

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3176 of 2014

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Kumari Kusum Prasad Wife Of Awadhesh Kumar Resident Of Village -
Chakjainaw, P.S. Harnaut, District - Nalanda

.... Petitioner

Versus

1. The State Of Bihar Through Secretary, Social Welfare Department, Bihar, Patna
2. Director, I.C.D.S., Bihar, Patna
3. Deputy Director, Welfare, Patna
4. District Magistrate, Nalanda
5. District Programme Officer, Nalanda
6. Child Development Project Officer, Harnaut (Nalanda)
7. Punam Kumari Wife Of Rajiv Ranjan Resident Of Village - Chakjainaw, P.O.
Gonawan, P.S. Harnaut, District - Nalanda (Pin - 803110)

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Singh, Adv.
For the Respondent/s : Mr. Krishna Chandra Jha, AC to AAG8
For respondent no.7 : Mr. Gouranga Chatterjee, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 16-11-2016

Heard Mr. Anil Kumar Singh, learned counsel for the petitioner, Mr. Krishna Chandra Jha, learned Assisting Counsel to AAG8 and Mr. Gouranga Chatterjee, learned counsel appearing for the private respondent.

The parties have been heard with a view to final disposal of the writ petition at the stage of admission.

The petitioner is aggrieved by the order dated 25.10.2012 passed by the District Programme Officer, Nalanda, impunged at Annexure 8, whereby she has been terminated from the post of Anganwari Sevika, Kendra Chakjainaw, Block Harnaut, Code No.101, in the district of Nalanda. The order stands affirmed by the

appellate authority, who has rejected the appeal filed by the petitioner bearing Appeal Case No. 180/2012 vide order passed on 18.12.2013, impugned at Annexure 9.

The facts briefly stated are that an inspection was carried out at the centre of which the petitioner happens to be Anganwari Sevika on 12.9.2012 by the Assistant Collector cum Magistrate, Nalanda, who submitted his report, vide Annexure 4 to the writ petition, pointing out certain irregularities that he discovered at the centre. The petitioner was served with a show cause notice by the District Programme Officer bearing Memo No. 4093 dated 25.9.2012, vide Annexure 6, listing eight allegations and which was duly replied by the petitioner vide Annexure 7 rebutting each of them. Not being satisfied that the District Programme Officer, Nalanda vide Memo No. 5308 dated 25.10.2012 upheld the irregularities complained against the petitioner to terminate her services and which order of the District Programme Officer has been upheld by the Deputy Director, Welfare, Patna Division, Patna vide order dated 18.12.2013 passed in Appeal Case No. 180/2012 preferred by the petitioner and feeling aggrieved she is before this Court.

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

While Mr. Jha, learned counsel appearing for the State and



Mr. Chatterjee, learned counsel appearing for newly appointed Anganwari Sevika, have relied upon the charges levelled against the petitioner, a copy of which is placed at Annexure 6, to submit that the petitioner was found wanting on running of the centre, the arguments have been repelled by the learned counsel for the petitioner in reference to the show cause reply to submit that allegations are not based on evidence. The order of termination passed by the District Programme Officer, impugned at Annexure 8, simply proceeds to uphold the allegations without dealing with the reply. The District Programme Officer has merely reiterated the factum of inspection carried out by the Assistant Collector dated 12.9.2012 together with the alleged irregularity reported by him but when dealing the answer given by the petitioner to each of the charges, the same has been rejected by the District Programme Officer by mentioning that the petitioner had advanced information about the inspection and thus, whatsoever circumstances existing was due to such advance notice. Even when the petitioner has given her reply as regarding stock of food materials, the number of children, as regarding her presence at the centre, all these explanations even have been rejected by the District Programme Officer sweepingly even in absence of any evidence to contest the stand taken by the petitioner. The order passed by the District Programme Officer is mechanical and does not assign

any reason to reject the explanation given by the petitioner nor does it deal with the same. The appellate authority has also mechanically endorsed the view expressed by the District Programme Officer.

In the circumstances discussed and considering the explanation given by the petitioner to the show cause notice present at Annexure 7 which explanation while providing answer to the allegation, has not been rejected by the District Programme Officer by a reasoned order to terminate her service, the order of termination, impugned at Annexure 8, cannot be upheld. Apparently the order of termination is based on no evidence, rather merely suspecting the petitioner of being prepared for the inspection on account of advance notice that the opinion is formed. Law is well settled and mere suspicion cannot take place of substantive proof. Even the appellate order mechanically endorses the view taken and shows no application of mind.

As a consequence the order dated 25.10.2012 passed by the District Programme Officer impugned at Annexure-7 together with the appellate order dated 18.12.2013 passed by the Deputy Director, Welfare, impugned at Annexure-9, are quashed and set aside. The petitioner stands restored to the post of Anganwari Sevika, Kendra Chakjainaw, Block Harnaut, Code No.101, in the district of Nalanda. Obviously since private respondent no.7 has been appointed on

account of vacancy caused due to termination of the petitioner, she would have to make way for the petitioner and her appointment is, accordingly, set aside.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.11.2016
Transmission Date	NA