

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2601 of 2014

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Geeta Kumari W/o Manoj Paswan Resident of Village- Sona Gopalpur, P.S-and
P.O- Gauri Chak, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar, through District Magistrate, Patna, Address- At Collectorate Campus Patna, P.O- Bankipur, P.S.- Pirbahore, District-Patna.
2. District Programme Officer, Patna, at Collectorate Camps Patna, P.O- Bankipur, P.S- Pirbahore, District- Patna.
3. District Welfare Officer, Patna, at Collectorate Campus, Patna, P.O- Bankipur,P.S- Pirbahore, District- Patna
4. The Child Development Project Officer, Punpun, P.O and P.S- Punpun, District- Patna

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. RUDAL PRASAD, Advocate

For the Respondent/s : Mr. S. RAZA AHMAD

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-09-2016

Reg: CWJC No. 2601 of 2014 with I.A. No. 5712 of 2014
and I.A. No. 360 of 2016

Heard Mr. Rudal Prasad, learned counsel for the petitioner
and Mr. S. Raza Ahmad, learned AAG-5 for the State.

The writ petition, with the consent of the parties, has been
taken up for final disposal at the stage of admission itself.

The writ petitioner is aggrieved by the order dated
16.8.2013 passed by the Deputy Director, Welfare, Patna Division
whereby the Deputy Director while dismissing the Appeal No. 38 of
2013-14 filed by the petitioner has confirmed the order dated
28.1.2013 passed by the District Programme Officer, Patna in Case
No. 2K of 2013 whereby the services of the petitioner as Anganbari

Sevika, Code No. 130, Centre Sona Gopalpur, Sampatchak, Patna has been terminated.

It is submitted by Mr. Rudal Prasad learned counsel for the petitioner that though a selection process had been initiated but it did not reach any conclusion. He submits that a fresh advertisement bearing No. 1 of 2016 has again been published in the light of advisory issued by the department on 05.4.2016 but even the process so initiated is at its initial stage. The petitioner has filed I.A. No. 5712 of 2014 and I.A. No. 360 of 2016 for stay of the selection process.

Facts as reflecting from the writ petition is that the petitioner was appointed as an Anganbari Sevika for Anganbari Centre at Sona Gopalpur bearing No. 130 in the district of Patna. The petitioner contends that on 16.10.2012, she left the centre in connection with the withdrawal of amount from the bank for purchase of uniform etc. but left an application at the centre as an information. An inspection was carried out by the Child Development Project Officer on the same day and obviously she found the petitioner absent and submitted his report, a copy of which is present at Annexure-2 and reports that the petitioner was absent; the Sahayika was present with 30 children of whom 20 were in uniform; and only 1 kg. of 'Posahar' had been prepared. The Child Development Project Officer finding the position not satisfactory submitted his report. Proceeding therefrom, the District Programme Officer, Patna vide his



letter bearing Memo No. 53 dated 08.1.2013 present at Annexure-3, issued show cause notice against termination to the petitioner listing 8 allegations, few of which are even beyond the report of the Child Development Project Officer. The petitioner filed a detailed response to the show cause, a copy of which is present at Annexure-4 responding to each of the allegations. While submitting her explanation the petitioner prayed for dropping the proceedings and for condonation of mistake, if any. The District Programme Officer while rejecting the explanation has terminated the service of the petitioner and the ground is her absence from the Centre without due information to her Controlling Authority. The order of termination dated 28.1.2013 of the District Programme Officer is impugned at Annexure-5 and which has been affirmed by the Deputy Director, Welfare vide order dated 16.8.2013 impugned at Annexure-6 even while taking note of the stand of the counsel for the department that the allegations were general in nature.

A counter affidavit is on record and the explanation given in support of the order of dismissal is the unauthorized absence of the petitioner from the Centre.

I have heard learned counsel for the parties and I have perused the records.

Of the many charges levelled against the petitioner which was responded by a detailed explanation vide Annexure-4, the only



explanation which did not satisfy the District Programme Officer, is, in justification of her absence. It is rather strange that even though a responsibility is cast upon an Anganbari Sevika of running the Centre in a proper manner, adhering to the requirements and even when the petitioner has given an explanation for her absence which has not been rejected by the District Programme Officer as being incorrect, yet he proceeds to terminate the petitioner on grounds of her absence. In my opinion, if the explanation of the petitioner that she had gone for withdrawal of money from the bank for purchase of uniform as well as for meeting expenses, was not found to be incorrect and has not been rejected by the District Programme Officer, that by itself is sufficient to strike down the grounds for termination.

Even otherwise, in my opinion, a single day absence cannot be a substantive ground for imposition of an extreme penalty of termination. It is rather surprising that even when the learned advocate appearing for the Department before the appellate authority has submitted that the allegations were general in nature yet it has no effect on the appellate authority to apply his mind and consider the termination independently in the light of the explanation given. The order of termination as well as its affirmation by the appellate authority is a perversity for it does not take into consideration the explanation given and the reason assigned by the petitioner to justify her absence. In fact, if the petitioner had gone in connection with the

work of the Centre, there was no requirement for applying a leave application for she was not on leave and secondly her statement has not been found to be incorrect. Thirdly if an Anganbari Sevika is required to inform the Controlling Authority every time she leaves the Centre then there has to be instructions issued in this regard. Neither the impugned orders nor the counter affidavit discusses any such instruction which mandates that if an Anganbari Sevika leaves the Centre in connection with the work of the Centre, she has to intimate the Controlling Authority.

For the reasons and discussions above, the order of termination becomes unsustainable and in result, the termination order dated 28.1.2013 passed by the District Programme Officer impugned at Annexure-5 together with the appellate order dated 16.8.2013 passed by the Deputy Director, Welfare impugned at Annexure-6 cannot be upheld and are accordingly set aside. The petitioner is restored to her post as Anganbari Sevika.

The writ petition is allowed. Interlocutory applications are disposed of.

(Jyoti Saran, J)

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