

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.765 of 2014

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1. Reeta Kumari W/O Kapildeo Rai Resident of Village- Nathpur, P.S.- Narpatganj,
District- Araria

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department,
Bihar, Patna
2. The Principal Secretary, Social Welfare Department, Bihar, Patna
3. The Director, I.C.D.S. Directorate, Social Welfare Department, Bihar, Patna
4. The Divisional Commissioner, Purnea
5. The District Magistrate, Araria
6. The District Programme Officer, Araria
7. The Child Development Project Officer, Narpatganj, District- Araria
8. Renu Roy @ Renu Devi, vill- Nathpur, District Araria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Kumar, Adv.

For the Respondent/s : Mr. Anuj Kumar, A.C. to G.P.24
Mr. Mrigank Mauli, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 03-08-2016

Heard Mr. Raj Kumar, learned counsel for the petitioner, Mr.
Anuj Kumar A.C. to G.P.24 for the State and Mr. Mrigank Mauli,
learned for the newly added respondent No.8.

The petitioner is aggrieved by the order dated 26.6.2013 of the
Divisional Commissioner whereby the appeal filed by the petitioner
bearing Appeal No. 16 of 2013 has been rejected thus affirming the
orders of cancellation of selection dated 8.1.2008 of the Director,
I.C.D.S. and the order dated 19.6.2012 of the District Programme
Officer. The order in reference are impugned at Annexures 9, 4 and 7
respectively.

Considering the various stages through which this case passed until the passing of the impugned orders, it would require a brief discussion on the sequence of events.

The petitioner was appointed in the year 2004. Owing to allegations of irregularity in the distribution of Take Home Ration (T.H.R. for the sake of brevity) that her selection was recommended for cancellation by the Child Development Project Officer (hereinafter referred to as the C.D.P.O.), Narpatganj in the district of Araria vide memo No.277 dated 13.11.2007 placed at Annexure-1. No formal order for termination though, was passed by the competent authority. The petitioner being aggrieved by the recommendation came before this Court in C.W.J.C.No.7460 of 2008 and a coordinate bench vide judgment and order dated 3.5.2011 quashed the recommendation. Liberty however, was granted to the respondent authorities to proceed afresh in accordance with law. In the meantime and during the pendency of the writ petition, a second order was passed, this time by the Director, Welfare who by order bearing Memo No.106 dated 9.1.2008 again recommended for termination of the selection of the petitioner and some others inter alia on allegation of irregularity in distribution of 'T.H.R'. It is not in dispute that again no formal orders were passed on such recommendation by the competent authority i.e the District Magistrate. It is following the order of this Court on the



writ petition that an enquiry was held by the Child Development Project Officer whose report dated 11.5.2012 is present at Annexure-6. Apparently no substantive irregularity is pointed out by the 'C.D.P.O.' except that for the fortnight beginning 23.11.2007 the petitioner distributed ration for 10 days though she was required distribution for a fortnight. The enquiry report was considered by the District Programme Officer who while taking note of the recommendation of the Director, Welfare present at Annexure-4 did not think it proper to order for reinstatement of the petitioner in his order dated 19.6.2012. According to District Programme Officer until the recommendation of the Director, Welfare is modified by a superior authority, the petitioner cannot be reinstated. Rather surprisingly even though there is no formal order of dismissal passed against the petitioner by the competent authority yet the District Programme Officer treats the petitioner to be a dismissed employee.

The petitioner again came before this Court in C.W.J.C.No.12311 of 2012 and was relegated to the forum of appeal by a bench of this Court vide order present at Annexure-8 and which appeal bearing Misc. Appeal No.16 of 2013 has been dismissed by the Commissioner, Purnea vide order passed on 26.6.2013 impugned at Annexure-9. Feeling aggrieved, the petitioner is before this Court.



I have heard learned counsel for the parties and I have perused the records and it does not require a long drawn discussion to hold that the order passed by the Commissioner is perfunctory, contrary to the legal position and has been passed in a routine manner. As already observed, it is rather surprising that even when there is no formal order of dismissal passed against the petitioner yet she has been made to go around through the stages discussed hereinabove. The first of the recommendation against the petitioner was passed on 13.11.2007 which did not result in a formal order of dismissal. Even the recommendation of the Director, Welfare passed on 9.1.2008 to the District Magistrate, did not result in an order of dismissal. It is thus rather strange that even when there is no order of dismissal passed in respect of the petitioner by the District Magistrate, who was the competent authority under the guidelines issued by the State Government vide Circular No.2783 dated 3.10.2006, yet she has been kept out of office and respondent No.8 has been appointed in her place in the year 2012 to fill up the gap. All I can say is that the case in hand is a poor reflection on the working of the department. It is even more unfortunate that the Commissioner, Purnea has not bothered to go through the records of the proceedings before expressing his opinion in a perfunctory manner. In absence of an order of dismissal, the action of the respondents to restrain the

petitioner from discharging her duties as Anganbari Sevika, Anganbari Kendra No. 16139, Mishri Lal Roy Tola, Block Narpatganj in the district of Araria, is wholly illegal and for the same reason, the appointment of respondent No.8 is held illegal, for there cannot be two appointments on the same post.

In result, the order of appointment of respondent No.8 to the post of Anganbari Sevika is set aside and the petitioner is restored to her post of Anganbari Sevika, Anganbari Kendra, 16139, Mishri Lal Roy Tola, Block Narpatganj, Araria.

Although this Court in the circumstances discussed, was tempted to impose heavy costs on the respondents for their mechanical approach to the issue but does refrain from doing so.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

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