

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7438 of 2014

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Sarswati Kumari W/o Sada Nand Singh Resident of Village- Madadpur, Police
Station- Pandarak, District- Patna. Petitioner

Versus

1. The State of Bihar through Principal Secretary Welfare Department, Govt. of Bihar, Patna.
 2. The Deputy Director, Welfare, Patna Division, Patna.
 3. The District Programme Officer, Patna.
 4. The Child Development Project Officer, Pandarak, Patna
 5. Vinita Devi Wife of Sanjay Kumar Singh, village Madadpur, police station Pandarak district Patna Respondents
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Appearance :

For the Petitioner : Mr. Mrigendra Kumar, Advocate
For the state : Mr. Sunil Kr. Mandal, SC 3 and
Neelam Kumari, AC to SC 3
For respondent no.5 : Mr. Rakesh Kr.Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 27-11-2017

Heard learned counsel for the petitioner, the state and the respondent no.5.

The petitioner has sought quashing of order passed in Case No. 188 of 2013, dated 16.4.2013 by the District Programme Officer (respondent no.3), whereby she has been terminated from the service of Anganbari Sewika/Sahayika at Madadpur Paswan Tola Center No. 42. She has also prayed for quashing of appellate order passed in Angnbari Appeal Case no. 13/2013-14 dated 26.7.2013, by the Deputy Director, Welfare, Patna Division, Patna (respondent no.2), whereby the termination order has been upheld.

The allegation is that when the Center of the petitioner was



inspected on 20.10.2012, 15.12.2012 and 20.12.2012 by the Child Development Project Officer, Pandarak (respondent no.4), she was found absent and there were only 10 children at the Center. Further, the Poshahar being provided to the children was also in less quantity. Show cause, as contained in Annexure 1, was issued to the petitioner which was replied by her as contained in Annexure 2. She has also placed before the authorities the Visitor's book of the relevant period i.e. on 20.10.2012 at 11 AM with relation to the said Anganbari Kendra containing the entries of the relevant dates which is Annexure 5 to the writ petition. Counsel for the petitioner has drawn attention of the Court to the two relevant dates mentioned in the said show cause being 20.10.2012 and 15.12.2012. As per the notes entered on the Visitors book on both these dates, the same was signed by the CDPO and a Female supervisor, who constituted the expert team of two members who had inspected the center and on the basis of which Annexure 1 has been issued to the petitioner calling upon her to submit show cause reply.

The order has been passed on the said show cause by the District Programme Officer, Patna (respondent no.3) on 16.4.2013. The same does not show any consideration of the Visitor books entries. In appeal, when the petitioner challenged the findings of the respondent no.3 before the respondent no.2, Deputy Director, he too



failed to consider the entries made in the Visitors book showing her presence and other defence of the petitioner. It appears that respondents have not considered the points of the petitioner raised by her in the reply to show cause. Further, from the perusal of counter affidavit filed on behalf of respondents no. 3, 4 and 6, it is apparent that the Visitors book has been referred to therein in order to substantiate the impugned orders. Reference to the Visitors book made in paragraph 20 of the counter affidavit shows that entries of the Visitors book is admitted by the respondents also. There appears to be gross violation of responsibility on the part of the respondents. Besides, the show cause, Annexure 1, does not appear to be sustainable in law inasmuch as the inspection is dated 20.12.2012 but findings/deficiencies have been recorded therein with respect to 20.10.2012 to 5.12.2012, when no inspection is said to have been done. The findings recorded in the inspection report are unsustainable on facts as well as perverse in law.

While the matter was pending before this Court, respondent no.5 has been appointed in place of the petitioner as Anganbari Sevika at Madadpur Paswan Tola Center 42. She has appeared and filed counter affidavit and justifies her appointment as being in accordance with law and after observing the requisite procedure of law.



Counsel for the petitioner draws attention of the Court to order dated 20.1.2015, wherein this Court has specifically held that any selection made on the posts of Anganwari Sevika/Sahayika for Anganwari Centre Madadpur Paswan Tola Code 42, in the district of Patna, during the pendency of the writ petition, shall be subject to final outcome of the present writ petition.

In spite of the said order and in spite of pendency of the writ petition, State respondents proceeded to appoint respondent no.5. Since, the instant case is such, where the petitioner has shown that the show cause (Annexure 1) issued by the authorities and their orders passed on consideration of her reply to the show cause, are itself *prima facie* not sustainable in law, the impugned order dated 16.4.2013, passed by the District Programme Officer, Patna terminating the service of the petitioner as also order dated 26.7.2013, passed in Anganbari Appeal Case no. 13/2013-14 by the Deputy Director, Welfare, Patna Division, in violation of the principle of natural justice, are hereby quashed.

The writ petition stands allowed in the aforesaid terms.

(Madhuresh Prasad, J)

Shashi.

NAFR	
CAV DATE	NA
Uploading Date	1.12.2017
Transmission	1.12.2017



Date	
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