

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3259 of 2014

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1. Babeeta Rani, Wife of Shri Jitendra Kumar Resident of Village- Panapur, Block and P.S.- Meenapur, District- Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary Social Welfare Department, Government of Bihar, Patna
2. That Director, I.C.D.S., Government of Bihar, Patna
3. The Commissioner, Tirhut Division, Muzaffarpur
4. The District Magistrate, Muzaffarpur
5. The District Programme Officer, Muzaffarpur
6. The Child Development Officer, Meenapur, Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Krishna Kant Singh, Adv.

For the Respondent/s : Smt. Geeta Kumari, G.P.28

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-11-2016

Heard Mr. Krishna Kant Singh, learned counsel for the petitioner, and Ms. Smriti Singh, learned AC to AAG10 for the State.

In the nature of the order which this Court proposes to pass it would not be required to delve deep into the merit of the case. Suffice it to say that the petitioner is aggrieved by the order dated 27.12.2012 passed by the Commissioner, Tirhut Division, Muzaffarpur in Service Appeal No. 19/2010, whereby the appeal has been dismissed and the reason is that the order has been passed by the appellate authority without opportunity of hearing to the petitioner.

The facts of the case briefly stated is that the petitioner was



terminated from the post of Anganwari Sevika, Anganwari Centre No.1, Gosayin Tola, North Panapur, Gram Panchayat Raj Panapur, in the district of Muzaffarpur under the order of the District Programme Officer, bearing Memo No. 661 dated 20.7.2009, impugned at Annexure 4, inter alia, on grounds of unauthorized absence and irregularity in running of the centre. The petitioner came before this Court questioning the order of termination in C.W.J.C. No. 12824/2009 and vide order passed on 7.10.2009 present at Annexure 5, a Bench of this Court disposed of the writ petition with a direction to the District Magistrate, Muzaffarpur to dispose of Service Appeal No. 11/2009 preferred against the order of termination. The District Magistrate, Muzaffarpur vide order dated 17.12.2009, impugned at Annexure 6, has upheld the termination order.

The petitioner feeling aggrieved preferred a statutory appeal giving rise to Appeal No. 19/2010 before the Commissioner, Tirhut Division, Muzaffarpur and the appeal was heard on 13.9.2010 and was directed to be put up for orders. However, the Commissioner who heard the appeal could not pass final order thereon until his transfer and the matter was put up for fresh hearing before the successor in the office of the Commissioner. The successor in office of the Commissioner vide order dated 11.8.2012 directed for fresh hearing of the appeal and the matter was listed on 9.7.2012 and when the



petitioner was found absent and the matter was adjourned to 13.8.2012 for hearing. The matter was listed on 13.8.2012 but hearing could not take place as the Commissioner was busy. The appeal was adjourned to 24.9.2012 when again the Commissioner could not carry out the hearing and the matter was adjourned, but unfortunately no date was fixed for hearing of the appeal on such adjournment. The appeal was thereafter listed on 10.12.2012 and 17.12.2012 when obviously the petitioner was absent and the Commissioner proceeded to put up the matter for orders on 27.12.2012 when the order impugned at Annexure 8 has been passed dismissing the appeal ex-parte.

The argument advanced by Mr. Krishna Kant Singh, learned counsel appearing on behalf of the petitioner, to question the order of the Commissioner is that the petitioner has been denied opportunity of being heard. He submits that though hearing was conducted by the predecessor in the office of the Commissioner but he failed to pass final orders until his transfer. He submits that the successor Commissioner though listed the matter but was short on time and the matter kept being adjourned when on 24.9.2012 it was adjourned sine die without any date. He submits that in absence of any particular date given by the Commissioner on 24.9.2012, his suo moto listing of the appeal without due intimation to the petitioner to attend the appeal,



cannot prejudice her case nor matter could have been heard and disposed of ex-parte. He further submits that though realizing the position, the commissioner vide order passed on 8.7.2013 in Misc. Case No. 283/2013 present at Annexure 9, has restored the appeal but by a subsequent order passed on 23.10.2013 the Commissioner disposed of the miscellaneous case upholding his earlier order passed on the appeal, which was ex-parte.

The short argument advanced by Mr. Singh is that the petitioner has been denied statutory remedy and the fault does not lie with her.

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

The arguments advanced by Mr. Krishna Kant Singh is supportive from the ordersheet in Appeal Case No. 19 of 2010, a copy of which is enclosed at Annexure-7 to the writ petition. The ordersheet in appeal case pending before the Commissioner reflects that on 13.9.2010 the appeal was heard and orders were reserved in the case. No final orders were passed in the appeal by the Commissioner for almost 2 years and he got posted out. The new incumbent took up the matter on 11.8.2012 and while noting that final order could not be passed in appeal, listed the matter for fresh hearing. The appeal was considered on 9.7.2012, 13.8.2012 and again on 24.9.2012 but somehow could not be heard primarily on account of



paucity of time with the Commissioner. On 24.9.2012 the appeal was adjourned but no date was given. This has handicapped the petitioner, who thereafter had no knowledge about the date fixed for hearing of the appeal. Obviously, she was absent when the matter was taken up on 10.12.2012, 17.12.2012 and also when the final order passed on 27.12.2012. The counter affidavit is on record but does not answer whether due intimation was given to the petitioner regarding the fixation of the date in the hearing matter. Considering that the date of hearing in the appeal was adjourned by the Commissioner on 24.9.2012 without fixing the next date of hearing, he should have ensured that due communication was given to the petitioner about the date of hearing so fixed by him later on.

As I have said there is nothing on record to confirm that the petitioner was duly intimated about the date of hearing. Although learned State counsel has endeavoured to submit that the petitioner was expected to be more vigilant in the matter and should have ascertained the date fixed in the appeal, from the office of the Commissioner but such argument is only taken to be rejected. In my opinion, the failure on the part of the Commissioner, Tirhut Division to fix a date of hearing while adjourning the appeal on 24.9.2012 cannot act prejudicially to the petitioner nor can deprive her to a hearing. Rightly pointed out by Mr. Singh, that the Commissioner was

conscious about this aspect of the matter when he allowed the restoration arising from Misc. Case No. 283 of 2013 vide order passed on 8.7.2013 present at Annexure-9 but then he again faulted to uphold the earlier order which indisputably was ex-parte.

In the undisputed circumstances noted above, the order dated 27.12.2012 passed by the Commissioner, Tirhut Division, Muzaffarpur in Service Appeal No. 19 of 2010 as well as the order passed by him in Misc. Case No. 283 of 2013 cannot be upheld and are accordingly quashed and set aside. The Service Appeal No. 19 of 2010 is restored to its file for disposal in accordance with the law but only after opportunity of hearing to the petitioner who shall present herself before the Commissioner on or before 28.11.2016 when he shall proceed to dispose of the matter expeditiously and preferably within four weeks thereafter.

The writ petition is allowed with the stipulations aforementioned

(Jyoti Saran, J)

Bibhash/-

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CAV DATE	
Uploading Date	19.11.16
Transmission Date	