

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.394 of 2017

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Rubaida Khatoon, W/o Md. Nasiruddin Ansari, R/o- Kajichak, P.O. + P.S. Rafiganj,
District- Aurangabad.

.... 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 Directorate, Bihar, Patna.
3. The Commissioner, Magadh Division, Gaya.
4. The District Magistrate, Aurangabad.
5. The District Programme Officer, Aurangabad.
6. The Deputy Director, Welfare, Magadh Division, Gaya.
7. The Child Development Project Officer, Rafiganj, Aurangabad.
8. The Assistant Director, Integrated Child Development Scheme Directorate, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Singh, Advocate
For the Respondent/s : Smt. Kumari Amrita, GP-3
Mr. Mithilesh Kr. Upadhyay, AC to GP-3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 15-03-2017

Heard Mr. Rajeev Kumar Singh, learned counsel
appearing for the petitioner and Mr. Mithilesh Kumar Upadhyay,
learned Assisting Counsel to Government Pleader No.3 for the State.

With the consent of the parties this writ petition has
been heard with a view to its final disposal at the stage of Admission
itself.

The petitioner is aggrieved by the order dated 27.3.2012
of the District Programme Officer, Aurangabad, whereby she has
been relieved from the post of Anganwari Sevika, Anganwari Centre
No.173, Kajichak, Rafiganj in the district of Aurangabad. A copy of
the order is impugned at Annexure-1 and has been affirmed by the



Appellate Authority who has dismissed the appeal bearing Anganwari Appeal No.88 Abad/2012 so preferred by the petitioner vide order passed on 7.3.2014.

The foundation for the impugned order lies on the inspection report, a copy of which has been enclosed at Annexure-4 series and in so far as the petitioner is concerned, the report is present at running page 39 of the writ proceeding. The Assistant Director heading the team had reported that there were only 5 children present at the centre of which 3 were not found to be on the rolls of the centre. The Anganwari Sevika admitted that the children are from the outside. The inspection team also found that the registers were not available and kitchen did not appear to be in working condition.

One of the arguments advanced by Mr. Rajeev Kumar Singh, learned counsel appearing for the petitioner is that within a span of two hours 9 centres were inspected by allotting 5 to 10 minutes to each of the centres and when such irregularities have been pointed out.

Be that as it may, certain irregularities having come to the notice of the inspection team that the matter was reported leading to issuance of a show cause notice on 16.11.2011, a copy of which is present at Annexure-5 under the signature of the District Programme Officer, Aurangabad. While the inspection team has found the centre



open with children present, the show cause notice charges the petitioner of keeping the centre closed and of committing serious irregularities. No details, however, is present in the notice as to the nature of default.

The petitioner on her part filed reply denying the allegations leading to issuance of second show cause notice issued on 17.3.2012 asking her to be present for hearing on 27.3.2012 and which again is for keeping the centre closed accompanied with serious irregularities. A plain look of the two show cause notices would confirm that nothing specific has been charged against the petitioner except sweeping allegation of irregularity in the functioning of the centre. The petitioner again filed her reply, a copy of which is present at Annexure-6 and which has culminated in the order impugned upholding the allegation. Feeling aggrieved the petitioner is before this Court.

I have heard learned counsel for the parties and I have perused the records and in my opinion the order impugned is not sustainable for the following reasons:

The inspection report available at running page 39 of the writ proceedings indicates that the centre was open and the inspection team found the required registers not available and opined that the functioning of the centre is irregular. On the other hand the show cause notices present at Annexures 5 and 7 deviate from the



inspection report to charge the petitioner of keeping the centre closed. In other words, the show cause notice does not meet the allegation made in the inspection report which is the foundation for termination.

Another glaring infirmity in the proceeding is that the show cause notice does not indicate the nature of irregularities so found and except for sweeping allegation charging the petitioner of indulging in serious irregularities, the petitioner has not been confronted with any specific allegation. Obviously a general allegation has been disowned by the petitioner by a general reply on denial.

The other reason which persuades this Court to draw in favour of the petitioner is that even though there may be some kind of default on the part of the petitioner in keeping the centre operational by following the required procedure and even though the inspection report does indicate some kind of default by the petitioner but it neither indicates a financial default by the petitioner nor the inspection report does indicate that the petitioner is a perpetual defaulter and that the default was irreversible or reflected a financial misappropriation by the petitioner. The authorities ought to have taken a more pragmatic approach in affording the petitioner opportunity in adopting corrective measures rather than imposing extreme penalty. An extreme penalty is to be imposed in an extreme



circumstances and the facts on record does not indicate any such requirement. The petitioner has specifically mentioned in her reply that there is no complaint by the villagers in respect of the centre and the stand of the petitioner has not been confronted with any material.

In the circumstances discussed and taking note of the nature of the irregularities so noticed by the inspection team I am of the opinion that an extremely harsh treatment has been meted out to the petitioner by relieving her of her engagement and as a consequence the order of termination dated 27.3.2012 impugned at Annexure-1 as confirmed by the Appellate Authority vide Annexure-2 cannot be upheld and is accordingly set aside.

Re: I.A. No.372 of 2017:

In view of the reinstatement of the petitioner the selection process whatsoever that may have been initiated by the respondents would require no persuasion in so far as the centre in question is concerned.

The writ petition is accordingly allowed. I.A. No.372 of 2017 is disposed of.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	29-03-2017
Transmission Date	NA

