

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 4242 of 2015

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Shakuntala Kumari Wife of Vijay Kumar, Resident of Village- Mohini Pokhra,
P.O. - Shivpur, P.S. - Bikramganj, District- Rohtas.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, S.W.D. Bihar
2. The Director, Integrated Child Welfare Scheme (Department of Social Welfare) Bihar, Patna.
3. The Statistical Officer, Integrated Child Welfare Scheme (Department of Social Welfare), Bihar, Patna.
4. The Deputy Director, Kalyan, Patna Division, Patna.
5. The District Programme Officer, Rohtas, Sasaram.
6. The Child Development Project Officer, Block – Bikramganj, District – Rohtas, Sasaram.
7. Seema Kuar, Wife of Late Pramod Singh, Resident of Village – Mohini, P.S. – Bikramganj, District – Rohtas at Sasaram.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Radha Mohan Pandey
Mr. Sanjay Kumar Singh

For the Respondent/s : A.C. to Govt. Advocate – 1
Mr. Dhananjay Kumar

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 22-02-2017

Heard Sri Radha Mohan Pandey, learned counsel for the petitioner, learned A.C. to Govt. Advocate – 1 as well as Sri Dhananjay Kumar, learned counsel, who has appeared on behalf of private respondent i.e. respondent no. 7.

2. The petitioner has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India, with a prayer to quash an order dated 19-09-2014 passed in Anganbari Appeal No. 29 of 2012 by the respondent no. 4/Deputy Director,



Welfare, Patna Division, Patna (for short "Dy. Director"). It has further been prayed for directing the respondents to allow joining of the petitioner on the post of Anganbari Sevika at Anganbari Centre No. 29, Mohini Pokhra, Ward No. 12 on the ground that she was selected as Anganbari Sevika, vide letter no. 153 dated 29-09-2014.

3. Short fact of the case is that the respondent no. 7 was earlier functioning as Anganbari Sevika for Anganbari Centre No. 29, Mohini Pokhra. On the ground that on inspection, the said anganbari centre was found closed, show cause notice was issued to respondent no. 7 and vide Annexure – 1 to the present writ petition i.e. order contained in Memo No. 152 dated 30th May, 2012, the respondent no. 7 was discharged from functioning, as Anganbari Sevika. After the order of termination i.e. Annexure – 1, as pleaded in the writ petition, the respondent no. 7 approached this Court by filing a writ petition, vide C.W.J.C. No. 21048 of 2012, which was dismissed by a Bench of this Court by its order dated 06-02-2014. The order of the writ court is quoted hereinbelow:-

"The finding of omission and commission on behalf of the petitioner is writ large in the order. The defence that on the date of inspection the petitioner was having a stomach ache and she needed medical assistance is too common a defence to be accepted on the face value. This Court has come across hundreds of cases when identical defence is taken by Aanganbari Sevika whenever inspection is done and omissions are found by the authority. Obviously, the defence is a lame duck excuse, which is not required to be accepted on the face value.

Writ has no merit. It is dismissed."



4. A plea has been taken that despite the fact that dismissal of the respondent no. 7 was approved by this Court, the Dy. Director, Welfare allowed the Anganbari Appeal No. 29 of 2012, which was filed by respondent no. 7, by its order dated 19-09-2014. In sum and substance, it has been argued that once termination order of the respondent no. 7 had got approval by this Court, the Dy. Director was having no authority or jurisdiction to interfere with the said termination order and on this ground alone, the order impugned i.e. order dated 19-09-2014 passed in Anganbari Appeal No. 29 of 2012 (Annexure – 7 to the writ petition) is liable to be set aside.

5. Sri Pandey, learned counsel for the petitioner has argued that right from the very beginning the respondent no. 7 has played hide & sick and virtually, she had committed the offence of concealment of fact. He further submits that even after the dismissal of the writ petition i.e. C.W.J.C. No. 21048 of 2012, the respondent no. 7 had preferred an appeal, vide L.P.A. No. 525 of 2014, which was finally dismissed as withdrawn by order dated 23-08-2016. It has been argued that after the termination of the respondent no. 7, again selection process was initiated for appointment of Anganbari Sevika for the centre in question and thereafter, the petitioner was selected, as Anganbari Sevika, and appointment letter to this effect was issued, vide Annexure – 4 to the writ petition i.e. selection letter, vide Memo No. 153 dated 29-09-2014. It has been argued that despite the fact that by adopting all the procedures, the petitioner



was selected, as Anganbari Sevika of Centre No. 29, she was not allowed to join and thereafter, she was constrained to approach this Court by way of filing the present writ petition. Accordingly, a prayer has been made that besides quashing of the order of the appellate authority i.e. Annexure – 7 to the writ petition, direction may be issued to the authority concerned to accept the joining and allow the petitioner to function as Anganbari Sevika of the centre in question.

