

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1740 of 2016

Arising out of

Civil Writ Jurisdiction Case No. 765 of 2014

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Renu Roy @ Renu Devi wife of Jaichand Roy, Resident of Village- Nathpur, P.S.
Narpatganj, District- Araria.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department, Bihar, Patna.
2. The Principal Secretary, Social Welfare Department, Bihar, Patna.
3. The Director, I.C.D.S. Directorate, Social Welfare Department, Bihar, Patna.
4. The Divisional Commissioner, Patna.
5. The District Magistrate, Araria.
6. The District Programme Officer, Araria.
7. The Child Development Project Officer, Narpatganj, District Araria.
8. Reeta Kumari wife of Kapildeo Rai, Resident of Village- Nathpur, P.S. Narpatganj, District- Araria.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun, Advocate

For the Respondent/s : Mr. SARVESH KUMAR-GP-24

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 03-07-2017



Seeking exception to an order dated 03.08.2016 passed by the Writ Court in C.W.J.C. No. 765 of 2014, this appeal has been filed under Clause 10 of the Letters Patent and from the order passed by the learned Writ Court, it is seen that the power to terminate the appointment of an Anganwari Sevika as per Government orders and circulars in vogue at the time when the cause of action for the present writ petition was filed, vested with the District Magistrate and as per the guidelines issued by the State Government vide Circular No. 2783 of 03.10.2006, it was only the District Magistrate who was authorized to pass an order terminating the appointment. In the present case, the Director, Welfare had passed the impugned order and holding that what was ordered by the Director was only a recommendation and based on the recommendation until and unless orders of termination are passed by the District Magistrate, the employment or the engagement as Anganwari Sevika will not come to an end and finding there to be no termination by the competent statutory authority, the Writ Court has interfered into the matter.

2. Even though the learned counsel appearing for the appellant argued that once the Director has passed the order cancelling the selection, the consequential termination is deemed to have been issued and when the Director has taken action, it is not necessary to pass any further order by the District Magistrate.



3. We find no substance in the aforesaid contention. The writ-petitioner was appointed to the post in question and, therefore, a right had accrued to her to work in pursuance to the appointment made. Until and unless her appointment was terminated in accordance to law and according to law, it is only the District Magistrate who can terminate the service and once there was no order passed by the District Magistrate in accordance to law, terminating the service of the writ-petitioner, the learned Writ Court has not committed any error in granting benefit to the writ-petitioner.

4. Accordingly, finding no case for interference, the Letters Patent Appeal stands dismissed.

5. Contention of learned counsel for Respondent No. 8 to say that she was appointed after the writ-petitioner's termination is concerned, the same cannot be a ground for interfering into the matter. Respondent No. 8 could be appointed only if the termination was brought about in accordance with law and a vacancy was available for appointing her. In this case, there being no termination, the so-called appointment of Respondent No. 8 itself is an illegal act having been made without any post or vacancy being available and, therefore, on such grounds as were placed before us by Respondent No. 8, we see no reason to make any indulgence into the order passed by the learned Writ Court.



6. Accordingly, the Letters Patent Appeal stands dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
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