

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.11235 of 2013**

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Anita Kumari Wife Of Anil Kumar Resident Of Village Bardih, P.S. Islampur,  
District Nalanda

.... .... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Social Welfare Department, Govt. Of Bihar, Patna
3. The Director, I.C.D.S. Directorate, Bihar, Patna
4. The District Magistrate, Nalanda At Biharsharif
5. The District Program Officer, Nalanda At Biharsharif
6. The Child Development Project Officer, Islampur
7. The Lady Supervisor, Islampur

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Harendra Pd. Singh,  
Mr. Anil Kumar

For the Respondent/s: Mr. Manoj Kumar Sinha, A.C. to S.C. 30.

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**  
**ORAL JUDGMENT**  
**Date: 01-02-2016**

1. Heard learned counsel for the petitioner and learned counsel  
for the State.

2. In the present case, the petitioner is seeking relief of quashing  
the order dated 02.04.2013, passed by the respondent No.4, whereby  
and whereunder he has affirmed the order bearing Memo No.3055  
dated 19.07.2012, whereby and whereunder the appellate authority  
refused to grant relief to the petitioner for her reinstatement as  
Anganbari Sevika and affirmed the order of termination passed by the  
District Programme Officer, Nalanda.

**3.** The short facts of this case are that the petitioner was appointed as Angnbari Sevika at Centre No.1 situated at Bardhi Block-Islampur District-Nalanda, after following the due procedure of the appointment and was working to the satisfaction of the respondent authorities. No complaint was ever made against the petitioner with respect to the manner she was working as Anganbari Sevika.

**4.** On 29.05.2012, at about 12:05 pm. an inspection was conducted by respondent No.6 and during the inspection the petitioner was found present at the centre along with Sahaika but only one child was found present and found entries were made in different registers meant for different subjects. It has been mentioned in the Inspection Report that as per the statement of Sahaika 29 children were present but the attendance of 35 children was found marked. Another, anomaly was found in distribution of take home ration as was not done as per the quantity fixed under the instruction, wherein it has been recorded that rice was distributed at 2.5 kg. and pulse was being given at 1.25 gram., while as per the Government instructions, he was required to be given 3 kg. of rice and 1.5 kg of pulse. The Inspecting party also found that there were some irregularities in giving the ration as instead of giving the take home ration to mal nutritious lady she was giving to the breast feeding women. On the basis of this



inspection, a show cause was issued to the petitioner vide memo No.2274 dated 11.6.2012 and called upon the petitioner to file her explanation. In the show cause it has been mentioned that the inspections were conducted on 29.05.2012 at 12:05 pm. and 19.02.2012 at 10:30 p.m. and during the inspection several irregularities were found.

5. In reply, the petitioner has submitted that on 29.05.2012 the inspection was conducted at 12:05 pm. by that time the children were returning to their respective houses after taking meal, which was observed by the Inspecting party, on that account except one other children were found absent. It has further been stated that so far as the distribution of take home ration, having been distributed lesser quantity is concerned, it has been stated that the distribution was made according to the Government Guidelines. The take home ration given to the breast feeding lady was herself mal nutritious lady, cannot be said to deviation from the guidelines and further claimed that no inspection was conducted on 19.02.2012 at about 10:30 am., which is apparently clear from the inspection register itself.

6. After considering the explanation filed by the petitioner, the District Programme Officer has passed the order of termination vide memo No.3055 dated 19.7.2012, wherein it has been recorded

that during the inspection several irregularities, as aforesaid, were found.

7. Against that order the present petitioner filed an appeal before the Commissioner, which was registered as Case No.147 of 2012. The Commissioner after considering the material on record found that the petitioner was not discharging his duties properly as she was involved in siphoning the Government money and affirmed the order of the District Programme Officer.

8. Learned counsel for the petitioner further submits that as per the guidelines issued by the State of Bihar in the name of Director, ICDS, providing in what manner dereliction of duty of Anganbari Sevika will be dealt, provided, in extreme case, the punishment of dismissal would be passed. It has been provided as first step in the case of deviation, Sevika should be warned; even pass order for return of deficit amount of grain. It has further been submitted that the order has been passed without considering the explanation given by the petitioner and at the same time, the inspection register itself disclose that no inspection was conducted on 09.02.2012 and wrongly it has been recorded in the show cause about the conducting of the inspection by the Inspector.



9. It has further been submitted by learned counsel for the petitioner that on the date of inspection all the children were present and when the inspection was done the time was over and children were returning to their respective houses was seen by Inspecting team as in the summer the timing of centre come to an end at about 12 'o' clock. It has further been submitted that the reason that has been assigned in the order does not require any extreme punishment against the petitioner but would have passed another appropriate punishment.

