

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.69 of 2016

IN

Civil Writ Jurisdiction Case No. 16491 of 2012

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1. Urmila Kumari Wife of Arvind kumar Singh Resident of village -sirsa, Po Dighwa Dubauli, P.s Baikunthpur, District Gopalganj.

.... Appellant/s

Versus

1. The State of Bihar
2. The Commissioner, Saran Division, Chapra.
3. District Magistrate, Gopalganj.
4. Block Development Officer, Baikunthpur Block , District Gopalganj.
5. District Programme Officer, Gopalganj.
6. Child Development Project officer, Baikunthpur Block, district Gopalganj.
7. Mukhiya Gram Panchayat Raj, Sirsa, Manpur, Ps. Baikunthpur Block, district Gopalganj.
8. Panchayat Secretary, Gram Panchayat Raj, Sirsa Manpur, Ps. Baikunthpur Block, district Gopalganj.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Naresh Chandra Verma

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date: 22-12-2016

The present Letters Patent Appeal has been filed under Clause 10 of the Letters Patent of Patna High Court Rules against the order dated 16.1.2014 passed by the learned Single Judge in C.W.J.C. No. 16491 of 2012 whereby the writ application filed with prayer for quashing the order dated 23.3.2012 passed by respondent no. 2, the Divisional Commissioner, Saran in Anganbari Appeal No. 127 of



2011, as contained in Annexure 5 to the writ application and the order dated 6.8.2011 passed by respondent no. 3, the District Magistrate in Misc. Anganbari Case No. 46 of 2010 as contained in Annexure 4 to the writ application, has been dismissed and the disengagement of the appellant as Anganbari Sevika has been affirmed on the ground that the appellant got adequate opportunity for integral remedy as per the guidelines and as such, this court is not required to analyze again the whole case in exercise of jurisdiction under Article 226 of the Constitution of India.

The factual matrix of the case is that the appellant was appointed as Anganbari Sevika at Anganbari Centre No. 64 in village Sirsa Bazar in the district of Gopalganj and worked as such for seven years. On 11.12.2009 the appellant due to illness was on leave duly allowed by the CDPO but the Block Development Officer, Baikunthpur went to the Anganbari Centre No. 64 and without any notice to the writ petitioner-appellant, held enquiry, found the appellant absent and sent a report to the District Magistrate, Gopalganj. The District Magistrate, after getting the enquiry conducted by the BDO, terminated the employment of the appellant from the post of Anganbari Sevika w.e.f. 11.1.2010. Thereafter, the appellant preferred Appeal No. 11 of 2010 before the Divisional Commissioner, Saran, vide order dated 29.6.2010 remanded the



matter to the District Magistrate to pass fresh order after holding detail enquiry. The District Magistrate, after holding detail enquiry, again passed order dated 6.8.2011, confirming the previous order, whereafter the appellant again filed Anganbari Appeal No. 127 of 2011 before the Divisional Commissioner. The Divisional Commissioner affirmed the order of the Collector. The appellant challenged both orders of Collector and the Divisional Commissioner before the writ court but the learned Single Judge declined to interfere hence the present Letters Patent Appeal.

From the order of the Divisional Commissioner passed in Appeal No. 127 of 2011, it appears that only question raised was that the Block Development Officer was not entitled to conduct enquiry as per the guidelines of 2010 whereas it was held by the Divisional Commissioner that the guidelines of 2006 was applicable to the appellant, which does not restrict conduction of enquiry by the B.D.O.

It is submitted by learned counsel for the appellant that the appellate order ought to have been passed by the CDPO but the same was passed by the District Magistrate, hence the appellant lost an opportunity of appeal before the District Magistrate. More over, the BDO was not entitled to conduct enquiry.

In view of the fact that the appellant availed opportunity



of appeal twice before the Divisional Commissioner, hence she waived her right to raise this issue now in Letters Patent Appeal. The order of the Divisional Commissioner dated 23.3.2012 clearly suggests that the case of the appellant was governed by 2006 guidelines which do not put any restriction with regard to the conduction of enquiry by Block Development Officer. More over, the appellant was employed on contractual basis and she was terminated in 2010. The appellant was given ample opportunity to avail the integral remedy provided in the guidelines, hence we do not find any infirmity in the order passed by the learned Single Judge.

Accordingly, this Letters Patent Appeal is dismissed.

(Hemant Gupta, ACJ)

(Dinesh Kumar Singh, J)

Anil/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	

