

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12614 of 2014

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Sandhya Kumari, W/o Late Dhananjay Kumar Singh Resident of Village
Masadh Tola, P.O and Police Station- Jagdishpur, District- Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Principal Secretary Department of Panchayati Raj Bihar,
Patna.
3. District Panchayati Raj Officer, Bhojpur
4. Sub- Divisional Magistrate, Jagdishpur, Bhojpur.
5. Block Development Officer, Jagdishpur, Bhojpur.
6. Miss Sabita Devi Sarpanch Gram Panchayat Utarwari Jangal Mahal
resident of Village+ P.O. Dulaur Block Jagdishpur, Bhojpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhishek, Advocate.

For the Respondent/s : Mr. Santosh Kumar Jha, GP 3

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 07-09-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application

reads as follows:

*"... quashing the letter dated 29.9.2012 issued by
respondent no. 6 by which service of the petitioner has been
terminated and also setting aside a subsequent letter dated
25.4.2013 issued by the respondent no. 6 by which she has
refused to follow the order dated 09.03.2013 passed by
respondent no. 4 in Appeal No. 1/2012-13 by which
termination of service of the petitioner was set aside."*

3. Learned counsel for the petitioner has submitted that

the petitioner's services, as Secretary of the Gram Kutchery, was
terminated on 29.09.2012 under the order of the Sarpanch of Gram
Panchayat Utarwari Jangal Mahal, Block- Jagdishpur District-



Bhojpur. He has also submitted that as against the aforesaid order, the petitioner had filed an appeal, which was allowed by the Sub Divisional Officer, Jagdishpur by an order dated 09.03.2013, but despite the appeal being allowed and termination order of the petitioner having been set aside, the Sarpanch had refused to comply the order on the ground that the Sub Divisional Officer had no jurisdiction to entertain an appeal against an order of termination of service of Secretary of Gram Kutchery much less setting it aside.

4. Learned counsel for the State, however, had submitted that the Sub Divisional Officer has not been vested with any power of interfering in the matter of termination of the service of the Secretary of the Gram Kutchery inasmuch as Bihar Gram Kutchery Sachiv (Niyojan, Seva Shart Avam Kartvya) Niyamawali, 2007 (hereinafter referred to as 'the 2007 Rules') does not vest such power in the Sub Divisional Officer. According to the learned counsel for the State, such power of hearing appeal is vested only in District Panchayat Raj Officer.

5. In the considered opinion of this Court, there is lot of misconception about the power as with regard to taking disciplinary action against Sachiv of Gram Kutchery. From a bare perusal of 2007 Rules, it would be found that the power of



appointment of Gram Kutchery Sachiv, is vested in a committee consisting of Sarpanch, Gram Kutchery and all other Panch of Gram Kutchery and the Nodal Officer nominated by Block Development Officer. It is this committee which has to prepare the panel on the basis of marks secured in the matriculation (secondary) examination. The power of issuance of appointment letter from the approved panel is vested in the Sarpanch to the Gram Kutchery. Rule-6 therefore, makes the committee and not the Sarpanch, the appointing authority. Rule-11 vests the power of taking disciplinary action against Gram Kutchery Sachiv, in which action it is the Committee of Sarpanch, all Panches and the Nodal Officer nominated by the Block Development Officer, which has been empowered to take a final decision. Sarpanch, therefore, alone cannot taken decision to remove the duly appointed Gram Kutchery Sachiv in view of Rule-6 read with Rule-11.

6. Rule-12 in fact makes Sub Divisional Officer to decide any sort of complaint in the matter of employment on the post of Gram Kutchery Sachiv and the decision of the Sub Divisional Officer has to be made subject matter of appeal before the Collector of the district or any other officer in the rank of Additional District Magistrate empowered and authorized by the Collector of the district.



7. Judged in this background, this Court would find that if the Sapranch had any grievance against the order passed by the Sub Divisional Officer, Jagdishpur, he had to file an appeal before the Collector of the district instead of refusing to abide by the order of the Sub Divisional Officer, Jagdishpur dated 09.03.2013. That having been not done the order of the Sarpanch dated 25.04.2013 refusing to comply the directions of the Sub Divisional Officer, Jagdishpur must be held to be wholly without jurisdiction. What has really surprised, this Court that the District Panchayati Raj Officer, Bhojpur, Arrah has issued a direction to the Block Development Officer, Jagdishpur for implementing the order of the Sub Divisional Officer, Jagdishpur, that should not have been done and if there was any reason for the District Panchayati Raj Officer, Bhojpur, Arrah to find that the Sarpanch was not complying the order of the Sub Divisional Officer, Jagdishpur, he had to bring the matter to the notice of the Collector of the Bhojpur district.

8. That being so, while this Court would set aside the order passed by the Sarpanch dated 25.04.2013, and remit the matter back to the Collector of the district, who shall now examine the whole issue afresh as with regard to the so called termination of the services of the petitioner and decide the issue relating to

removal of the petitioner under the order of the Sarpanch dated 29.09.2012 and if it is found that the order of the Sub Divisional Officer, Jagdishpur assailing Appeal Case No. 1 of 2012-13, does not suffer from any error either in fact or in law. The petitioner's services shall be reinstated of course after giving opportunity to the Sarpanch. This exercise, however, must be completed by the Collector of the Bhojpur district within a period of three months from the date of receipt of this order. It would be however open for the petitioner to file a representation before the Collector of the Bhojpur district and the decision would be taken by the Collector strictly in accordance with the provisions made under Rule-13 of 2007 Rules.

9. With the aforementioned observation and direction, this writ application is disposed of.

(Mihir Kumar Jha, J)

Sujit/-

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