

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.953 of 2011

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Sawita Kumari, wife of Yogendra Pandit, resident of Lahisarai Mahto Tola, P.S. and District Lakhisarai, posted as Sevika in Angan Bari Centre No.57, Makuna Ward No. 14(29), Lakhisarai, District Lakhisarai

.... Petitioner

Versus

1. The State of Bihar (through Director Child Development Project, Bihar, Patna)
2. The Divisional Commissioner, Munger Division, Munger
3. The District Magistrate, Lakhisarai, District Lakhisarai
4. The District Welfare Officer, Lakhisarai, District Lakhisarai
5. The District Statistical Officer, Lakhisarai, District Lakhisarai
6. The Block Development Officer, Lakhisarai, District Lakhisarai
7. The Child Development Project Officer, Lakhisarai, District Lakhisarai
8. The Ward Councillor, Ward No. 14(29), Lakhisarai, District Lakhisarai
9. Gayatri Kumari wife of Binod Mahto, resident of Lakhisarai, Mahto Tola, P.S. Lakhisarai, District Lakhisarai, at present posted as Sevika in centre no. 57 Makuna, P.S. and District Lakhisarai

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Mohan Kumar Singh, Adv.
For the Respondent/s : Mr. Shashi Shekhar Tiwary, AC to AAG4
For respondent no.9 : Mr. Mrityunjay Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 15-11-2016

Heard Mr. Mohan Kumar Singh, learned counsel for the petitioner, Mr. Shashi Shekhar Tiwary, learned Assisting Counsel to AAG4 for the State and Mr. Mrityunjay Kumar, learned counsel appearing for the complainant- respondent no.9

The petitioner while questioning the order whereby Anganwari Centre No. 57 in village Makuna, in the district of Lakhisarai, was cancelled, has also questioned her termination order from the post of Anganwari Sevika with consequential prayer for reinstatement on the post.



Amongst several grounds raised by the petitioner to question the orders of cancellation of the centre dated 20.3.2009, impugned at Annexure 4, and her termination order dated 14.5.2010 passed by the District Programme Officer, Lakhisarai, enclosed at Annexure R/3 to the counter affidavit of the private respondent, and its communication by the Child Development Project Officer, Lakhisarai vide letter dated 4.6.2010, present at Annexure 7, which order of termination has been affirmed by the Divisional Commissioner, Munger, vide order passed on 6.9.2010, impugned at Annexure 8 to the writ petition, is that these orders have been passed without opportunity of hearing to the petitioner. The issues raised by Mr. Singh, learned counsel for the petitioner, stand noted in the order of this Court passed on 27.9.2016 and are as follows:

"(a) The enquiry was held behind the back of the petitioner and is a table report as it does not bear the signature of the petitioner.

(b) No show cause notice nor opportunity of hearing was given to the petitioner before the orders were passed; and

(c) The stipulation regarding Anganbari Sevika belonging to majority section of the society is not one of the condition under the 2016 Rules which was in force when the appointment of the petitioner was made in the year 2007."

Although this writ petition was filed on 17.1.2011 and has been taken up on several occasions requiring the counter affidavit



from the State, but even a lapse of five years has not been found sufficient for the respondent State to file a counter affidavit. In fact even after noting the issues raised by the learned counsel for the petitioner vide order passed on 27.9.2016, this matter has been taken up on 18.10.2016 and again on 25.10.2016 affording time to the learned State counsel to file their counter affidavit but when the matter is taken up Mr. Tiwary, learned Assisting Counsel, informs that the letters issued to the concerned Officers have not been responded. In the circumstances, the matter is taken up for consideration on the basis of materials on record, which includes a counter affidavit filed on behalf of the private respondent.

While I have already taken note of the issues raised by Mr. Singh, learned counsel for the petitioner, to contest the order of termination of service, Mr. Mrityunjay Kumar, learned counsel for the private respondent, has referred to an enquiry report present at Annexure R/2 to submit that since the petitioner did not hold basic qualification of coming from a caste which had a majority in the village, hence she was not fit to hold the post. With reference to the order of termination dated 14.5.2010 passed by the District Programme Officer, he submits that it is in the background of the report present at Annexure R/2 that this order was passed and which has been confirmed by the Divisional Commissioner in the appeal

filed by the petitioner giving rise to Service Appeal No. 26/2004.

The argument of Mr. Mrityunjay Kumar has been responded to by Mr. Mohan Kumar Singh with reference to a copy of the Inspection Register enclosed at Annexure 9 to the rejoinder and to submit that no such inspection took place on 3.6.2009 and the report enclosed at Annexure R/2 is a table report prepared by the District Statistical Officer in absence of the petitioner. He submits that although the presence of the petitioner stands noted in the report enclosed at Annexure R/2 but in absence of signature of the petitioner either on the report or there being a corresponding entry in the Inspection Report maintained at the centre, the relevant extract of which has been enclosed at Annexure 9, it is confirmed that the report is a table report and is ex-parte. He further submits that the issue taken note of by the court has not been answered.

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

Pleadings on record show that even when a decision was taken to close the Centre no.57 and for its reorganization by the District Magistrate in his order dated 20.3.2009 impugned at Annexure-4, and which was questioned by the petitioner before the Commissioner in Appeal No. 12 of 2009, the Commissioner while upholding the reorganization did not interfere with the service of the



petitioner rather has restricted the honorarium for the period the centre was not functioned. The Commissioner by the same order has allowed the District Magistrate to decide the fate of the petitioner in consideration of the survey report regarding the strength of the majority community in the village.

I have already noted that the State has not bothered to file any counter affidavit to contest the issues raised by the petitioner. Although Mr. Mrityunjay Kumar, learned counsel appearing on behalf of the complainant, has attempted to obstruct the prayer of the petitioner but in the circumstances where there is nothing on record to contest the argument advanced by Mr. Mohan Kumar Singh that the order of termination was passed ex-parte, behind the back of the petitioner and without affording any opportunity to defend herself, the writ petition has to be allowed. The writ petition also has to be allowed because under the order of the Commissioner passed in Appeal No. 12/2009 present at Annexure 4, it is the District Magistrate who is to take a decision on the continuance of the petitioner and not the District Programme Officer.

In the result, the order of termination of service of the petitioner bearing Memo No. 229 dated 14.5.2010 passed by the District Programme Officer, Lakhisarai, enclosed at Annexure R/3 to the counter affidavit, together with its confirmation by the Divisional

Commissioner, Munger in the order dated 6.9.2010 in Service Appeal No. 26/2010, impugned at Annexure 8, cannot be upheld and is accordingly quashed and set aside.

The petitioner shall stand restored to the post of Anganwari Sevika, Centre No.57.

The writ petition is allowed.

This order, however, would not preclude the respondents to proceed in the matter afresh but in accordance with law.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.11.2016
Transmission Date	NA