

(2011) 04 PAT CK 0072
In the Patna High Court
Case No : CWJC No. 5345 of 2011

Rajneesh Sudhakar Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:

Citation : (2011) 04 PAT CK 0072

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard learned Counsel for the Petitioner, learned AAG for the State and learned Counsel for the State Health Society.

2. There is a preliminary objection raised on behalf of the State that the impugned order contained in Annexure-10 dated 24th February, 2011 cannot be assailed or tested for its validity or legality under Article 226 of the Constitution of India as appointment of the Petitioner is under a registered society registered under the Societies Registration Act and was contractual in nature. The appointment letter is Annexure-5 wherein terms and conditions of contract have been indicated. Petitioner's service has been terminated after giving a month's salary in lieu of notice and remedy for the Petitioner would not lie before the High Court but may be before the civil court of competent jurisdiction..

3. Submission of the counsel for the Petitioner is that in view of the constitution and object of the society the State has over bearing presence in the constitution of the society as well as the pervasive control looking at the persons who occupy various posts as office bearers. He submits that termination even if it is a contractual post cannot be effected without being given opportunity of hearing to the Petitioner. It is stigma in the face of the allegations made in the letter and that by itself makes out a case for interference. In addition to that he relies on para -40 of a decision rendered by the Supreme Court which is a case of Karnataka State Forest Industries Corporation Vs. Indian Rocks,

4. The Court has gone through the aims and objects of the society. No doubt

there are grants of aid by the State Government but the society can also generate funds from other sources which would be evident from perusal of Clause 6.1 as per rules and regulations of the society annexed as Annexure-17.

5. Law is well settled that in matters of concluded contract the parties per se are bound by the terms and conditions of the contract and unless there is some breach of any fundamental right of a citizen it is not for the Court to exercise its power under writ jurisdiction because writ jurisdiction would not enforce the terms of the contract. This is the opinion of the Supreme Court in para 40 of the decision relied by the learned Counsel for the Petitioner.

6. There is a clause for termination of service after giving a month's notice or a month's salary. Obviously the Respondents have not found the service of the Petitioner satisfactory and if the society feels that there is no utility of the person because of his inability to deliver goods to the society there is no compulsion for the society to continue with such person on the organization.

7. There could be occasions where the Court can interfere even in such matters but in the given facts and circumstances, it is not a case where a writ application ought to be maintained but it does not mean that Petitioner does not have remedy under the law. The remedy for him would lie under common law and not under Article 226 of the Constitution of India.

8. Writ has no merit. It is dismissed.