6. Sri Dhananjay Kumar, learned counsel for respondent no. 7 has vehemently opposed the prayer of the petitioner, however; he accepts that fact regarding filing of the appeal and pendency of the appeal i.e. Anganbari Appeal No. 29 of 2012 was not disclosed in earlier writ petition filed by the respondent no. 7 i.e. C.W.J.C. No. 21048 of 2012. He submits that immediately after termination of respondent no. 7, the respondent no. 7 in the year 2012 itself had filed an appeal before the Deputy Director, Welfare, but since no decision was being taken, the respondent no. 7 had filed the writ petition before this Court. He submits that inadvertently, the fact regarding pendency of the appeal was not brought to the notice of this Court in the earlier proceeding i.e. in C.W.J.C. No. 21048 of 2012. Sri Dhananjay Kumar, learned counsel for respondent no. 7 submits that in earlier writ petition, some another counsel was appearing, but after the order of the writ court, an appeal was filed by the respondent no. 7 and the fact regarding pendency of the present writ petition was brought to the notice of the Division Bench



and as such, the Division Bench permitted the appellant (respondent no. 7 herein) to withdraw the appeal to defend her case in the present proceeding. Besides this, he has argued that selection of petitioner was itself not in accordance with law. While proceeding with selection of the petitioner, no proper advertisement was issued and that too, the said appointment letter was issued after the order passed by the appellate authority. By way of referring to Annexure – 4 to the writ petition, he submits that appointment letter of the petitioner was issued, vide Memo No. 153 dated 29-09-2014, whereas, the appeal i.e. Anganbari Appeal No. 29 of 2012 was allowed on 19-09-2014.

7. Learned A.C. to Govt. Advocate – 1 submits that in this case, the Deputy Director, Welfare himself has filed an affidavit on 14th December, 2014, in which, besides tendering apology, he had stated that the fact regarding order passed by the writ court in C.W.J.C. No. 21048 of 2012 was not brought to the notice of the appellate authority. Regarding the appointment of petitioner, the learned State counsel submits that in the counter affidavit of respondent no. 5 & 6, which was filed on 5th November, 2015, in paragraph – 10, a specific stand has been taken that the appointment of petitioner was made in accordance with law. Alongwith the counter affidavit, proceeding of the Aam Sabha has also been brought on record, as Annexure – A to the counter affidavit. Learned State counsel submits that the proceeding i.e.



Annexure – A to the counter affidavit of respondent no. 5 & 6 makes it clear that selection of the petitioner was subject to the order of the Court case.

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record. *Prima facie*, the Court is satisfied that the respondent no. 7 has purposely not disclosed the fact regarding filing of the appeal before the Deputy Director and once against her termination, she had filed an appeal, which was pending, it was mandatorily required on the part of the respondent no. 7 to state those facts in the writ petition, which was filed before this Court, vide C.W.J.C. No. 21048 of 2012. In normal course, such act amounts to concealment of fact, which attracts penal provision, however; this Court is not intending to pass such order, but fact remains that once termination of the respondent no. 7 i.e. order dated 30th May, 2012 passed by the District Programme Officer, Rohtas at Sasaram was already approved by this Court in C.W.J.C. No. 21048 of 2012, the subsequent order passed by the appellate authority i.e. order dated 19-09-2014 in Anganbari Appeal No. 29 of 2012 shall be considered as an order *in nullity* and as such, order dated 19-09-2014 passed in Anganbari Appeal No. 29 of 2012 is, hereby, set aside. Since in the counter affidavit of respondent no. 5 & 6, a categorical stand has been taken that selection of the petitioner was made, as per the meeting of Aam Sabha with full corum, there is no reason to question the



appointment of the petitioner, particularly at this stage. Since, the petitioner was already appointed, pursuant to the decision of the Aam Sabha, the respondents are directed to allow her joining forthwith.

9. The writ petition stands allowed.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27.02.2017
Transmission Date	N/A

