

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13556 of 2013

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1. Kiran Devi Wife Of Late Shivji Paswan Resident Of Village - Bedipatti,
P.S. Bahadurpur, District - Darbhanga (At Present Was Posted As
Anganbari Sewika Of Bedi Patti, Kendra No. 109)

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Department Of
Social Welfare, State Of Bihar, Patna
2. The Principal Secretary, Department Of Social Welfare, State Of Bihar,
Patna
3. The District Magistrate, Darbhanga
4. The District Programme Officer, Darbhanga
5. The Director, Integrated Child Development Scheme (I.C.D.S.), Bihar,
Patna
6. The Child Development Project Officer, Bahadurpur Block, District -
Darbhanga
7. The Commissioner, Darbhanga Division, Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Shahnawaz Ali, Advocate.

For the Respondent/s : Mr. Naresh Prasad, AC to SC -20

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

5 01-02-2016 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner herein, seeks to challenge the order
dated 14.03.2013 passed in Anganbari Case No. 06 of 2012 and
also prays for a writ in the nature of certiorari for quashing Memo
No. 456 dated 22.02.2012 issued by the District Programme
Officer, Darbhanga by which the services of the writ-petitioner, as
Anganbari Sevika has been terminated.

Learned counsel for the petitioner submits that the



order impugned is not only harsh but is also violative of the Principles of Natural Justice, as the respondents have acted in derogation of the direction, issued by the Director, I.C.D.S., Department of Social Welfare, Bihar as also the direction and guidelines, issued by this Court from-time-to-time in the matters, relating to the services of Anganbari Sevika. It is further submitted that in the present case, the respondents have also acted in a discriminatory manner and have issued two different types of orders in the case of the petitioner and in the case of Sushila Devi, (Sahayika), who was also similarly situated as the petitioner, and had been found absent from the centre on the date of inspection. It is further submitted that the order has been passed in a purely mechanical manner inasmuch as the enquiry report is vague and indistinct and the concerned C.D.P.O. has merely marked the petitioner absent after having inspected the Centre at Beddi Patti Kendra, Centre No. 109 in Bahadurpur Block, District – Darbhanga after reporting the same to be closed.

Pointing to Annexure-3, learned counsel for the petitioner submits that the inspection dated 21.12.2011 was conducted at 1.30 P.M. at the centre and on the said date, on account of acute cold wave conditions, petitioner having felt indisposed had closed the centre early and had left the place as the



Children, after being given their nourishment, had been sent home due to acute cold wave conditions. It is further submitted that noting the cold wave condition, the department had also issued a direction on the said date, but the same was communicated slightly later and the contents of the direction was that keeping in view the cold wave condition, the centre would run between 12.00 P.M. to 2.00 P.M only till 05.01.2012. The contention/defence has been made out by the petitioner in the explanation to the show cause notice issued to her, is that she (petitioner) and the Sahiyka, namely, Sushila Devi, who was there to assist her, had left the centre as she felt unwell on account of the cold wave condition. Learned counsel for the petitioner further submits that in spite of adverse climate, the nourishment was prepared as per the attendance in the school and the petitioner with the assistance of the said Sahiyka, distributed the same and thereafter, left the premises at about 1.00 P.M. for going to the doctor.

Ignoring the contentions and the explanation, offered by the petitioner, the learned District Programmes Officer has passed the impugned order, holding her guilty for dereliction of duty and stating that there have been irregularities prevalent at the centre. Furthermore while rejecting her explanation has directed that she be terminated from the post of Anganbari Sevika.



However, no reason has been assigned for such rejection. So far as the Sahayika is concerned, she has been let off taking her absence lightly and directing that a month's honorarium be not paid to her and the amount be deposited in the account of the District Child Development Project within three days.

Learned counsel for the petitioner submits that such a double standard, adopted by the District Programme Officer, is itself explicitly indicative of the mala fide intention of the said Officer, as two parameters have been adopted within the same centre by the authority to a same category of person which is contrary to the Principles of Natural Justice. It is further submitted that the Honble Court has issued direction from-time-to-time to all District Programme Officers to follow certain parameters, while passing any order of termination but the same has not been followed in the present case. It has been well settled that Anganbari Sevikas/Sahayikas constitute one class of persons as agents and eligibility and method of selection are common. The nature of alleged irregularities and variations in the irregularities cannot be the basis for sub classification, if they constitute one class, there cannot be two procedures for dealing with them.

