

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13086 of 2017

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Jeetendra Kumar S/o Late Baso Paswan, Resident of Village-Churamanbigha,
Post Office- Gopalpur, Police Station-Iton Chanan, District-Lakhisarai.

... .. Petitioner

Versus

1. The State of Bihar
2. The District Magistrate, Bhagalpur.
3. The Deputy Development Commissioner, Bhagalpur.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Siyaram Sahi, Advocate
		Mr. Syed Masleh-Uddin Ashraf, Advocate
For the Respondents	:	Mr. Harish Kumar, G.P.-8

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT

Date : 09-08-2021

The petitioner has put to challenge an order issued by the District Magistrate, Bhagalpur, vide Memo No. 1231 dated 29.05.2017, whereby he has been removed from the post of Programme Officer, which he was holding on the basis of his contractual engagement.

2. The petitioner had preferred an appeal against the said order dated 30.08.2017, which has been rejected by an order dated 08.03.2018, passed by the Secretary, Rural Development Department, Government of Bihar, as the appellate authority, issued vide Memo. No. 360506 dated 16.03.2018. The said order has been brought on record by way of Annexure-8 to I.A. No. 1 of 2019. The petitioner seeks to challenge the said appellate order



dated 30.08.2017 by seeking amendment in the writ application through I.A. No. 1 of 2019. Since the said appellate order arises out of the order under challenge in the writ application, the prayer for amendment in the writ application is allowed. Accordingly the petitioner is permitted to question the correctness of the order dated 08.03.2018 passed by the Secretary, Rural Development Department, Government of Bihar.

3. I.A. No. 1 of 2019 stands allowed accordingly.

4. The petitioner was admittedly appointed as Programme Officer on contractual basis in 2007 under District Rural Development Agency (DRDA), Bhagalpur, agreement in respect of which was entered into on 25.09.2007. A copy of the said agreement has been brought on record by way of Annexure-I to a supplementary counter affidavit filed on behalf of the DRDA. Clause 3 of which reads as under : -

“3. The position offered to you is on contract extending not more than Two year from subject to satisfactory performance. The contract would be reviewed by DRDA based on your performance during the contract period. DRDA might rescind the contract if your performance has been found unsatisfactory. However if the performance is satisfactory DRDA may extend the contract period for



further period of 2 years on same terms & condition.”

5. It transpires from the statement made in the writ application that the petitioner was issued a show cause notice on 01.03.2017 by the Deputy Development Commissioner-cum-Chief Executive Officer, DRDA, Bhagalpur, asking him to explain as to why there was no progress in the Block where he was posted, according to MIS report for the month of February, 2017 in execution of a programme under MNREGA.

6. A show cause notice was issued to the petitioner on 01.03.2017 (Annexure-1 to the writ petition) asking him to explain as to why the contract of his engagement be not cancelled because of administrative lapses, want of interest in discharge of his function as well as non-compliance of the orders issued by the District Magistrate. The show cause notice was based on MIS report for the month of January, 2017.

7. The petitioner filed his show cause reply justifying the reasons for lack of progress including the fact that he was holding additional charge of Programme Officer of Naugachia Anchal for long period of time. It is the petitioner's case that without considering the said reply, the District Magistrate,



Bhagalpur, by the impugned order dated 29.05.2017, has removed the petitioner from the post of Programme Officer.

8. It is the petitioners' case that he has been able to show in his reply to the show cause notice that it was because of lack of staff, food, etc. and other circumstances that the execution of scheme under MNREGA was not found satisfactory. Further, he has canvassed that he was deputed for maintaining law and order during Intermediate examination and Board examination of 2017 by the Sub Divisional Officer as also during Holi and flood, which added to the reasons for poor out put in terms of performance.

9. Mr. Siyaram Sahi, learned counsel appearing on behalf of the petitioner has argued that the District Magistrate, while passing the impugned order has not considered the points raised by the petitioner in his reply to the show cause notice. He has further argued that the appellate authority has also not duly considered the points taken in his memo of appeal.

10. A counter affidavit has been filed on behalf of the respondents. Mr. Harish Kumar, learned G.P.-8 representing the respondent State of Bihar has relied on Supreme Court's decision in case of **GRIDCO Ltd. v. Sadananda Doloi**, reported in **(2011) 15 SCC 16**, to submit that the scope of judicial review under Article 226 of the Constitution of India in the matters of



contractual appointments is very limited and it cannot extend to this Court acting as an appellate authority sitting in judgment over a decision of termination of contractual engagement. The action of the respondents cannot be termed to be unreasonable, unfair, perverse or irrational, he contends. He has accordingly submitted that the petitioner cannot claim violation of any legal right which accrued to him.

11. I find force in the submissions made on behalf of the State of Bihar, placing reliance on the supreme Court's decision in case of **GRIDCO Ltd.** (supra), which has taken note of decision in case of **Satish Chandra Anand v. Union of India (AIR 1953 SC 250)**, wherein a five-Judge Bench dismissed the petition challenging the termination primarily on the ground that the petitioner of that case could not prove a breach of fundamental right since no right accrued to him as the whole matter rested in contract and termination of contract did not amount to dismissal or removal from service. The Supreme Court concluded in paragraph 41, in case of **GRIDCO Ltd.** (supra), as under : -

“41. It is also evident that the renewal of the contract of employment depended upon the perception of the management as to the usefulness of the respondent and the need for an incumbent in the position held by him. Both these aspects



rested entirely in the discretion of the Corporation. The respondent was in the service of another employer before he chose to accept a contractual employment offered to him by the Corporation which was limited in tenure and terminable by three months' notice on either side. In that view, therefore, there was no element of any unfair treatment or unequal bargaining power between the appellant and the respondent to call for an over-sympathetic or protective approach towards the latter.”

12. In the present case, the petitioner was given an opportunity of hearing. He had remedy to prefer an appeal, which he availed. The appellate authority has passed a detailed reasoned order rejecting the contention raised by the petitioner before the appellate authority. Neither the impugned order passed by the District Magistrate nor that of the appellate authority can be said to be perverse or without reason. They have assigned specific reason for discontinuing the services of the petitioner.

13. It is true that a writ Court exercising jurisdiction under Article 226 of the Constitution may judicially review any executive action and determine the issues of illegality, perversity, unreasonableness or irrationality, rendering such action vulnerable, no matter the action falls in the realm of contract. It has, however, been repeatedly held, at the same time, that such jurisdiction



cannot extend to the Court acting as an appellate authority sitting in judgment over the decision.

14. For the reasons noted and discussions made hereinabove, in my opinion, no case is made out for this Court's interference in the matter.

15. This application, in Court's opinion, has no merit and is accordingly dismissed.

16. There shall, however, be no order as to cost.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	29.06.2021
Uploading Date	09.08.2021
Transmission Date	N/A

