

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2231 of 2014

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Mamta Kumari W/o Surendra Kumar Resident of Mohanchak Milki, P.O and P.S-
Islampur, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director, Integrated Child Development Scheme (I.C.D.S.), Bihar, Patna.
3. The District Magistrate, Nalanda.
4. The District Programme Officer, Nalanda.
5. The Child Development Project Officer, Islampur, District- Nalanda.
6. Smt. Premlata W/O Baleshwar Singh Resident of Village Mohanchak Milki, P.S-
Islampur, District- Nalanda.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Shri Krishna Ranjan, Advocate

For the Respondent/s : Mr. Deepak Kumar, A.C. to SC-5

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 31-08-2016

Heard Mr. Shri Krishna Ranjan, learned counsel
appearing for the petitioner and Mr. Deepak Kumar, Assisting
Counsel to SC-5 and Mr. Rewati Kant Raman for the private
respondent.

With the consent of the parties, the matter has been
heard with a view to final disposal at the stage of admission stage
itself.

The petitioner is aggrieved by the order bearing
Memo No. 1905 dated 07.9.2013 passed by the District Magistrate,
Nalanda in Miscellaneous (Anganwari) Case No. 75 of 2012 whereby
the order passed by the District Programme Officer terminating the

service of the respondent no. 6 from the post of Anganwari Sevika, Centre No. 84 in the District of Nalanda, has been set aside thus restoring the respondent no. 6 to her post. A copy of such order is impugned at Annexure-4 to the writ petition.

Fact of the case briefly stated is that the respondent no. 6 was initially appointed as Anganwari Sevika for the centre in question. An inspection was carried out by the Child Development Project Officer on 15.2.2012 and finding irregularities that the appointment of the respondent no. 6 was cancelled by him vide order passed on 29.3.2012. The respondent no. 6 questioned her cancellation before the District Magistrate, Nalanda in terms of the statutory provisions but since it was not being disposed of that she approached this Court in CWJC No. 18019 of 2012 and which was disposed of with a direction to the District Magistrate, Nalanda to consider and dispose of the appeal accordingly. The appeal was heard and has been allowed vide Annexure-4. In between a selection process was initiated and the petitioner was appointed on 11.2.2012 vide Annexure-1 to the present writ petition. She has also obtained training and the evidence is present at Annexure-2 series. Since by virtue of the order passed on the appeal preferred by the respondent no. 6 whereby she has been restored to her post, that the petitioner being aggrieved is before this Court.

Two issues have been raised by Mr. Ranjan to

question the order passed by the District Magistrate, namely:

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- (a) Although under the guidelines issued regulating the appointment of Anganwari Sevika and Sahayika issued in the year 2011, it is the District Magistrate before whom a complaint against an order passed by the District Programme Officer would lie but such jurisdiction was taken away by the amendment to the guidelines made in the year 2013 vide Memo No. 2354 dated 17.5.2013, issued by the Social Welfare Department, a copy of which is present at Annexure-5 and whereafter it is the Deputy Director, Welfare posted in the office of the Divisional Commissioner or an Additional Collector duly authorized by the Divisional Commissioner, who have been vested with the jurisdiction to hear any such complaint against the order passed by the District Programme Officer; and
- (b) The petitioner was not afforded opportunity to defend herself as she was not a party to the complaint.

While the counsel for the State has supported the impugned order, Mr. Raman, learned counsel appearing for the private respondent has invited the attention of this Court to the proceedings of the Aam Sabha, a copy of which is placed at Annexure-A to the counter affidavit of the respondent no. 6 to submit that the appointment of the writ petitioner was conditional and was



made subject to the challenge made by the respondent no. 6 against her termination. He thus submits that since the appointment of the petitioner was conditional and was made subject to the outcome of the complaint of the respondent no. 6 and which complaint has been upheld by the District Magistrate, there is no cause for indulgence and the writ petitioner would have to make way for the respondent no. 6.

Insofar as the non-arraignment of the writ petitioner is concerned, it is the argument of Mr. Raman that since the respondent no. 6 was not aware of the appointment of the petitioner hence she was not made a party. He further submits that since the writ petitioner was conscious that her appointment is conditional upon the outcome of the complaint of the respondent no. 6, it is the writ petitioner who should have taken sufficient step for getting herself arraigned in the pending consideration. Insofar as the issue of jurisdiction is concerned, it is the argument of Mr. Deepak Kumar, learned State counsel that the amendment at Annexure-5 is not retrospective and does not deal with the pending appeals which have to be disposed of accordingly.

I have heard learned counsel for the parties and I have perused the records. It is undisputed that appointment of the writ petitioner was conditional upon the outcome of the complaint filed by the respondent no. 6 against her termination. Thus the writ petitioner was aware that she would sail or sink with the outcome of the



complaint filed by the respondent no. 6 which was pending consideration before the District Magistrate. Insofar as the issue of arraignment is concerned, the proceedings of the Aam Sabha itself take notice of the complaint made by the respondent no. 6 against her termination and thus the writ petitioner was also aware that the respondent no. 6 has taken recourse to the statutory remedy and in case she wanted to be heard by the District Magistrate then she should have taken sufficient steps for getting herself arraigned and she cannot shift the blame on the respondent no. 6. Insofar as the issue of jurisdiction is concerned as argued by Mr. Deepak Kumar, Annexure-5 which incorporates the amendment to the guidelines neither makes the amendment retrospective nor any provision is present to regulate the pending cases and in such circumstances, the jurisdiction exercised by the District Magistrate to dispose of the complaint suffers no infirmity.

For the reasons and discussion aforementioned, the order passed by the District Magistrate, Nalanda impugned at Annexure-4, does not call for any interference.

This writ petition is accordingly dismissed.

(Jyoti Saran, J)

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