

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10317 of 2020

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Md. Sirajuddin son of Md. Shahavuddin resident of Village- Bhagwanpur,
P.S.- Rajnagar, 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, Babubarhi, District- Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vishwanath Prasad Sinha, Sr. Adv Mr. Sanjay Kumar Singh
For the Respondent/s	:	None

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

8 06-09-2022 The petitioner is aggrieved by the order dated 31.01.2019, whereby his contractual existence as Awas Sahayak has been terminated by the Deputy Development Commissioner, Madhubani.

The petitioner has appealed against the said order, which has been rejected by order dated 03.01.2020 passed by the Deputy Secretary, Rural Development Department under communication dated 10.01.2020.

Learned senior counsel for the petitioner submits that cancellation of petitioner's contract of service by order of the



Deputy Development Commissioner, Madhubani is unsustainable in view of the provisions contained in Clause 7 of the letter dated 21.10.2014 issued by the Secretary to the Government of Bihar in the Rural Development Department prescribing the procedure for cancellation of contract.

Clause 7 of the letter reads as follows:

“(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 पश्चात 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।”

The procedure, therefore, requires recommendation of



the Block Development Officer and a review by the Deputy Development Commissioner whereafter reasoned order is required to be passed by the District Magistrate after complying with the principles of natural justice and hearing the person likely to be affected. In the instant case, however, the order has been passed by the Deputy Development Commissioner, Madhubani, not by the District Magistrate. Since the order has not been passed after compliance with the principles of natural justice by the District Magistrate, the order dated 31.01.2019 is unsustainable in view of violation of procedure prescribed under Clause 7 of the letter dated 21.10.2014.

The said submission is apparently correct from bare perusal of the impugned order dated 31.01.2019.

The State in its counter-affidavit has tried to sustain the order as being as per direction of the District Magistrate.

Learned senior counsel for the petitioner, however, has referred to decision of the Division Bench dated 18.01.2022 passed in CWJC No. 10439 of 2020 wherein identical issue fell for consideration before the Division Bench whereby based on decision to cancel the contractual appointment taken by the District Magistrate, the contractual employment was cancelled by the Deputy Development Commissioner.



Considering such action to be unsustainable for violation of Clause 7 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।

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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 petitioner's case is squarely covered by the decision of the Division Bench and, therefore, impugned orders dated 31.10.2019 passed by the Deputy Development Commissioner, Madhubani and order dated 03.01.2020 passed in Appeal by the Deputy Secretary, Rural Development Department are hereby quashed.

The writ application is allowed with liberty to the State to proceed afresh in accordance with law.

(Madhuresh Prasad, J)

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