

(2018) 01 JH CK 0067
In the Jharkhand High Court
Case No : 3758 of 2011

Deep Shikha Kumari

APPELLANT

Vs

The State of Jharkhand & Ors.

RESPONDENT

Date of Decision : 11-01-2018

Acts Referred:

Constitution of India, Article 14, Article 21, Article 16 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous

Citation : (2018) 01 JH CK 0067

Hon'ble Judges : Pramath Patnaik

Bench : Single Bench

Advocate : Sarju Prasad, Anup Kr. Agarwal

Final Decision : Dismissed

Judgement

1. In the instant writ application, the petitioner has interalia sought for issuance of writ of certiorari for quashing the letter dated 01.03.2011 issued

by the respondent no.3 and for quashing the Memo No.77 dated 21.04.2010 passed by the respondent no.4. The petitioner has further prayed for

direction to respondents for reinstatement in services with retrospective effect with all consequential benefits.

2. The brief facts leading to filing of the writ application is that the petitioner was appointed on the post of Block Account Manager vide letter

dated 01.10.2008 issued by State RCH Officer Jharkhand, Namkum Ranchi. The appointment of the petitioner was on contractual basis under the

National Rural Health Mission, Government of Jharkhand in pursuance of a selection in the walk-in interview. In pursuance to the said appointment

order, the petitioner joined the aforesaid post and continued to discharge her

duties most diligently and utmost sincerity with satisfaction of the authorities but while working as such on the basis of a complaint which was lodged on the behest of Seema Pandey who by misusing the signature of the alleged complainant put on blank paper for the purpose of marking their attendance. Basing on the such complaint, the petitioner was placed under suspension by the order of the Deputy Commissioner, Dumka. Vide suspension order dated 26.04.2010 issued by the respondent no.4 who had no authority or power to put the petitioner under suspension. Since, he was not appointing nor controlling or disciplinary authority of the petitioner. The petitioner immediately was served with a show cause on a very same date i.e. on 21.04.2010 to give explanation with regard to the complaint dated 16.04.2010 as per Annexure-4 to the writ petition. On receipt of the show cause notice, the petitioner submitted her written clarification/explanation to respondent no.4 giving detailed submissions as per Annexure-5 to the writ petition. Thereafter, the respondent no.3 issued a letter to respondent no.4 by annexing all explanation submitted by the petitioner to re-investigate the matter in the light of the explanation submitted by the petitioner as evident from Annexure-8 to the writ petition. Thereafter, services of the petitioner has been terminated vide letter dated 01.03.2011 as per Annexure-9 to the writ petition which is impugned in this writ application.

3. Mr. Sarju Prasad, learned counsel for the petitioner has submitted with vehemence that the impugned order of termination has been passed without observing the Principle of natural Justice. Learned counsel for the petitioner further submits that since the termination order was tainted with stigma, therefore full-fledged inquiry ought to have been conducted prior to termination of the petitioner since, the same has not been followed. The impugned order of termination is not sustainable being bereft of Article 14, 16 and 21 of the Constitution of India. Learned counsel for the petitioner also submits that the action of the respondents amounts to colourable exercise of power which cannot be sustained on the anvil of Article 14 and 16 of the Constitution of India.

4. Repudiating the averments made in the writ application, a counteraffidavit has been filed by the respondents. In the counter-affidavit, it has been submitted that the petitioner was appointed on 01.10.2008 as Block Accounts

