
(2013) 11 PAT CK 0067

In the Patna High Court

Case No : Letters Patent Appeal No. 599 of 2013

Renu Kumari

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2014) 2 BBCJ 52 : (2014) 2 BLJud 119

Hon'ble Judges : Mr. Navin Sinha and Mr. Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Mr. Anil Kumar Sinha, Advocate, for the Appellants; Mr. Girija Shankar Prasad, GP 1 with Umesh Kumar, AC to GP 1, for the Respondents

Final Decision : Allowed

Judgement

Mr. Navin Sinha, J.(Oral)—We have heard Counsel for the Appellants and the State.

2. The present appeal arises from the order dated 17.4.2013 dismissing CWJC No. 4781 of 2010. The learned Single Judge held that the appointment of the Appellants being contractual in nature, any breach of the terms in ordering termination is not amenable to challenge before a Writ Court being a purely administrative matter. If so opined, the Appellants could move the Civil Court of competent jurisdiction for remedy under the common law.

3. Learned Counsel for the Appellants submits that they were appointed on 17.3.2008 and 13.11.2008 as Warden and Night Guard respectively on contractual basis in the Kasturba Gandhi Residential Girls School established under the Sarva Shiksha Abhiyan. The contract was for one year renewable in nature. It was renewed on 1.7.2009. During pendency of the renewed tenure they were terminated on 7.11.2009 under orders passed by the District Superintendent of Education cum District Programme Coordinator, Bihar Education Project, Samastipur. It stated that despite warning they had not mended their ways. Certain named officials in writing had made adverse

observations against their duties and activities. The order to their prejudice, casting aspersions and stigmatic was passed in violation of principles of natural justice without any opportunity to show cause and defend. It cast a slur on the character of the appellants.

4. The Appellants represented against the arbitrary termination. The Project Director on 1.12.2009 called for a report. The District Superintendent of Education, Samastipur and the Block Education Officer were directed to hold an enquiry. The enquiry report dated 29.12.2009 states that the allegations made against the Appellants that they were living as husband and wife at Ajanta Rest House was not correct. They resided separately. Their attendance was duly marked on 7.4.2009. The District Superintendent of Education should have called for an explanation preceded by a show cause notice before termination. The report also states that after the cause may have been shown by the Appellants the matter should have been placed before the Appointment Committee for appropriate decision. Learned Counsel relies upon the order of the State Programme Director dated 6.5.2009 prescribing the procedure for removal asserting it was not followed.

5. Referring to the instruction dated 6.5.2009 it is further submitted that renewal of the contract was a matter of course to take advantage of their qualification, training and past experience. Only in extreme cases of unsatisfactory performance or dereliction in duties they were to be removed but only after placing it before the Selection Committee.

6. On 4.5.2010 the Court had stayed the order for termination and the Appellants have continued in service.

7. Learned Counsel submits that a contract employee can be removed in terms of the contract or after expiry of the contract. If the removal is during term of the contract casting aspersion or stigma it be preceded by a show cause notice. The subsequent enquiry report manifests that the grounds for termination are non est. If arbitrariness is apparent violating rights under Article 14 of the Constitution the question of approaching the Civil Court of competent jurisdiction does not arise.

8. Learned Counsel for the State submitted that in view of the counter affidavit filed by Respondent no. 3 in the writ petition he supports the impugned order.

9. We have considered the submissions on behalf of the parties. Undoubtedly the service tenure and status of a contract employee is more precarious than even a temporary employee much less permanent employee. He can be terminated in terms of the contract. After the contract expires he may not have an indefeasible right of renewal but if the authorities have framed any policy including that dated 6.5.2009 such a contract employee has a right to be fairly and reasonably considered for renewal thereunder. But that does not make a contract employee completely dependant at the whims and fancies of the authorities. He has a security of tenure during subsistence of the contract. In the facts of the present

case, the Appellants have been removed during tenure of the contract. If it had been removal simplicitor, matters for our consideration would have been entirely different. But once aspersions were sought to be cast, not only on their performance of duties but their character also making the removal stigmatic in nature, it is well settled law that they had a right to be heard. This law has been of-repeated and is being repeated by the Courts regularly. We express deep surprise for the manner in which the District Education Officer, Samastipur acted in issuing the termination order arrogating unto himself powers under the law which he did not possess. He generated a wholly unwanted litigation burdening not only the State exchequer, but also the Court giving a complete go by to the State Litigation Policy.

10. The law in this regard finds succinct discussion in (1991) 1 SCC 212 (Kumari Shrelekha Vidyarthi etc. v. State of U.P. and others) observing as follows:-

"22. There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions."

11. Before the Writ Court a counter affidavit was filed by one Rajni Kant Praveen, District Superintendent of Education cum District Programme Coordinator, Samastipur, Respondent no. 3. The affidavit was affirmed on 13.8.2010. It does not answer the pleadings of the writ petition paragraph wise. Paragraph 10 of the writ petition read along with Annexure 5, the enquiry report that the allegations against the Appellants were untrue, was not considered necessary to answer. Respondent no. 3 only referred to documents till 3.12.2009 adverse to the Appellants. Sri Praveen was acting as an Officer of the Government and not contesting the appointment of the Appellants in his personal capacity as an adversary. It was his duty to assist the Court properly by placing all necessary

materials before the Court and leave the conclusion to be arrived at for the Court to decide. His conduct in not placing the enquiry report dated 29.12.2009 and deliberately withholding it appears to have been a wilful act to mislead the Court. Such an attempt by withholding relevant documents and information by the respondent in our opinion is an extremely serious matter polluting the stream of justice for which we should have proceeded further against him but refrain from doing so. We, however, direct the Principal Secretary, Human Resources Development Department to take note of our observations with regard to the conduct of Sri Praveen in administrative jurisdiction and take departmental action so that others may not venture into such conduct.

12. In (2013) 9 SCC 199 (Moti Lal Songara v. Prem Prakash @ pappu) it has been observed that

1."....the "Court is not a laboratory where children come to play". The action of the respondent-accused depicts the attitude where one calculatedly conceives the concept that he is entitled to play a game of chess in a Court of law and the propriety, expected norms from a litigant and the abhorrence of Courts to the issues of suppression of facts can comfortably be kept at bay...."

13. The allegation against Appellant no. 1, a lady, was also with regard to her character and reputation, the most treasured possession for a woman. In view of the enquiry report we leave it open for her to pursue her civil and criminal remedy under the laws of the land against the concerned.

14. In view of the enquiry report dated 29.12.2,009, not noticed by the learned Single Judge, the order under appeal is completely unsustainable. The order for termination dated 7.11.2009 and the order under appeal dated 17.4.2013 are set aside.

15. The question for renewal of the contract has obviously to be left to the respondents to consider under the policy dated 6.5.2009. The appeal is allowed.