

(2023) 01 PAT CK 0015

In the Patna High Court

Case No : Letters Patent Appeal No. 162 Of 2020

Dr. Md. Abdul Ali

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 11-01-2023

Acts Referred:

Citation : (2023) 01 PAT CK 0015

Hon'ble Judges : Ahsanuddin Amanullah, J; Harish Kumar, J

Bench : Division Bench

Advocate : Md. Aslam Ansari, S.D. Yadav, Nagendra Kumar Singh

Final Decision : Dismissed

Judgement

1. Heard Mr. Md. Aslam Ansari, learned counsel for the appellant and Mr. S.D. Yadav, learned AAG 9 for the State.

2. The present appeal is directed against the judgment dated 20.01.2020 passed by the learned Single Judge in CWJC No. 22251 of 2019 by which the writ petition filed by the petitioner against his order of termination of contract dated 31.08.2019 has been dismissed.

3. The appellant was initially engaged on contract for a period of two years on 29.06.2011 and the last renewal was for the period dated 01.01.2018 to 01.01.2021 but in the meantime on 23.07.2019, he received a show cause based on a comment of the learned Sessions Judge in a judicial order whereby an injury report submitted by him was doubted and adverse comments were made therein.

4. The appellant took a stand in his show cause that on the relevant day he was not on duty and two other persons had prepared the injury report and he was forced to sign on the same and thus no liability can be fastened on him. The authorities after giving him a second show cause terminated the contract by the impugned order invoking the provision of Clause-5 of the agreement of contract

between the parties.

5. Learned counsel for the appellant submitted that reliance on Clause-5 of the contractual agreement dated 29.06.2011 is erroneous for the reason that it talks about any information found false or fabricated document presented by the appellant for seeking the employment and it does not relate to any misconduct or fraud/forgery committed during the course of employment. However, it was submitted that the appellant is a scapegoat as without there being any fault on his part, he has been inflicted with the severest punishment of his contract itself being terminated. Learned counsel submitted that there may have been an error in judgment by the appellant in preparing the injury report and he had not taken such stand himself but rather an erroneous show cause on his behalf was filed under professional advise. It was submitted that human error to a professional is admissible, especially in matters where it is basically subjective for forming an opinion, which the appellant has done inasmuch as, the incised wound has been written to be caused by bamboo stick, which is also capable of inflicting such injury in specific cases.

6. Learned AAG 9, per contra, fairly submitted that the invocation of Clause-5 of the contractual agreement dated 29.06.2011 may not be appropriate but in the same contractual agreement Clause-3 and Clause-6 which have been quoted by the learned Single Judge in the order impugned clearly stipulates that if there is any misconduct or lack of satisfactory service, the contract may be terminated and the conduct of the appellant in the present instance clearly demonstrates that the stipulation of those clauses were satisfied and termination of the contract does not warrant any interference, as mere wrong quoting of a provision will not be a ground for interference where substantially the power exists. However, he submitted that as the stand has been taken that the appellant under improper/erroneous/professional advise had taken such stand in his show cause, he may have departmental remedy.

7. Having considered the rival contentions, the Court does not find any occasion to interfere in the order of the learned Single Judge as also the order which was impugned in the writ petition.

8. Accordingly, the appeal stands dismissed.

9. However, as the learned counsel for the appellant has submitted that due to improper and incorrect professional advise, a stand was taken in the show cause, for the ends of justice, the Court would only observe that it would be open to him to file appropriate representation before the department concerned raising all these factual/legal issues which may be considered by the competent authority in accordance with law, without being prejudiced by the present order.

10. On prayer made by learned counsel for the appellant, the Court would further observe that if such representation is filed within six weeks from today, the competent authority would after affording an opportunity of hearing, if so desired by the appellant would pass a reasoned order thereupon within six weeks from

the date of filing of the such representation.