In **Manjula Kumari Vs. State of Bihar** and other analogous cases **reported in 2013(1) PLJR, 901** a Bench of this

Hon'ble has held as follows :-

Anganwari Sewikas/Sahayikas constitute one class of person as Agents. The eligibility and methodology for selection are common. The nature of the duties commonly consist of running Anganwari Centres to provide food grains to poor and needy children, pregnant women. The supervisory powers exercised over them are similar. Anganwari Sewikas/Sahayikas who commit civil irregularities in the running of the Centre constitute one class. The nature of the alleged irregularity cannot constitute a basis for sub-classification. Variation in irregularities such as the centre being closed during normal hours, improper distribution, non maintenance of records cannot be a basis for sub-classification, If they constitute one class, there cannot be two different procedures to deal with them, one simple and other onerous.”

Further it has been held that :-

“Rules of natural justice are not like statutory rules embodied in any prescribed form. What shall be its meaning and connotation will depend on the facts of each case. The rights to a hearing, that no man shall be a Judge in his own cause, the passing of a reasoned order are not the only facets of natural justice. It is an old adage that justice



must not only be done but that it must appear to be done. Procedural fairness and reasonableness of the process for decision making is a part of the principle of natural justice. If there is any prescription which fetters the jurisdiction, power and authority of the person deciding, it vitiates the exercise of the power.”

Learned counsel for the petitioner submits that though in the present case the petitioner had filed a show cause but she was not given any opportunity of being heard and on a fresh ground that the petitioner was not even present in the village, the District Programme Officer has rejected the representation of the petitioner. The petitioner has been treated harshly and dismissed from service. Neither the show cause filed by the petitioner was taken into consideration nor the concerned Officer took any steps to adduce evidence and come to the finding as to whether the petitioner had gone to the centre or not. Furthermore, the existence of cold wave conditions is an admitted position and a presumption can well be drawn that the children had gone home earlier.

Learned counsel for the State, pointing to several paragraphs of the counter affidavit, submits that the petitioner had



been guilty of dereliction of duty as at the time of inspection of Anganbari Centre No. 109 in Bahadurpur Block, District – Darbhanga, the Child Development Project Officer Bedi Patti, the centre was found closed and found the petitioner absent. He submitted that it was under such premises that the impugned order was passed.

On enquiry being made by the Court as to whether the petitioner was habitual defaulter, the State Counsel made himself silent. Learned counsel for the State is also not in a position to pin point as to why a reasoned order was not passed and what were the situations, which led to passing of the impugned order, that too on a fresh ground not stated in the notice. The only reason which has been given in the order is that since the petitioner was found absent from the Centre on the concerned date, the impugned order has been passed against her. There is no discussion of the petitioner's explanation regarding the cold wave conditions, nor has it been satisfactorily explained as to why the District Programmes Officer arrived at the finding that the petitioner was absent from the village, a charge which she had not been called upon to answer at any stage. Furthermore, there was no material to show on what basis the presumption was arrived at. Learned counsel for the State is also unable to satisfy this Court as to why

two different parameters have been adopted in the case of the petitioner and in the case of Sushila Devi (Sahiyka) of the Centre, who was also found absent from the centre at 1.30 P.M.

Having heard learned counsel for the petitioner and learned counsel for the State and in view of the above discussions and considering the entire gamut of circumstances and also the fact that the petitioner has not been afforded sufficient opportunity, this Court is unable to appreciate as to why such a harsh action was taken against the petitioner. The authorities clearly acted in violation of the Principles of Natural Justice also, without following the parameters fixed by this Court which stands explicitly stated in Annexure -7, a direction to all the concerned Child Development Project Officers at the district level.

In the result, this application is allowed and the impugned order dated 14.03.2013 passed in Anganbari Case No. 06 of 2012 and the Memo No. 456 dated 22.02.2012 as contained in Annexure-1 and 2 are set aside with a further direction that the petitioner be reinstated.

However, in view of the facts and circumstances of the case, there shall be no order as to costs.

(Anjana Mishra, J)

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