10. Learned counsel for the State has first submitted that the present writ petition itself is not maintainable as the matter relates to Aanganbari Sevika, they are not holding the civil post, and therefore, the provisions of Articles 309 and 311 of the Constitution of India does not apply. If the petitioner is really aggrieved by the order, he may approach to the Civil Court for the claim of the damage.

11. In support of his contention, he has relied upon two judgments reported in *Neetu Kumari W/o Rajesh Kumar Kushwaha @ Rambabu vs. The State of Bihar & Ors.* reported in 2011(4) *P.L.J.R.*, 20 and in *Shakuntala Chandrakant Shreshti vs. Prabhakar Maruti Garvali and another*, reported in 2007(11) *S.C.C.*, 668.



**12.** Learned counsel for the respondent further submitted that the inspection register annexed by the petitioner itself shows that on different occasions inspection was made, dereliction of duty was recorded and on every occasion suggestion was given to the petitioner improve the functioning of the centre. He has further submitted that altogether 7 to 8 times inspection was made and every time the Inspector suggested the petitioner to mend her manner of working and when the petitioner did not rectify her mistake but continued to commit such illegalities/irregularities in running the centre, the respondents have no other way but to pass the order of termination. It was also found during the inspection that there was difference in the attendance of the children.

**13.** Learned counsel for the respondent further submits that the Government instructions that has to be followed by the Inspector is properly pragmatic manner in view of the fact that on different occasions irregularities were found but no action was taken against the petitioner.

**14.** Learned counsel for the petitioner, in reply, has submitted that the writ petition will be maintainable in view of the judgment reported in 2010(2) P.L.J.R, 1075, more particularly paragraph Nos. 2



and 6, wherein the Court has granted relief to the Anganbari Sevika where the Collector has wrongly passed the order against Anganbari Sevika with regard to her age and this Court has directed the Commissioner to take action with regard to assessment of her age after constituting a Medical Board. He has further relied on few orders passed by this Court passed in C.W.J.C. No.6356 of 2012 and C.W.J.C. No. 2905 of 2012, where the Court has granted relief to the Anganbari Sevika when the respondents in that case have not followed the instructions as per the directions issued by State Government. In such view of the matter, it has been submitted that the contention of learned advocate for the respondent that the present writ application is not maintainable and the petitioner should approach to the Civil Court is totally misplaced argument.

**15.** Having considered the rival contentions of the parties, this Court is not going into the issue with regard to maintainability of writ application but admittedly, the Apex Court in its judgments reported in 2007(11) S.S.C. page 681, para 20 and 28, has held that the Anganbari Sevika is not holding a civil post and hence the provisions of constitution as enshrined under Articles 309 and 311 does not apply. Apart from that aspect of the matter, in merit also, the manner in which the petitioner discharged her duties as Anganbari

Sevika does not require any interference from this Court, let us examine.

**16.** The argument has come from the side of the petitioner that such harsh punishment should not be imposed upon the petitioner in view of the Government instructions to the State authorities, which provides in what manner the action will be taken against erring Anganbari Sevika but only in a extreme circumstances, termination order would be passed, but the Hon'ble Supreme Court and this Court in series of judgments has decided that in exercising the power of judicial review the Court has to see that as in what manner the decision making process has been followed but not the decision. Admittedly, in the present case, show cause notice was given to the petitioner and whereupon she was called upon to file her explanation, she filed her explanation, which was considered by the authorities and after considering all the materials on record, it was found that it is not proper to keep the petitioner in service as Anganbari Sevika. The natural justice cannot be put to the Straight jacket formula; it varies from situation to situation. The petitioner is not holding a civil post, show cause notice was given and she replied, is sufficient compliance of the natural justice as it is not required to hold a formal departmental inquiry for the alleged act of dereliction of duty. If certain irregularities were found during the inspection,

it was duty to point out its nature and ask her to explain, that part has been followed by the respondents, the petitioner can not claim treatment at par with Government Officials. The record itself discloses that on different occasions the inspection was made and on every occasion suggestion was made to amend her activities but she always ignored to follow the instructions. It was also found mismanagement. During the inspection it was found that the number of children in the attendance register was shown in higher side but was found in a lesser side. It was reported by the Sahayika that 29 children were present at the centre but in the attendance register it has been shown that 35 children were present.

17. This Court would not like to show misplaced sympathy to petitioner who was found siphoning the public fund. This Court does not find any merit in this writ petition. Accordingly, this petition is dismissed. However, the petitioner is at liberty to approach another forum in accordance with law.

**(Shivaji Pandey, J)**

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