

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10549 of 2020

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Santosh Kumar Mandal, son of Shri Rajlal Mandal, resident of Village-
Enarwa Godh, P.S.- Dewdha, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Rural Development Department Government of Bihar.
3. The Additional Secretary, Rural Development Department Government of Bihar.
4. The Collector, Madhubani.
5. The Deputy Development Commissioner, Madhubani.
6. The Block Development Officer, Ladania, District- Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Bishwanath Prasad Sinha, Sr. Advocate
For the Respondent/s : Mr.Deepak Sahay Jamuar, AC to AAG4

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

7 19-10-2022 The Deputy Development Commissioner (DDC for short), Madhubani, under order dated 30.01.2019 has terminated the petitioner's contractual services as Gramin Awas Sahayak. The same is assailed in the instant writ proceedings.

Learned senior counsel for the petitioner has submitted that for removal of Gramin Awas Sahayak the Department has prescribed a procedure as contained Clause 7 of letter dated 21.10.2014, issued by the Secretary (Respondent No.2).

Since, in the instant case, the order has not been passed by the District Magistrate (DM for short) after



complying with principles of natural justice, but by the DDC, this Court would find that the order is unsustainable.

The conclusion of the Court is fortified by decision of the Division Bench dated 18.01.2022 passed in **C.W.J.C. No.10439 of 2020**, wherein under similar circumstances the Division Bench has held as follows:-

“The only point raised by the learned Sr. counsel appearing for the petitioner is that under the guidelines issued by the Government, the service conditions and the manner in which contractual employment can be cancelled has been outlined in Annexure-4 and Clause -7 deals with cancellation of contractual appointment by the District Magistrate, if the services of the employee is not found to be satisfactory and after affording opportunity of hearing to the employee.

Clause “7” reads as under:-

(7) अनुबंध रद्द किया जाना : ऐसे

दृष्टांत आ सकते हैं जहाँ कर्तव्यहीनता एवं अन्य न्यायसंगत आधार पर ग्रामीण आवास कर्मियों के अनुबंध को रद्द करने की आवश्यकता महसूस हो।

इस संबंध में प्रखण्ड विकास पदाधिकारी की अनुशंसा तथा उप विकास आयुक्त की समीक्षोपरान्त प्राप्त आरोप पत्र के आधार पर



आरोपित पक्ष की सुनवाई के पश्चात् जिलापदाधिकारी के द्वारा युक्तियुक्त आदेश पारित किया जायेगा। इस तरह से पारित अनुबंध रद्द आदेश के विरुद्ध अपील विभागीय सचिव /प्रधान सचिव के समक्ष अनुबंध रद्द आदेश पारित किये जाने की तिथि के तीन माह के अंदर किया जा सकेगा।

As per prescribed procedure, on the recommendation of BDO and review made by the Deputy Development Commissioner of the charges levelled against the employee, speaking and reasoned order is to be passed by the District Magistrate, after complying the principles of natural justice and giving reasonable opportunity to the delinquent employee to defend himself against the charges levelled against him. However, in the present case the order states that the decision to cancel the contractual employment has been taken by the District Magistrate and same has been communicated to the petitioner by impugned order and appeal filed against said order has been dismissed by the Appellate Authority which is not as per the guidelines issued by the State Government.

After hearing learned counsel for



the petitioner and learned counsel for the State, the impugned order are not sustainable in the eye of law and accordingly, the order dated 31.01.2019 (Annexure-7) passed by the DDC, Madhubani as well as order dated 10.01.2020 (Annexure-9) passed by Appellate Authority are set aside.

However, setting aside of the impugned orders will not preclude the competent authority to pass a fresh order on the basis of memo of charge dated 20.08.2018 as contained in Annexure- 6 in terms of the guidelines issued by the Government as contained in Annexure-4.

The writ petition is allowed to the extent as indicated above.”

The order of the Deputy Development Commissioner is, therefore, unsustainable and is hereby quashed. The order of the Additional Secretary dated 03.01.2020 passed in appeal, affirming the illegal order must also collapse and is also quashed.

Writ application is allowed with liberty to the State to proceed afresh, in accordance with law.

(Madhuresh Prasad, J)

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