

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1241 of 2015
IN
Civil Writ Jurisdiction Case No. 7043 of 2014**

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Kosum Devi Wife of Vijay Prasad resident of village - Koniypar, Post- Korama,
Police Station- Hilsa in the district of Nalanda.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department , Government of Bihar, Patna.
2. The Director, I.C.D.S. , Social Welfare Department , Indira Bhawan, Baily Road, Patna.
3. The Commissioner, Patna Division, Patna.
4. The District Magistrate-cum-Collector, Nalanda .
5. The District Programme Office, Nalanda .
6. The Child Development Project Officer, Hilsa in the district of Nalanda.
7. Sabita Kumari wife of Mahanand Prasad resident of village - Koniypar, Post-Korاما, Police Station- Hilsa in the district of Nalanda.

.... Respondent/s

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Appearance :

For the Appellant/s : M/S. Sunil Kumar & Pankaj Kumar
For the Respondent/s : Mr. Nadim Seraj, G. P. 5
Mr. Shailesh Kumar, A.C. to G.P. 5

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 02-12-2016

I.A. No. 5277 of 2015

The interlocutory application has been filed for
condonation of delay of two days in filing the appeal.

2. Upon hearing learned counsel for the appellant and
learned counsel for the State, the delay in filing the appeal is
condoned.

3. I.A. No. 5277 of 2015 is, accordingly, disposed of.

4. Heard learned counsel for the appellant on the merits of



the matter.

5. The letters patent appeal has been filed against the judgment and order of a learned Single Judge dated 08.01.2015 passed in C.W.J.C. No. 7043 of 2014 dismissing the writ application in which the order dated 15.12.2011 passed by the District Programme Officer, Nalanda had been challenged by which the engagement of the appellant on the post of Anganbari Sahayika had been cancelled.

6. The reason for the same was that on inspection made by the Child Development Project Officer, Hilsa, the Anganbari Centre of the appellant was found to be closed and both the concerned Sevika as also the appellant Sahayika were found absent. A show cause notice was issued by the District Programme Officer, Nalanda as to why the engagement of the appellant be not cancelled to which reply was also filed by the appellant but being not satisfied with the same by order dated 15.12.2011 the District Programme Officer, Nalanda cancelled the engagement of the appellant. An appeal against the said order was dismissed by the District Magistrate, Nalanda by order dated 04.09.2012 and the revision before the Divisional Commissioner, Patna also met the same fate by order dated 20.12.2013/13.01.2014.

7. The learned Single Judge has noted that the writ petitioner-appellant does not hold a civil post and cannot claim the



protection of Article 311 of the Constitution of India. She was just an agent of the Government and was entitled for certain honorarium only and the selection has been cancelled on the ground of non performance of duty. The learned Single Judge has also noted in the said order that after cancellation of selection of the petitioner, now a fresh selection on the said post has already been made and respondent no. 7 has been engaged on the post of Anganbari Sahayika for the Anganbari Centre in question. It has also been noted that the fresh selection of respondent no. 7 is not under challenge and against one single post of Anganbari Sahayika two persons cannot be directed to be engaged.

8. At the outset we find it difficult to accept the reasoning given by the learned Single Judge that the relief cannot be granted to the appellant for the reason that the post has been filled up by respondent no. 7 and there cannot be any direction to appoint two persons on the single post. The appellant had through out challenged her disengagement by the impugned order dated 15.12.2011 before the appellate authority and the revisional authority and then before this Court. Therefore, if at any stage she would have succeeded, then for the mere reason that some one has been engaged in her place, she could not have been denied her reinstatement, rather she would have been entitled for reinstatement on that post because she would have been treated to have been wrongly removed from the said post.



9. As a matter of fact, learned counsel for the appellant submits that even when fresh appointments are made, the appointment letter clearly states the fact that the appointment is subject to the pending litigation in the matter. However, from a perusal of the orders passed by the administrative authorities right from the District Programme Officer, District Magistrate and the Divisional Commissioner, Patna, we find that concurrent findings of fact are found against the appellant that the Anganbari Centre was found closed when the same was inspected and the appellant was also found absent at that time. The plea taken by the appellant that there was an accident of a boy of the Anganbari Centre in question with a cycle or motor cycle and she had taken the said boy for medical treatment did not find favour with the authorities concerned. The said plea appears to be an after thought because at every Anganbari Centre, two persons as Anganbari Sevika and Anganbari Sahayika are posted. As the appellant is an Anganbari Sahayika and even such an accident of a boy had taken place, there was no occasion for the Centre to be closed down because Anganbari Sevika must have been there. That the Centre was closed is a fact not disputed by the appellant, rather she admits that the Centre was closed and she was absent.

10. In view of the concurrent findings of fact recorded by the administrative authorities, the writ Court cannot act as an appellate authority and there is a very limited scope for such examination



under the writ jurisdiction, we do not find any reason to interfere with the impugned order.

11. In such a matter, all that is to be seen is whether the process by which the removal has taken place was fair. It is rightly stated by the learned Single Judge that the appellant does not have the protection of Article 311 of the Constitution of India. All that is required in such a case is adoption of a fair procedure which has been done in this case by issuance of notice to the respondent concerned.

12. It is unfortunate that the appellant has made unsubstantiated allegations against the Child Development Project Officer and other officials. Looking into the records of the matter, the same shows the appellant in a very poor light.

13. For the aforesaid reason, we do not see any scope for interference in the matter. The letters patent appeal is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

Amin/-

(Birendra Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	

