

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.308 of 2015

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Sabita Kumari, wife of Shyam Bihari Das, resident of Village - Gandiha, Police Station - Rafiganj, District – Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
2. The Director (ICDS) of Social Welfare Department, Government of Bihar, Patna.
3. The Deputy Director, Welfare, Magadh Pramandal, Gaya.
4. The Assistant Director (ICDS) of Social Welfare Department, Government of Bihar, Patna.
5. The District Magistrate, Aurangabad.
6. The District Programme Officer, Aurangabad.
7. The Child Development Project Officer, Rafiganj Block, Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhu Narayan Sharma

For the Respondent/s : Mr. P.N. Shahi, AAG-6

Mr. Manish Kumar, AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-09-2016

Heard Mr. Prabhu Narayan Sharma, learned counsel appearing for the petitioner and Mr. Manish Kumar, learned A.C. to A.A.G.-6, for the State.

The petitioner is aggrieved by the order dated 27.3.2012 passed by the District Programme Officer, Aurangabad in Selection Case No.112 of 2011 whereby the services of the petitioner from the post of Anganbari Sevika, Gordiha Anganbari Centre Code No.118 in the district of Aurangabad has been terminated. The order of the District Programme Officer has been affirmed by the



Deputy Director (Welfare) in his order dated 7.3.2014 dismissing the appeal filed by the petitioner bearing Anganbari Appeal No.83 Abad of 2012. Copies of the order passed by the District Programme Officer and the Deputy Director (Welfare) are impugned at Annexure-1 and 2 to the writ petition respectively.

Mr. Sharma, learned counsel appearing for the petitioner while questioning the impugned order has submitted that for a single day absence, an extreme penalty of dismissal has been passed against the petitioner even when the petitioner has given explanation as to her absence. It is the submission of Mr. Sharma that although the copy of the enquiry report submitted by the Assistant Director (Welfare) was not handed over to the petitioner but a copy of the same is present at Annexure-B and the charge leveled that the Centre was not functioning properly, is not based on records. He submits that even though reference is made to statement of some villagers but their names are not present and thus on a generalized allegation, the petitioner has been terminated.

Mr. Manish Kumar, learned A.C. to A.A.G.-6 for the State while contesting the argument of Mr. Sharma has submitted that it is receiving complaints that when the inspection was carried out, the petitioner was found absent. The local villagers informed that the centre is hardly functional. Mr. Kumar has also referred to a



letter of the Director present at Annexure-A which is addressed to the District Programme Officer to submit that there were complaints in relation to a number of Anganbadi Centres in the district of Aurangabad including the petitioner and it is in consideration whereof that a decision has been taken, which requires no interference.

Responding to the argument of Mr. Manish Kumar, learned A.C. to A.A.G.-6, Mr. Sharma has referred to a Division Bench opinion in L.P.A. No.419 of 2014 (Kumari Hemlata & others vs. State of Bihar) to submit that in a similar instance where the termination order was passed upon a direction issued by the Director, Social Welfare that the termination has been set aside on grounds that it is influenced by a superior authority. He submits that the case in hand is squarely covered by the judgment and order passed by the Division Bench in L.P.A. No.419 of 2014 (Kumari Hemlata and others vs. the State of Bihar). Mr. Sharma has also submitted that no fresh appointment has been made to the post in the meanwhile.

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

The writ petition is fit to be allowed on the issues raised and contested. The enquiry report of the Assistant Director enclosed



at Annexure-B is utterly vague and except for the allegation of closure of the Centre, which may be an irregularity, the other allegations have no foundations. The second infirmity in the proceeding is, that this report was never handed over to the petitioner for any reply. The third infirmity is that even when the petitioner has given explanation for her absence and which has not been found to be untrue yet the District Programme Officer has mechanically passed the order of dismissal. Fourthly, the order of dismissal is influenced by the directions of the Director, Social Welfare who has recommended for termination of appointment vide his letter bearing no.2203 dated 25.8.2011 present at Annexure-A. The order of dismissal passed by the District Programme Officer was thus only a consequence flowing therefrom.

Even otherwise an extreme penalty of removal or cancellation of selection, as the case may be, for a single day aberration viz closure of a Centre with no accompanying circumstances supporting such extreme penalty, in my opinion is rather harsh and an arbitrary decision especially where the person concerned has given a possible explanation for her absence.

Above all, the case of the petitioner is squarely covered by the opinion expressed by the Division Bench in L.P.A. No.419 of 2014 (Kumari Hemlata and others vs. the State of Bihar).



For the reasons aforementioned the impugned order dated 27.3.2012 passed by the District Programme Officer, Aurangabad together with the order dated 7.3.2014 passed by the Deputy Director (Welfare), Magadh in Anganbari Appeal No.83 Abad of 2012 impugned at Annexures-1 and 2 respectively, cannot be upheld and are accordingly quashed and set aside.

The writ petition is allowed.

The petitioner is restored to her post.

(Jyoti Saran, J)

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AFR/NAFR	AFR
CAV DATE	
Uploading Date	3.10.2016
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