

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.40 of 2020

In
Civil Writ Jurisdiction Case No.13153 of 2012

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Shweta Kumari Wife of Yogendra Prasad Verma, Resident of Ghughari Tand,
Danti Bagh Road, P.S.-Civil Line, District-Gaya, Bihar.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Rural Development, Govt. of Bihar, Patna.
2. The District Officer, Gaya.
3. The Deputy Development Commissioner cum Chief Executive Officer cum Program Coordinator, District Rural Development Agency, Gaya.
4. The Director, National Employment Scheme, Gaya.
5. The Director, Accounts Administration and Self Employment, DRDA, Gaya.
6. The Incharge, Establishment, DRDA, Gaya.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Ms. Nivedita Nirvikar, Sr. Advocate Mr. Binay Kumar, Advocate
For the Respondent/s	:	Mr. Anjani Kumar (Aag4)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 18-08-2022

Heard learned counsels for the parties.

2. The appellant has questioned the validity of the order dated 21.12.2019 passed in C.W.J.C. No. 13153 of 2012. The appellant was appointed on contract basis against the post of Project Economist, DRDA, Gaya vide order dated 13.09.2007. While working on contract basis, she remained



unauthorized absent from 19.10.2011 to 17.01.2012 and retained the keys of Almirah, which has resulted in disruption of execution of certain works under SGSY in the concerned district.

3. Taking note of the aforesaid conduct of the appellant and the fact that appellant was a contract appointee, the competent authority proceeded to terminate the services of the appellant on 01.03.2012.

4. Feeling aggrieved and dissatisfied with the order of termination, the appellant has invoked remedy under Article 226 of the Constitution in filing C.W.J.C. No. 13153 of 2012 and it was dismissed on 21.12.2019. Hence, the present appeal.

5. Learned senior counsel for the appellant vehemently contended that even though appellant is a contractual employee. If her termination is based on certain allegations in that event the competent authority should have considered the explanation of the appellant against show cause notice. The same has not been considered. It is further submitted that with a *mala fide* intention her services were terminated.

6. Para 5, 8 and 9 of the order of the learned single Judge reads as under:-

“5. The petitioner was selected for the appointment on contractual basis



pursuant to an advertisement and subsequent written test against the post of Project Economist, DRDA, Gaya, by an order dated 13.09.2007. It transpires from the impugned order dated 01.03.2012 that she had remained absent from 19.10.2011 to 17.01.2012. An explanation was sought from her when she had intended to submit her joining by a letter dated 18.01.2012 by the Deputy Development Commissioner, Gaya. The Deputy Development Commissioner has recorded his finding in the impugned order that she did not hand over the keys of the Almirah which was under her charge for the period of her absence from 19.10.2011 to 17.01.2012. The Deputy Development Commissioner has further recorded in the impugned order that it had become difficult to execute the work under SGSY in the District because of the conduct of the petitioner. Keeping into account, the petitioner's reluctance, irresponsible and uncooperative attitude and her unauthorized absence, the Deputy Development Commissioner decided to terminate the service of the petitioner.

8. Learned counsel representing the State of Bihar justifying the impugned decision has contended that the petitioner's engagement could have been terminated even without putting her on any kind of notice in view of clear language of Clauses-4 and 11 of the Agreement on contractual appointment and has relied on a Division Bench decision of this Court dated 12.08.2011 in ***LPA No. 772 of 2011 (Neetu Kumari Vrs. State of Bihar and Ors.)***. He has submitted that the engagement being contractual in nature, the petitioner cannot be said to have established his legal right to continue.

9. There should not be any doubt that terms and conditions of a contractual engagement will be governed by the nature of Agreement entered into between the parties. Clauses-4 and 11 of the Agreement which has



been relied on by the petitioner herself read thus:-

“4. You will not be entitled to your salary if you willfully neglect or refuse or from other cause or be unable to perform any of the duty under this engagement. The employer may suspend your salary during such neglect, negligence or inability as aforesaid and may further immediately terminate your engagement without giving any such notice or making such payment of salary in advance.

xxx xxx xxx

11. The employer may terminate your engagement without giving any notice in the event of 7 days or more continuous absence from duty without taking permission from the competent authority.”

In the light of the aforesaid findings given by the learned single Judge, it is not appropriate to interfere with the order of the learned single Judge, merely that appellant's explanation has not been considered by the competent authority before termination order for the reasons that remaining unauthorized absent from 19.10.2011 to 17.01.2012, while holding the post on contract basis, no vested right is vested on appellant.

7. Learned senior counsel for the appellant submitted that the appellant suffered accident due to which she could not hand over the keys of Almirah for a period of three



months. However, at the same time, appellant has not apprised this Court as to whether she was admitted as an inpatient and it was beyond her control to communicate with her superior in respect of handing over the keys of Almirah.

8. In the light of these facts and circumstances, no interference is called for in respect of order of the learned single Judge dated 21.12.2019 passed in C.W.J.C. No. 13153 of 2012.

9. Accordingly, the present Letters Patent Appeal stands dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

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