Manager and her nature of work was contractual and she was posted in Dumka District on the said post. While working as such, certain allegations were levelled against the petitioner of demanding/accepting illegal gratification for disbursing payment to the Sahiyas. It has further been submitted that some of the Sahiyas made a written complaint against the petitioner before the Deputy Commissioner, Dumka on 16.04.2010 alleging that she is illegally taking Rs.500/- from Sahiyas and Rs.100/- from each pregnant lady against the disbursement of cheque for Rs.1000/-. It has further been submitted that after receiving the complaint dated 16.04.2010, the Deputy Commissioner, Dumka called for an explanation vide memo no.75 dated 21.04.2010 whereby she was asked to appear on 30.04.2010 before the Deputy Commissioner, Dumka vide Annexure-A to the counter-affidavit. It has further been submitted that the Deputy Commissioner, Dumka vide memo dated 21.04.2010 passed an order suspending the petitioner. Thereafter, the petitioner submitted her explanation against the charges levelled on 30.04.2010 by denying all the charges against her. After receiving copy of the explanation, the Mission Director issued a letter to Deputy Commissioner, Dumka vide letter dated 03.12.2010 to re-enquire in view of the explanation submitted by the petitioner. Thereafter, the Mission Director, Jharkhand Rural Health Mission Society terminated the contract of the petitioner on the basis of the recommendation made by the Deputy Commissioner, Dumka vide letter dated 01.03.2011.

5. Mr. Anup Kr. Agarwal, learned J.C. to S.C.V for the respondent-State apart from reiterating the submissions made in the counter-affidavit has assiduously submitted that appointment of the petitioner was contractual and after giving sufficient opportunity to the petitioner, the services of the petitioner who was provided contractual appointment has been terminated. Therefore, there is absolutely no violation of natural justice hence the case of the petitioner does not deserve for reconsideration by this Court. Learned counsel for the respondent-State further submits that since the petitioner's appointment is contractual, her case cannot be treated at par with regular employee therefore, she was not entitled to be subjected to any regular enquiry. However, after giving adequate opportunity to explain her stand regarding alleged allegations, misconduct, the service of the

petitioner has been terminated.

6. After hearing learned counsel for the respective parties at length and having bestowed my anxious consideration to the documents on records, I

am of the considered view that the petitioner has not been able to make out a case for interference due to following facts, reasons and judicial

pronouncements stated hereinbelow:-

(I) Admittedly, the petitioner was appointed on the post of Block Account Manager and the appointment of the petitioner was contractual. The

services of the petitioner has been dispensed with vide Annexure-9 to the writ application after following the Principle of Natural Justice.

Therefore, the contention of the counsel for the petitioner that no opportunity of hearing was given to the petitioner prior to termination is not

acceptable.

(II) In case of contractual appointment, the principle of natural justice is also one of the pre-condition for dispensing with services and the State

acts fairly and reasonably in its contractual, constitutional or statutory obligation, it acts contrary to the constitutional guarantee found under Article

14 of the Constitution. In this regard the judgment of the Hon'ble Apex Court in the case of ABL International Ltd. and Another Vs. Export

Credit Guarantee Corporation of India Ltd. and Others reported in (2004) 3 SCC 553 at para 23 and para 53 has held as follows :

23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an

obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India.....

53. From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and

unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the

Constitution.....

Further, in the case of Karnataka State Forest Industries Corporation Vs. Indian Rocks reported in (2009) 1 SCC 150 same ratio was reiterated

wherein it was held as follows:

38. Although ordinarily a superior court in exercise of its writ jurisdiction would not enforce the terms of a contract qua contract, it is trite that

when an action of the State is arbitrary or discriminatory and, thus, violative of Article 14 of the Constitution of India, a writ petition would be maintainable.

Even in the matter of contractual appointment, if the order is stigmatic then an opportunity of hearing ought to be given by respondent-authorities to the petitioner.

(III) Reverting to the present case, it is apparent that the notice of show cause was given to the petitioner and after consideration of the show cause

explanation, the services of the petitioner has been terminated, therefore, the respondents have adhered to the compliance of the principles of

natural justice prior to the termination of the contract of the petitioner in issuing the impugned order of termination of contract vide Annexure-9 to

the writ application.

7. In view of the aforesaid reasons stated in the forgoing paragraphs, this Court is not inclined to interfere with the impugned order of termination

vide Annexure-9 to the writ petition. Accordingly, the writ petition sans merit is dismissed.