

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.471 of 2015

IN

Civil Writ Jurisdiction Case No. 1798 of 2013

1. Renu Kumari, wife of Rabindra Prakash resident of Village- Naima, P.S.- Telhara, District- Nalanda.

2. Renu Kumari, wife of Ashim Kumar, resident of Village- Naima, P.S.- Telhara, District- Nalanda.

.... Appellant/s

Versus

1. The State of Bihar.

2. The District Magistrate, Nalanda.

3. The District Program Officer, Nalanda.

4. The Child Development Project Officer, Block- Ekangersarai, District- Nalanda.

5. The Principal Secretary, Social Welfare Department, Govt. of Bihar, Patna.

6. The Director, I.C.D.S. Directorate, Govt. of Bihar, Patna.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Kamlesh Kumar

For the Respondent/s : Mr. Ajeet Kumar

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 02-09-2015

1. Aggrieved by an order passed by the learned single Judge, dated 31.07.2013, in CWJC No. 1798 of 2013, the present *intra* Court appeal, under Clause 10 of the Letters Patent of the Patna High Court, has been preferred by the appellants.

2. The said writ application was filed by the appellants,

seeking quashing of the order of their termination from service, dated 19.05.2012, from the post of Anganwari Sevika and Sahayika of Anganwari Centre, Naima, under Ekangarsarai Block of Nalanda District, passed by the District Programme Officer, Nalanda, and the appellate order, dated 06.20.2012, passed by the District Magistrate, Nalanda, dismissing the said appeal.

3. Certain facts are not in dispute. The appellant No.1 was working as Anganwari Sevika and appellant No.2 as Anganwari Sahayika of Anganwai Centre No.36, Naima, Village-Naima, District-Nalanda. On 01.03.2013, at 11.30 A.M., the Child Development Programme Officer made a surprise inspection of the said Centre, and found that the Centre was lying closed. The Child Development Programme Officer reported this fact to the District Programme Officer and, accordingly, show cause notices were issued to the appellants on 10.04.2012. The appellants were asked to submit their reply and were given opportunity of personal hearing. The appellants filed their reply. The reply filed by appellant No.1 is on record by way of Annexure-5 to the writ application, which deals with the reason of absence of appellant No.2 also. We have not been able to find out as to whether the appellant No.2 filed her separate reply to the show cause notice. It has, however, been stated, in the writ application, that both the appellants were physically present before the



District Programme Officer on 18.04.2012. The appellant No.1 took a plea in her reply to the show cause notice that because of pain in her chest and restlessness since morning on the fateful day, she had left to consult a doctor, where she remained admitted till 12 noon. The Centre was being run, in her absence, by the Anganwari Sahayika (appellant No.2). It has further been stated in the said reply that the hand pump of the school being not functional, the Sahayika (appellant No.2) had gone to some other place to fetch water for preparation of meal for the beneficiary-children and, in the meanwhile, the Child Development Programme Officer conducted surprise inspection.

4. The District Programme Officer, Nalanda, was not satisfied with the reply to the show cause notice as admittedly, when the surprise inspection was conducted, the appellants were not found present and no meal was found being prepared for the children at the time of surprise inspection. From the order passed by the District Programme Officer, it appears that under the scheme, nutritional food to the children in the age group of six months to three years, pregnant women and the mothers of infant in need of nutrition are to be distributed through Anganwari Sevika and Sahayika and though an Anganwari Centre could be closed only after the distribution of the food from 12 noon. The District Programme Officer was not



convinced with the plea of appellant No.1 that she was admitted in a hospital on the said date, when the surprise inspection was held. The appellate authority also did not find any merit in the appeal preferred by the appellants and dismissed it by order, dated 06.12.2012. These two orders, thus, came to be challenged by the appellants in CWJC No. 1798 of 2013. Learned single Judge, on the basis of the pleadings on record, refused to accept the plea that appellant No.1 resumed her duty at 12.30 P.M. on the same date after having been admitted in a private clinic of a doctor in Ekangarsari. Learned single Judge, doubted the very correctness of the medical certificate issued by the doctor, holding that it appeared to be manufactured and procured for the purpose of developing a defence.

5. It appears from the order, under appeal, that the appellant No.1 took a plea that on the date of inspection, i.e., on 01.03.2012, the dress material had been distributed by her among the children on 01.03.2012 itself. Learned single Judge rejected such plea as he found the story developed by her to be difficult to be believed. Learned single Judge, finding no infirmity in the orders passed by the District Programme Officer and the appellate authority (i.e., District Magistrate, Nalanda), has dismissed the writ petition.

6. Learned counsel, appearing on behalf of the appellants, has attempted to convince us that appellant No.1 had proceeded for

treatment, as she had felt chest pain and restlessness in the morning on the said date, after due information to the Mukhiya of the Gram Panchayat, by referring to letter, dated 01.03.2012 (Annexure-3 to the writ application).

7. Learned single Judge has dealt with the above aspect and has taken a view that the said stand did not inspire confidence nor the Mukhiya was the prescribed authority under the relevant rules/guidelines to grant leave for absence to Anganwari Sevika.

8. Nothing has been brought to our notice by learned counsel, appearing on behalf of the appellants, on the basis of which he could justify the plea that Mukhiya was the competent authority, in such matters, to entertain a leave application. This is an admitted fact that the Anganwari Centre, in course of surprise inspection, was found closed on 01.03.2012 and both the appellants, on whom duty was cast to run the Anganwari Centre, were absent. The explanations, given by them for their absence, have not been accepted by the District Programme Officer or the appellate authority (i.e. the District Magistrate, Nalanda). Learned single Judge, in the order under appeal, has gone into the correctness of the two orders on the basis of the materials brought on record in the writ application and the merit of their explanations for remaining absent during the surprise inspection. He has also not found the stand to be satisfactory. He has, rather, held

that appellants manufactured documents to develop defence in their favour. The view, taken by the learned single Judge, cannot be said to be erroneous and not a possible view on the basis of the pleadings and materials on record of the writ proceeding.

9. At any rate, the writ petition calls for determination of disputed question of facts, which would require holding of roving enquiry and taking down evidence to be adduced by the parties, which is not warranted in the facts and circumstances of the present case.

10. In our considered view, therefore, the order, passed by the learned single Judge, does not require any interference by this Court in the present *intra* Court appeal.

11. We do not find any merit in this appeal. This appeal is, accordingly, dismissed.

12. There shall, however, be no order as to costs.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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