

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5359 of 2015

=====

Shobha Kumari. Wife of Rohit Paswan. Resident of Village - Arjun Sarthua, P.S.-
Khodaganj, P.O.- Arjun Sarthua, District - Nalanda.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Women and Child Welfare, Government of Bihar, Patna.
3. The Director, Integrated Child Development Scheme, Government of Bihar, Patna.
4. The Commissioner, Patna Division, Patna.
5. The Deputy Director, Welfare, Patna Division, Patna.
6. The District Magistrate, Nalanda at Biharsharif.
7. The District Programme Officer, ICDS, Nalanda at Biharsharif.
8. The Child Development Project Officer, Islampur, Nalanda.
9. Damyanti Devi. Wife of Chandrabhushan Paswan. Resident of Village - Arjun Sarthua, P.S.- Khodaganj, P.O.- Arjun Sarthua, District - Nalanda.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Adv.

For the Respondent/s : Mr. Vikas Kumar, AC to A.G.

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 04-02-2017

Heard Mr. Prashant Sinha, learned counsel for the petitioner
and Mr. Vikas Kumar, AC to AG, for the State.

The petitioner is aggrieved by the order dated 27.9.2014
passed by the Deputy Director, Welfare, Patna Division, Patna in
Appeal Case No. 239/2012, whereby the appeal preferred by the
private respondent has been allowed, thus, reinstating her to the post
of Anganwari Sevika, Anganwari Kendra No. 161, Village Arjun
Sarthua, Ward No.1, in the District of Nalanda. The petitioner is also
aggrieved by the consequential order bearing Memo No. 418 dated



11.12.2014 passed by the Child Development Project Officer, Islampur, impugned at Annexures 6 series, whereby in view of success of the private respondent in her appeal. She stands reinstated to her post of Anganwari Sevika and the petitioner, who had filled in the gap in the meanwhile, has been relieved from the post.

The only issue that has been raised by Mr. Sinha to question the order of removal, impugned at Annexures 6 series, dated 11.12.2014 passed by the Child Development Project Officer and the order passed by the Deputy Director, Welfare, in Appeal Case No. 239/2012, impugned at Annexures 5 series, is that it has been passed in violation of the principles of natural justice because the petitioner has not been heard in the matter.

There is no dispute on the assertion so made. The issue is whether a remand of the matter would give any other result. Though on principle, an adherence to the principles of natural justice, is an obligation cast on every authority discharging quasi judicial functions and normally a matter would call for a remand on this score but then a remand cannot be an empty formality and unless there could be possible reasons reflecting that remand of a matter for completion of the due process, would give a differential result, it would end in an exercise in futility.

Law in this regard is well settled and reference is made to



the opinion expressed by the Supreme Court in paragraphs 26 to 28 of the judgment reported in (2007)4 SCC 54 (**Ashok Kumar Sonkar v. Union of India & ors.**), which confirms the legal position that remand of a matter for adherence to the principles of natural justice should not be a futile exercise.

Some undisputed facts of the matter is that the private respondent was appointed to the post which was earlier held by the writ petitioner, who was removed therefrom on a challenge made by one Sunita Kumari. A fresh selection process ensued, the proceeding of which has been placed on record at Annexures 2 series. The selection went in favour of one Babita Kumari vide resolution passed by the Appointment Committee with a clear stipulation that the appointment would be subject to the challenge made by the ousted Anganwari Sevika i.e. the private respondent. The said Babita Kumari resigned leading to second round selection process which resulted in appointment of the petitioner. The proceedings is at Annexure 3 and is dated 7.5.2013. In between the private respondent questioned her ouster by filing appeal in question before the Commissioner, Patna Division, which was transferred for adjudication by the Deputy Director, Welfare, who is duly authorized to do so and by the judgment and order impugned dated 27.9.2014 the appeal so preferred by the private respondent has been allowed, thus, reinstating her to her



post. It is by virtue of this order of reinstatement that the petitioner has to give way because she occupies the post due to the ouster of the private respondent.

Although Mr. Prashant Sinha adventurously tries to question the very appointment of the private respondent but considering that the challenge to appointment of the private respondent was not at the instance of the petitioner rather it is one Sunita Kumari, who had questioned the appointment and this writ petitioner was not even in the picture at the relevant, she cannot be permitted to enlarge the scope of contest.

As I have already observed, although there is no dispute that the petitioner was not heard but since the occupation of the petitioner on the post is, due to the ouster of the private respondent, the moment she gets reinstated, the consequences would have to follow and the petitioner has to give way. A remand in such circumstances would be an empty formality and thus, I am not persuaded to remand the matter to complete this exercise in futility.

The writ petition is dismissed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23.02.2017
Transmission	NA



Date	
------	--

