

## Jeetendra Kumar Vs State Of Bihar

**Court:** Patna High Court

**Date of Decision:** Aug. 9, 2021

**Acts Referred:** Constitution Of India, 1950 " Article 226

**Hon'ble Judges:** Chakradhari Sharan, J

**Bench:** Single Bench

**Advocate:** Siyaram Sahi, Syed Masleh-Uddin Ashraf, Harish Kumar

**Final Decision:** Dismissed

### Judgement

1. The petitioner has put to challenge an order issued by the District Magistrate, Bhagalpur, vide Memo No. 1231 dated 29.05.2017, whereby he has

been removed from the post of Programme Officer, which he was holding on the basis of his contractual engagement.

2. The petitioner had preferred an appeal against the said order dated 30.08.2017, which has been rejected by an order dated 08.03.2018, passed by

the Secretary, Rural Development Department, Government of Bihar, as the appellate authority, issued vide Memo. No. 360506 dated 16.03.2018.

The said order has been brought on record by way of Annexure-8 to I.A. No. 1 of 2019. The petitioner seeks to challenge the said appellate order

dated 30.08.2017 by seeking amendment in the writ application through I.A. No. 1 of 2019. Since the said appellate order arises out of the order under

challenge in the writ application, the prayer for amendment in the writ application is allowed. Accordingly the petitioner is permitted to question the

correctness of the order dated 08.03.2018 passed by the Secretary, Rural Development Department, Government of Bihar.

3. I.A. No. 1 of 2019 stands allowed accordingly.

4. The petitioner was admittedly appointed as Programme Officer on contractual basis in 2007 under District Rural Development Agency (DRDA),

Bhagalpur, agreement in respect of which was entered into on 25.09.2007. A copy of the said agreement has been brought on record by way of

Annexure-I to a supplementary counter affidavit filed on behalf of the DRDA. Clause 3 of which reads as under : -

3. The position offered to you is on contract extending not more than Two year from subject to satisfactory performance. The contract would be

reviewed by DRDA based on your performance during the contract period. DRDA might rescind the contract if your performance has been found

unsatisfactory. However if the performance is satisfactory DRDA may extend the contract period for further period of 2 years on same terms &

condition.

5. It transpires from the statement made in the writ application that the petitioner was issued a show cause notice on 01.03.2017 by the Deputy

Development Commissioner-cum-Chief Executive Officer, DRDA, Bhagalpur, asking him to explain as to why there was no progress in the Block

where he was posted, according to MIS report for the month of February, 2017 in execution of a programme under MNREGA.

6. A show cause notice was issued to the petitioner on 01.03.2017 (Annexure-1 to the writ petition) asking him to explain as to why the contract of his

engagement be not cancelled because of administrative lapses, want of interest in discharge of his function as well as non-compliance of the orders

issued by the District Magistrate. The show cause notice was based on MIS report for the month of January, 2017.

7. The petitioner filed his show cause reply justifying the reasons for lack of progress including the fact that he was holding additional charge of

Programme Officer of Naugachia Anchal for long period of time. It is the petitioner's case that without considering the said reply, the District

Magistrate, Bhagalpur, by the impugned order dated 29.05.2017, has removed the petitioner from the post of Programme Officer.

8. It is the petitioner's case that he has been able to show in his reply to the show cause notice that it was because of lack of staff, food, etc. and

other circumstances that the execution of scheme under MNREGA was not found satisfactory. Further, he has canvassed that he was deputed for

maintaining law and order during Intermediate examination and Board examination of 2017 by the Sub Divisional Officer as also during Holi and flood,

which added to the reasons for poor output in terms of performance.

9. Mr. Siyaram Sahi, learned counsel appearing on behalf of the petitioner has argued that the District Magistrate, while passing the impugned order

has not considered the points raised by the petitioner in his reply to the show cause notice. He has further argued that the appellate authority has also

not duly considered the points taken in his memo of appeal.

10. A counter affidavit has been filed on behalf of the respondents. Mr. Harish Kumar, learned G.P.-8 representing the respondent State of Bihar has

relied on Supreme Court's decision in case of GRIDCO Ltd. v. Sadananda Doloi, reported in (2011) 15 SCC 16, to submit that the scope of

judicial review under Article 226 of the Constitution of India in the matters of contractual appointments is very limited and it cannot extend to this

Court acting as an appellate authority sitting in judgment over a decision of termination of contractual engagement. The action of the respondents

cannot be termed to be unreasonable, unfair, perverse or irrational, he contends. He has accordingly submitted that the petitioner cannot claim violation

of any legal right which accrued to him.

11. I find force in the submissions made on behalf of the State of Bihar, placing reliance on the supreme Court's decision in case of GRIDCO Ltd.

(supra), which has taken note of decision in case of Satish Chandra Anand v. Union of India (AIR 1953 SC 250), wherein a five-Judge Bench

dismissed the petition challenging the termination primarily on the ground that the petitioner of that case could not prove a breach of fundamental right

since no right accrued to him as the whole matter rested in contract and termination of contract did not amount to dismissal or removal from service.

The Supreme Court concluded in paragraph 41, in case of GRIDCO Ltd. (supra), as under : -

“41. It is also evident that the renewal of the contract of employment depended upon the perception of the management as to the usefulness of the

respondent and the need for an incumbent in the position held by him. Both these aspects rested entirely in the discretion of the Corporation. The

respondent was in the service of another employer before he chose to accept a contractual employment offered to him by the Corporation which was

limited in tenure and terminable by three months' notice on either side. In that view, therefore, there was no element of any unfair treatment or

unequal bargaining power between the appellant and the respondent to call for an over-sympathetic or protective approach towards the latter.”

12. In the present case, the petitioner was given an opportunity of hearing. He had remedy to prefer an appeal, which he availed. The appellate

authority has passed a detailed reasoned order rejecting the contention raised by the petitioner before the appellate authority. Neither the impugned

order passed by the District Magistrate nor that of the appellate authority can be said to be perverse or without reason. They have assigned specific

reason for discontinuing the services of the petitioner.

13. It is true that a writ Court exercising jurisdiction under Article 226 of the Constitution may judicially review any executive action and determine the

issues of illegality, perversity, unreasonableness or irrationality, rendering such action vulnerable, no matter the action falls in the realm of contract. It

has, however, been repeatedly held, at the same time, that such jurisdiction cannot extend to the Court acting as an appellate authority sitting in

judgment over the decision.

14. For the reasons noted and discussions made hereinabove, in my opinion, no case is made out for this Court's interference in the matter.

15. This application, in Court's opinion, has no merit and is accordingly dismissed.

16. There shall, however, be no order as to cost.