

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2350 of 2014

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1. Tara Devi Wife of Dharmendra Singh Resident of Village - Tetariadih,
P.S. Nawada Mufassil, District - Nawada

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department, Govt. of Bihar, Patna
2. The Director, Integrated Child Development Scheme, Department of Social Welfare, Govt. of Bihar, Patna
3. The Divisional Commissioner, Magadh Division, Gaya
4. The District Magistrate, Nawada
5. The District Programme Officer, Nawada
6. The Child Development Project Officer, Nawada Sadar, Nawada
7. Bachhi Devi Wife of Rajendra Mistri Resident of Village - Tetariadih, P.O. Akauna, P.S. Nawada, Mufassil, District - Nawada

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailesh Kumar, Adv.

For the Respondent/s : Mr. Ramadhar Singh, G.P.25
Mr. Archana Sinha, A.C. to G.P.25

For the respondent No.7 : Mr. Arun Kumar, Adv.
Mr. Ram Vinay Prasad Singh @Sanjay, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 14-09-2016

Heard Mr. Shailesh Kumar learned counsel for the petitioner,
Mr. Ramadhar Singh, G.P.25 for the State and Mr. Arun Kumar for
the private respondent No.7

With the consent of the parties this writ petition has been heard
and is being disposed of at the admission itself.

The petitioner is aggrieved by the order bearing Memo No.29
dated 28.7.2011 passed by the Commissioner, Magadh Division, Gaya
impugned at Annexure-6 whereby the appeal filed by the petitioner

bearing Appeal Case No. 56 of 2011 has been dismissed on grounds that it is bereft of the District Magistrate's order against which the appeal has been filed and that the Commissioner as an appellate authority cannot sit in appeal over the order passed by the Child Development Project Officer.

Needful to mention here that the District Magistrate, Nawada vide order bearing Memo No. 29 dated 7.1.2008 has cancelled the appointment of the petitioner as Anganbari Sahayika for Anganbari Centre Tetariadih within the Debour Gram Panchayat in the district of Nawada and which order was put to question by the petitioner before the Commissioner in Appeal case No. 56 of 2011 filed in the light of the liberty granted by the Court in C.W.J.C.No.5306 of 2008.

The short argument advanced by Mr. Shailesh Kumar learned counsel appearing for the petitioner is that the opinion of the Commissioner, Magadh Division is contrary to the records inasmuch as the petitioner had questioned the order passed the District Magistrate dated 7.1.2008 terminating appointment of the petitioner as Anganbari Sahayika in Appeal and a copy of the same, was also enclosed with the appeal.

It is in consideration of the submission made by Mr. Shailesh Kumar that the records of the appellate proceedings were called for and Mr. Singh learned G.P.25 has produced the same. A cursory



glance of the appellate proceedings by itself would show the incorrectness in the opinion expressed by the Commissioner, Magadh Division. The Memo of appeal is on the record of the proceedings and in paragraph 1 it proceeds to question the order dated 7.1.2008 of the District Magistrate-cum-Collector, Nawada cancelling the appointment of the petitioner to the post of Anganbari Sahayika. Even the copy of the order passed by the District Magistrate, Nawada is enclosed with the memo of appeal and is available at page 8 of the appellate proceeding.

In view of the circumstances discussed, the order of the Commissioner, Magadh Division passed in Appeal Case No. 56 of 2011 which dismisses the appeal on grounds that the order of the District Magistrate questioned in the said appeal was not impugned, is not the correct opinion and is contrary to the records of Appeal Case No. 56 of 2011 which not only questions the order of the District Magistrate but also encloses a copy of the order.

For the reasons so discussed, the order dated 28.7.2011 passed by the Commissioner, Magadh Division, Gaya impugned at Annexure-6 cannot be upheld and is accordingly quashed and set aside. The appeal stands restored to its file and the matter is remitted for fresh consideration by the Commissioner, Magadh Division, Gaya and its disposal in accordance with law after opportunity of hearing to

the parties.

Since the parties contesting are present before this Court they shall appear before the Commissioner, Magadh Division on 28.9.2016 at 11 A.M. and when he shall proceed to dispose of the appeal expeditiously and preferably within four weeks thereafter.

The writ petition is allowed.

Let the records so produced by Mr. Ramadhar Singh, G.P.25 be returned to him for the needful.

(Jyoti Saran, J)

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