

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Review No.143 of 2017**

**IN**

**Civil Writ Jurisdiction Case No. 7213 of 2015**

=====

1. Hemlata Kumari W/o Mahesh Bhgagat, Resident of Village- Latraha, P.O.-  
Amaha, P.S. and District- Supaul.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Social  
Welfare, Government of Bihar, Patna.  
2. The Principal Secretary, Department of Social Welfare, Government of Bihar,  
Patna.  
3. The Director, I.C.D.S., Bihar, Patna.  
4. The Divisional Commissioner, Koshi Division, Saharsa.  
5. The Deputy Director (Welfare) Koshi Division, Saharsa.  
6. The District Magistrate, Supaul.  
7. The District Programme Officer (I.C.D.S.), Supaul.  
8. The Child Development Project Officer (C.D.P.O.), Supaul.  
9. The Lady Supervisor (I.C.D.S.), C.D.P.O. Office, Supaul.  
10. Ranju Kumari, W/o Birendra Kumar, Resident of Village- Latraha, P.S.+  
District- Supaul.

.... .... Respondent/s

=====

**Appearance :**

For the Petitioner/s : Mr. Subodh Kumar Jha, Adv.  
Mr. Pranav Kumar Jha, Adv.

For the Respondent/s : Mr. Kaushal Kumar Jha AAG 8

=====

**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 10-11-2017**

This civil review is directed against the judgment and order dated 19.11.2016 passed by this Court in C.W.J.C.No.7213 of 2015 whereby this Court in consideration of the grievance raised by the private respondent herein, who was the writ petitioner before this Court and taking note of the fact that the termination of the petitioner from the post of Anganbari Sevika Centre No. 235 village Amaha Latraha in the district of Supaul was on grounds of absence for a single day which issue, stood concluded in the decision reported in



**2011(3)PLJR 140 (Poonam Kumari versus The State of Bihar),** allowed the writ petition. While allowing the writ petition this Court also recorded the submission of learned counsel for the petitioner that no third party rights had been created in the meanwhile.

The present review application is founded on this submission made by learned counsel for the writ petitioner as according to Mr. Subodh Kumar Jha, learned counsel appearing for the review petitioner, this submission is incorrect because the review petitioner had been appointed as back as on 11.09.2013 vide Annexure-3 to the review application and thus the writ petition having been filed two years thereafter, it was wholly incorrect on the part of the writ petitioner to make an incorrect submission before this Court which has denied an opportunity of hearing to the review petitioner at the stage of writ proceedings.

It is taking note of such submission of Mr. Jha appearing for the review petitioner that notice was issued to the writ petitioner who was arraigned as respondent no.10. It is after service of notice that the writ petitioner has registered appearance through Mr. Pramod Mishra who has submitted that the writ petitioner had no information about the appointment of the review petitioner and hence the submission before this Court.

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



The argument advanced by Mr. Jha learned counsel for the review petitioner cannot be contested because the review petitioner having been appointed as back as on 11.08.2013 she had every right to be heard when the order was passed on the writ petition even if her appointment was conditional, to be governed by the decision of the competent forum. It thus cannot be contested that the review petitioner was denied opportunity of representation on the submission made by the counsel for the writ petitioner that no third party rights had arisen in the meanwhile.

In normal course in the undisputed circumstances noted above the issue raised in the writ petition would require a rehearing with opportunity to the review petitioner to address the Court. The issue is whether a rehearing of the writ petition would result in any different order. That the parties have been heard at the stage of review petition and nothing exceptional being brought about by the review petitioner to make any shift in the opinion expressed by this Bench while allowing the writ petition relying upon the decision of the **Poonam Kumari** (supra), I am of the considered opinion that it would be a mere completion of formality to recall the order on the writ petition on this technicality for passing the same order, as put on review.

A right of hearing forms the backbone on which the principle of natural justice rests but then the principle is not to be applied mechanically and in a routine manner and even in circumstances



where a hearing is not to result in any different opinion than expressed at the stage when the party complaining was not heard. These principles have oft been repeated but for the sake of convenience I make reference to the decision of the Supreme Court reported in **(2007) 4 SCC 54 (Ashok Kumar Sonkar Vs. Union of India & Ors.)** more particularly paragraphs 26 to 28 of the judgment which runs as follows:

“26. This bring us to the question as to whether the principles of natural justice were required to be complied with. There cannot be any doubt whatsoever that the audi alteram partem is one of the basic pillar of natural justice which means no one should be condemned unheard. However, whenever possible the principle of natural justice should be followed. Ordinarily in a case of this nature the same should be complied with. Visitor may in a given situation issue notice to the employee who would be effected by the ultimate order that may be passed. He may not be given an oral hearing, but may be allowed to make a representation in writing.

27. It is also, however, well-settled that it cannot put any straight jacket formula. It may not be applied in a given case applied unless a prejudice is shown. It is not necessary where it would be a futile exercise.

28. A court of law does not insist on compliance of useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard.”

In the circumstances expressed above and in view of the legal position so well settled and considering that there is nothing in the



argument of Mr. Jha which would persuade this Court to change its opinion expressed earlier in reference to the judgment rendered by a coordinate bench in the case of **Poonam Kumari** (supra), this Court is not persuaded to grant indulgence to the prayer made by the review petitioner. In fact the review petitioner was well conscious of her position as manifest from her appointment letter present at Annexure-3 to the review petition that her appointment was conditional and subject to final orders passed by the competent forum. The review petitioner was thus conscious of the fact that she was holding the post only as a stop gap arrangement.

In the circumstances where the appointment of the review petitioner was conditional, she cannot claim either prejudice on the reinstatement of the writ petitioner, on whose removal, the review petitioner had been appointed nor can she claim any legal right to the post in view of the conditional nature of appointment.

Mr. Jha has also endeavoured to argue that the writ petitioner was ineligible for appointment as Anganbari Sevika because her husband was holding a Government post which is a disqualification under the guidelines in force regulating the appointment of Anganbari Sevika and Sahayika. Even though Mr. Jha attempts to question the appointment of the writ petitioner on eligibility but neither there is any statement to such effect in the review petition nor any such document is enclosed to support such allegation.



For the reasons so discussed, I find no reasons to interfere with the opinion expressed on the writ petition and this review application is accordingly disposed of. Before parting I deem it necessary to observe that in case the writ petitioner is suffering from eligibility disqualification, the review petitioner would be at liberty to move the statutory authorities as per the guideline with supporting materials and it goes without saying that any such application filed by the review petitioner would be considered and be disposed of by the authority concerned in accordance with law within a reasonable period of 3 months of filing with equal opportunity of representation both to the complaint as well as the party against whom the complaint is made.

**(Jyoti Saran, J)**

Bibhash/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | AFR        |
| CAV DATE          | NA         |
| Uploading Date    | 14.11.2017 |
| Transmission Date | NA         |

