

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10439 of 2020

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Kamal Kumar Safi, Son of Late Baudhu Safi, resident of Village- Bardaha,
P.S.- Babubarhi, 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, Benipatti, District - Madhubani.

... .. Respondent/s

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(The proceedings of the Court are being conducted by Hon'ble the Chief Justice /Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences /offices.)

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Singh, Adv
For the Respondent/s : Mr.Lalit Kishore (AG)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 18-01-2022

Heard learned counsel for the parties

Petitioner has prayed for the following relief(s):-

“That this is an application for issuance of a writ in the nature of certiorari and/or an appropriate writ for quashing the order dated 03.01.2020 passed Respondent No. 3 and which was communicated to the petitioner vide a letter contained in letter no. 453084 dated 10.01.2020 (as contained in Annexure-9) issued under the signature of the undersecretary Government of Bihar by which the appeal filed by the petitioner against the cancellation of contract by the order contained in Memo no. 218 dated 31.01.2019 (Annexure-7) issued under the signature of Deputy Development Commissioner (Respondent 5) has been

affirmed and also for quashing the order contained in memo No. 218 dated 31.01.2019 (Annexure-7) issued under the signature of Deputy Development Commissioner (Respondent 5) by which the contract of the petitioner has been cancelled and/or for passing of any other order of direction for which the petitioner is found legally entitled.”

This writ petition has been filed for setting aside the order dated 03.01.2020 passed by Additional Secretary, Rural Development Department, Government of Bihar, Patna by which he has dismissed the appeal filed by the petitioner against the order dated 31.01.2019 passed by Deputy Development Commissioner, by which the contractual appointment of petitioner has been cancelled.

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 एवम अन्य न्यायसंगत आधार पर ग्रामीण आवास कर्मियों के अनुबंध को रद्द करने की आवश्यकता महसूस हो इस सम्बन्ध में प्रखंड विकाश पदाधिकारी के अनुशंसा तथा

उप विकास आयुक्त की समीक्षोपरान्त प्राप्त आरोप पत्र के आधार पर आरोपित पक्ष की सुनवाई के पश्चात जिला पदाधिकारी के द्वारा युक्तियुक्त आदेश पारित किया जाएगा। इस तरह से पारित अनुबंध रद्द आदेश के विरुद्ध अपील विभागीय सचिव/प्रधान सचिव के के समक्ष अनुबंध रद्द आदेश पारित किए 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.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA