

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17449 of 2023

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Rahil Ahmed, S/o Sirajuddin Ansari, R/o- Ishapur Amrudi Bagicha, P.O and
P.S- Phulwari, District- Patna, Bihar- 801505.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Development Department, Government of Bihar, Patna.
2. The Chief Executive Officer, Bihar Rural Development Society, Government of Bihar, Patna.
3. The District Magistrate, District- Patna, Bihar.
4. The Deputy Development Commissioner, Patna, Bihar.
5. The Block Development Officer, Danapur, District- Patna, Bihar.

... .. Respondent/s

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Constitution of India---Article 226, 309 to 311---- Bihar Government Servants (Classification, Control & Appeal) Rules, 2005--- Rule 17---writ petition challenging the decision of Respondent authorities terminating the services of Petitioner on the post of Gramin Awas Sahayak under the Rural Development Department, Government of Bihar, Patna---plea that the termination order was passed only on the basis of allegation and without affording opportunity of hearing to Petitioner.

Held: CCA Rules is not applicable to the case of contractual, temporary, daily-wage or adhoc employee, appointed by the State for a particular Scheme and the service is automatically terminated on completion or cessation of the Scheme--- A contractual employee cannot claim protection of service rules applicable to the regular employees of the State--- Petitioner has been appointed by the State purely on contractual basis and does not hold any civil post under the State. Therefore, his services are not also terminated following the rules, formulated by the Union or the State Legislatures, as the case may be---writ dismissed---matter referred to the Larger Bench to decide the question as to whether departmental proceedings, holding departmental enquiry and determination of charge(s) under the provisions of CCA Rules, 2005, are applicable in case of contractual / temporary / daily-wager / adhoc employees working under the State under specific Scheme. (Para 1, 5, 9, 10, 15-18)

(2007) 11 SCC 681, AIR 1967 SC 884, (2023) 3 SCC 498, (2014) 5 SCC 300, (2005) 6 SCC 657

..... **Relied Upon.**

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- 5. The Block Development Officer, Danapur, District- Patna, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Aatish Kumar, Advocate
For the Respondent/s : Mr. Vinay Kirti Singh, GA2

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 07-05-2024

1. The petitioner has invoked the extraordinary writ
jurisdiction of this Court under Article 226 of the Constitution
of India, praying for following reliefs:-

“i) For setting aside the order
dated 10.12.2019 passed by the Principal
Secretary, Rural Development Department,



Government of Bihar, Patna upholding order of Termination contained in Memo No. 119 dt. 29.01.2019 passed by Respondent No.3, District Magistrate, District- Patna, Bihar and further to quash the order of Termination contained in Memo No. 119 dt. 29.01.2019 as well.

ii) For directing the respondents to Reinstatement the petitioner to his position of GRAMIN AAWAS SAHAYAK under the Bihar Rural Development Society, Rural Development Department, Government of Bihar, Patna as has been allowed to several other persons alike to the petitioner by the concerned Respondents in similarly situated matters of the same cadre and category.

(iii) To direct Respondents for the Payment of all back-due salaries along with consequential benefits to the petitioner from the date of his wrongful dismissal until his reinstatement.

(iv) For directing Respondents to pay the ex-gratia compensation for the mental and financial agony suffered due to the arbitrary termination.

(v) For directing the Respondents to pay all consequential benefits, including but not limited to, seniority, promotions, and any other benefits accrued during the period of



wrongful termination.

vi) To grant any other relief/s for which the petitioner be found entitled in the eye of the law.”

2. The petitioner was appointed to the post of Gramin Awas Sahayak *vide* Memo No. 793, dated 3rd of March, 2014 under the Rural Development Department, Government of Bihar, Patna. When he was posted in the office of Block Development Officer, Danapur, he received a notice to show cause as to why first installment of aid money to the beneficiaries for the financial year 2016-2017 and 2017-2018 under Pradhan Mantri Awas Yojana (Gramin) (“PMAY” for brevity) was not issued and disbursed to the beneficiaries.

3. It is pertinent to note that as Gramin Awas Sahayak, the petitioner enjoined with the duty of disbursement of fund to the beneficiaries for construction of houses under PMAY. The petitioner duly replied to the said show-cause notice, stating, *inter alia*, that he disbursed the first installment of grant of PMAY. However, he did not include the names of some persons who were declared as beneficiaries for registration because they did not have even land to construct houses under the said Scheme. The petitioner was served with second show-cause notice on 22nd of September, 2018. He also submitted his



reply to the satisfaction of his authorities. Subsequently, he was served with third show-cause notice by the Respondent No. 5 *vide* Memo No. 1440, dated 13th of October, 2018. It was alleged that the petitioner transferred fund granted in the name of a particular beneficiary to the account of other beneficiaries. The petitioner pleaded his inadvertence and rectified such error immediately.

4. The Respondent No. 5, Block Development Officer, Danapur, Patna sought for an explanation of the petitioner as to why he was absent in the meeting dated 22nd October, 2018. He immediately replied that due to physical illness, he could not attend office on 22nd of October, 2018.

5. On 25th of October, 2018, the State Gramin Awas Staff Association, Bihar (“SGASA” for short) called for a state-wide strike, mass leave and dharna in the District Collectorate against the punitive action(s), deductions of honorarium and for other demands. Therefore, the petitioner, being a member of SGASA, did not attend his duty from 25th of October, 2018 to 6th of November, 2019. He joined his service on 6th of November, 2019. On 12th of December, 2018, he was served with a charge-sheet, issued by the Deputy Development Commissioner, Danapur, Patna (Respondent No. 4) for unauthorized absence



during the said period. The petitioner submitted his reply to the charge-sheet before the District Magistrate, Patna, Respondent No. 3 on 8th of January, 2019, denying all allegations made out against him in the said charge-sheet. Subsequently, without giving any opportunity to defend his case, the petitioner was terminated w.e.f. 29th of January, 2019, by the District Magistrate, Patna. The petitioner submitted a detailed representation, dated 1st of February, 2019, denying all the allegations made out against him in the said charge-sheet with explanation. However, the petitioner's representation was not considered. Subsequently, on 21st of February, 2019, the Contractual Employees Union, Bihar, Patna wrote a letter to the Secretary, Rural Development Department, Government of Bihar, Patna regarding termination order of the petitioner and prayed for reconsideration of the same. However, the representation of the Union was also not considered by the authorities. The petitioner refers to an order passed by a Co-ordinate Bench of this Court in C.W.J.C. No. 7056 of 2020 on similar facts and circumstances, wherein a Co-ordinate Bench held : -

*“It is now well settled that no order
visiting evil or civil consequences can be
passed without compliance of natural justice.*



Indisputably the order as contained in Annexure-6 was passed without opportunity of hearing and only on the basis of allegation, the order of termination has been passed against this petitioner. Such order is lawless and cannot sustain.

It is accordingly, quashed, As a consequence of quashing of the order of termination, as contained in Annexure-6, the petitioner is directed to be reinstated with all consequential benefits.”

6. I have heard the learned Advocate for the petitioner as well as the learned counsel for the State. I have also carefully perused the writ petition, materials on record and specially the order passed by a Co-ordinate Bench in C.W.J.C. No. 7056 of 2020 on 13th of January, 2021. It is needless to say that the petitioner is a Gramin Awas Sahayak. He was appointed on contractual basis for a particular Scheme, namely, PMAY and after completion or termination of the Scheme, the service of the petitioner will be automatically terminated.

7. In ***State of Karnataka & Ors. v. Ameerbi & Ors.***, reported in ***(2007) 11 SCC 681***, the question as to whether Anganwadi workers constitutes civil posts or not, came up for consideration before the Hon'ble Supreme Court. The Hon'ble Supreme Court was pleased to hold that the post of Anganwadi



workers are not statutory posts. They have been created in terms of the Scheme. It is one thing to say that there exists a relationship of employer and employee by and between the State and Anganwadi workers, but it is another thing to say that they are holders of civil posts.

8. In **Ameerbi** (supra), the Hon'ble Supreme Court placed reliance on the Constitution Bench's decision in *State of Assam v. Kanak Chandra Dutta*, reported in *AIR 1967 SC 884* and reproduced paragraph nos. 9 and 10 of *Kanak Chandra Dutta* case. The said paragraphs are absolutely relevant for our purpose and is quoted below: -

“9. The question is whether a Mauzadar is a person holding a civil post under the State within Article 311 of the Constitution. There is no formal definition of ‘post’ and ‘civil post’. The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Article 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. See marginal note to Article 311. In Article 311, a member of a civil service of the Union or an



all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State. See the marginal notes to Articles 309, 310 and 311. The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

10. In the context of Articles 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds 'office' during the pleasure of the Governor of the State, except as expressly provided by the Constitution, see Article 310. A post under the



State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. Article 310(2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post.”

9. When the petitioner is not a holder of a civil post under the State, this question will automatically arise, if the petitioner being a contractual employee is subjected to the provisions relating to Rule 17 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as “CCA Rules” for short). In my humble opinion, CCA Rules is not applicable to the case of contractual, temporary, daily-wage or adhoc employee, appointed by the



State for a particular Scheme and the service is automatically terminated on completion or cessation of the Scheme.

10. The Hon'ble Supreme Court in case of *Nand Kumar v. State of Bihar & Ors.*, reported in (2014) 5 SCC 300, held that the daily-wage earners were never appointed through a proper procedure and hence, are not appointees in the strict sense of the terms "appointment". They do not hold a post. The Scheme of alternative appointment framed for regular employees of abolished organization cannot, therefore, confer a similar entitlement on the daily wagers of abolished organization to such alternative employment. Appointment on daily-wage basis is not an appointment to a post according to the rules. Usually, the projects in which the daily wagers were engaged, having come to an end, their appointment is necessarily terminated for want of work. Therefore, the status and rights of daily wagers or a government concern are not equivalent to that of a government servant and his claim to permanency has to be adjudged differently. Their claim to regularization / absorption is not a matter of course. Besides, the consequences of temporary appointment were within their knowledge. Thus, they cannot even have a right to invoke the theory of legitimate expectation for being confirmed in the post.



10. The same is the nature of services of a contractual employee. On expiry of the contract, the service of a contractual employee is abolished. A contractual employee cannot claim protection of service rules applicable to the regular employees of the State. Of course, the State, being an employer, there exists a relationship of employer and employee between the State and the contractual employee, but they cannot claim protection of Article 309 to 311 of the Constitution of India.

11. Very recently, in ***St. Mary's Education Society & Anr. v. Rajendra Prasad Bhargava & Ors.***, reported in ***(2023) 3 SCC 498***, the Hon'ble Supreme Court held that contract of personal service cannot be enforced subject to the following conditions, namely: -

“(i) when the employee is a public servant working under the Union of India or State;

(ii) when such an employee is employed by an authority / body which is a State within the meaning of Article 12 of the Constitution of India; and

(iii) when such an employee is “workmen” within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking



the machinery under the said Act.

In the first two cases, the employment ceases to have private law character and “status” to such an employment is attached. In the third category of cases, it is the Industrial Disputes Act which confers jurisdiction on the Labour Court / Industrial Tribunal to grant reinstatement in case termination is found to be illegal.”

12. In ***Binny Ltd. v. V. Sadasivan***, reported in (2005) 6 SCC 657, it is held in paragraph 11: -

“11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as public sector undertakings. However, in the



interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a “public function” when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest.”

13. The Hon'ble Supreme Court in *St. Mary's Education Society (supra)* quoted paragraph nos. 29 and 32 of *Binny Ltd. (supra)*, which are reproduced hereinbelow:

“29. *Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be*



used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies.”

32. Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not “State” within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial



review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties.”

14. Although, it was held by the Hon'ble Supreme Court that the power of judicial review under Article 226 of the Constitution of India can be exercised by the High Court, even if the body against which an action is sought is not State or an authority or an instrumentality of the State but there must be a public element in the action complained of. Thus, the Hon'ble Supreme Court held that the decision sought to be corrected or enforced must be in the discharge of public function. No doubt, the aims and objective of Appellant 1 herein are to impart education, which is a public function. However, the issue herein is with regard to the termination of service of Respondent 1, which is basically a service contract. A body is said to be performing a public function where it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so.

15. In the instant case, this Court is not unmindful to note that construction of house for poor section of people under PMAY is undoubtedly in discharge of public function. The



State by implementation and promotion of such Scheme has been protecting the most important fundamental and human right of life by providing roof over the head of the homeless. However, in order to disburse grants to the beneficiaries under the Scheme, some contractual employees, namely, Gramin Awas Sahayak, have been appointed by the State purely on contractual basis. They do not hold any civil post under the State. Therefore, their services are not also terminated following the rules, formulated by the Union or the State Legislatures, as the case may be.

16. Therefore, the service of the petitioner is terminable by its employer even without following the CCA Rules, 2005.

17. For the reasons stated above, I do not find any merit in the instant writ petition and accordingly it is dismissed.

18. Before I part with, I respectfully record that I have differed from the decision of a Co-ordinate Bench, passed in C.W.J.C. No. 7056 of 2020, which is annexed with the writ petition as Annexure-17. Therefore, in my humble opinion, the instant matter requires a reference to the Larger Bench to decide the question as to whether departmental proceedings, holding departmental enquiry and determination of



charge(s) under the provisions of CCA Rules, 2005, are applicable in case of contractual / temporary / daily-wager / adhoc employees working under the State under specific Scheme.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	AFR
CAV DATE	
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