

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19157 of 2010

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Sonali Sweety, wife of Rajkishore Nayak, resident of Village- Rampur Kanth,
Panchayat Akhta Uttari, P.O- Madhurapur, Block Suppi, Distt.- Sitamarhi

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Social Welfare Department, Bihar, Patna
3. The Director, Integrated Child Development Scheme (I.C.D.S), Social Welfare
Department, Bihar, Patna
4. The Commissioner, Tirhut Division, Muzaffarpur
5. The Deputy Director, Welfare, Tirhut Division, Muzaffarpur
6. The District Magistrate, Sitamarhi
7. The District Programme Officer, Sitamarhi
8. The Child Development Project Officer, Suppi Block, Distt.- Sitamarhi
9. Smt. Shila Kumari, wife of Awadhesh Nayak R/O Vill.- Rampur Kanth,
Panchayat Akhta Uttari, P.O. Madhurapur, Block Suppi, Distt.- Sitamarhi

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Siya Ram Sahi Mr. Hans Lal Kumar, Advocates.
For the State	:	Mr. Sanjay Kumar, AC to SC-15
For Respondent No. 9	:	Mr. Rajendra Prasad Singh, Sr. Adv. Mr. Mukesh Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 07-08-2017

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the respondent no. 9.

2. The present writ petition has been filed for quashing
the order dated 27.09.2010 (Annexure-14) passed by the respondent
Commissioner, Tirhut Division, Muzaffarpur in Service Appeal No.
131/2009, whereby and whereunder the appeal filed by the petitioner
against the order contained in memo no. 533 dated 14.07.2009 of the
District Magistrate cancelling the selection of the petitioner made as



Anganwari Sevika for Anganwari Centre No. 34 in Village Rampur Kanth, Block Suppi, District- Sitamarhi has been affirmed; for quashing the order contained in memo no. 533 dated 14.07.2009 (Annexure-9) of the District Magistrate, Sitamarhi, whereby the selection made in favour of the petitioner as Anganwari Sevika for Anganwari Centre No. 34 has been cancelled and a direction has been given to make afresh selection for the post of Anganwari Sevika for the aforesaid Centre; and for connected reliefs.

3. The short facts according to the petitioner are that the petitioner was selected as Anganwari Sevika on 12.06.2007 for Anganwari Centre No. 34 at Village Rampur Kanth under Block Suppi, and she had been performing her work since then to the satisfaction of the authorities. Two years later, a show cause notice dated 13.06.2009 came to be issued to the petitioner alleging that on 12.06.2009 she had to distribute Take Home Ration of 15 days but on the said date she was seen near Ghatwara going towards Sitamarhi from which it became evident that the petitioner was absent from the Centre and the T.H.R. was not distributed. The petitioner filed her reply to the show cause notice stating that on 12.06.2009 she was feeling unwell and was going to Sitamarhi for medical check up, in support of which the doctor's prescription was enclosed. The Child Development Project Officer accepted the petitioner's reply and reported accordingly to the District Programme Officer. By the impugned order dated 14.07.2009



(Annexure-9) however the District Magistrate took a different view of the matter and cancelled selection of the petitioner. The petitioner preferred an appeal before the Commissioner who called for reports from the District Magistrate as well as the Deputy Director. While the District Magistrate reiterated his view, the Deputy Director found that the petitioner had been running the Centre in a proper manner as stated by several persons named in his report dated 22.04.2010. He accordingly opined that the allegation against the petitioner was baseless as the fund for T.H.R. advance had not been received in the petitioner's account on the date of inspection and hence T.H.R. could not be distributed. The Commissioner however did not accept the recommendation of the Deputy Director to set aside the cancellation of the petitioner's selection and instead affirmed the order of the District Magistrate.

4. Learned counsel for the petitioner submits that the impugned orders are wholly arbitrary and unsustainable in law. From the show cause notice itself, it is evident that the allegation came to be made only on the ground that the petitioner is said to have been seen going towards Sitamarhi and there was in fact no inspection at the Centre. The impugned order passed by the District Magistrate is a non-speaking order and except stating that the show cause reply was not satisfactory, not a single reason has been assigned for holding such view. The recommendation of the Deputy Director has also been



completely ignored by the Commissioner in his appellate order which has thus been passed without considering the relevant materials available before him.

5. Learned counsel for the State as well as learned counsel for the private respondent no. 9 appearing *suo motu* submit that no fault can be found with the impugned orders as the petitioner was not at the Centre during the inspection when she was supposed to have kept it open for distribution of T.H.R.

6. Having heard the parties and on a consideration of the materials on record, this Court finds considerable merit in the writ petition. The impugned orders cannot be said to be reasoned orders which may stand the test of judicial review. The District Magistrate has not assigned a single reason why the petitioner's show cause reply was not satisfactorily or unacceptable or for differing with the report of the Child Development Project Officer. Similarly, the Commissioner has also failed to take note of materials before him in the shape of the Deputy Director's report which ought to have been considered and reasons given if the same was not acceptable. This Court is also of the view that even otherwise, considering only one day's absence when the petitioner claims to have gone for medical check up which was duly supported by doctor's prescription, her termination as Anganwari Sevika is too harsh a punishment. Reference in this regard may be made to the decision of this Court in *Punam Kumari Vs. The State of*



Bihar and others, 2011 (3) PLJR 140.

7. In the above view of the matter, the orders dated 27.09.2010 (Annexure-14) and contained in memo no. 533 dated 14.07.2009 (Annexure-9) are accordingly set aside and the writ petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	14.08.2017
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