

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1 of 2017

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1. Sunita Kumari Wife of Mithilesh Prasad R/o Village - Wajitpur, P.S. - Tekari,
District - Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Gaya.
4. The Child Development Project Officer, Tekari, Gaya.
5. Sangita Kumari wife of Anil Kumar, vill-Bajidpur, P.S. Tekari, District Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dinu Kumar, Adv.
Mr. Arvind Kumar Sharma, Adv.
Ms. Ritika Rani, Adv.

For the Respondent-State: Mr. Rajesh Kumar, A.C. to G.P.3
For the respondent No.5 : Mr. Gautam Kumar Yadav, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 02-03-2017

Heard Mr. Dinu Kumar learned counsel for the petitioner, Mr. Rajesh Kumar, A.C. to G.P.3 and Mr. Gautam Kumar Yadav who has appeared for the respondent No.5, stated to be an applicant in the fresh selection process which has ensued but has not yet been completed.

The petitioner was appointed as Anganbari Sevika in the year 2004 for Wajitpur Centre Mahmana Gram Panchayat, Block Tekari in the district of Gaya and has also undergone training. On 24.3.2008 the District Magistrate, Gaya held a surprise inspection at the centre and when he found the centre closed. Not being satisfied with the functioning of the centre that certain directions were issued and which



resulted in the show cause to the petitioner by the Child Development Project Officer who vide notice dated 27.3.2008 present at Annexure-2 show caused the petitioner on four grounds which are as follows:

- (a) The centre was closed on 24.3.2008
- (b) The Board was not put up at the centre
- (c) The Sahayika was absent; and
- (d) The Sahayika stays at Tekari

Charging the petitioner with keeping the centre non function that she was asked to explain and the petitioner filed her explanation vide Annexure-3 dated 28.3.2008. The explanation given by the petitioner has not satisfied the District Magistrate and who vide order bearing Memo No.526 dated 9.2.2008 impugned at Annexure-4 has passed orders for her removal inter alia on ground that the centre is perpetually closed; the take home ration is not being distributed and that the Sevika and Sahayika have misappropriated the money meant for distribution of the ration to their advantage.

The petitioner feeling aggrieved came before this Court in C.W.J.C.No.8192 of 2009 and a bench of this Court vide order present at Annexure-5 dated 20.7.2009 disposed of the writ petition asking the petitioner to exhaust the alternative statutory remedy of appeal. The Commissioner rejected the appeal on grounds of lack of jurisdiction and which forced the petitioner to again come before this



Court in C.W.J.C.No.14211 of 2010 and which was again disposed of on 23.8.2011 requiring the petitioner to go before the Commissioner. This time the appeal registered as Appeal Case No.124 of 2011 was heard and dismissed by the Commissioner, Magadh Division, Gaya upholding the order of the Collector impugned at Annexure-4. The order of the Commissioner dated 27.3.2015 is impugned at Annexure-8 and feeling aggrieved, the petitioner is before this Court.

Amongst other arguments advanced by Mr. Dinu Kumar to question the orders passed by the Collector-cum-District Magistrate, Gaya impugned at Annexure-4 as affirmed by the Commissioner vide Annexure-8, is that the order of termination rests on grounds which is not even found in the show cause notice. He submits that although the show cause at Annexure-2 was merely founded on the closure of the Centre and the missing board, the District Magistrate, Gaya has expanded the scope of the enquiry to include the charge of misappropriation which is not one of the charges mentioned in the notice. He submits that this issue was raised by the petitioner before the appellate authority but without success. It is now over eight years and despite twice remand by this Court that the matter has yet not reached a conclusion. Apparently, the order of removal of the petitioner is also for a charge, which does not find mention in the show cause present at Annexure-2 i.e the charge of misappropriation



of funds meant for take home ration. In other words, the termination order also rests on a charge which does not find place in the show cause notice.

According to Mr. Dinu Kumar this charge is without any foundation. According to him in absence of any allotment of take home ration there could be no case of misappropriation. In my opinion a charge of misappropriation is an issue of fact to be discussed on the basis of materials on record and conformingly, the show cause notice does not level any such charge against the petitioner. There is thus no dispute that the termination order is also resting on a charge which finds no mention in the notice issued to the petitioner nor there is accompanying materials to satisfy the said charge.

In the circumstance so discussed, I am unable to uphold the order of termination dated 9.4.2008 impugned at Annexure-4 as affirmed by the appellate authority i.e. Divisional Commissioner impugned at Annexure-8 which are accordingly quashed and set aside. The matter is remitted back to the District Magistrate, Gaya to consider the issue afresh and in case there are materials to impute a charge of misappropriation of the funds meant for take home ration then let a comprehensive notice be served on the petitioner who should also be allowed to respond thereto within a reasonable time



and whereafter let a fresh order be passed with opportunity of hearing to the petitioner. It goes without saying that in case the petitioner is guilty of misappropriation of a public fund certainly there is no rescue for her but in case the charge is without any foundation then obviously the matter would be different.

Since in the meantime a selection process has ensued, let no final decision be taken by the authority concerned until disposal of the matter by the District Magistrate, Gaya.

The petitioner would appear before the District Magistrate along with the copy of this order on or before 7.3.2017 at 11 A.M. and when he shall proceed to dispose of the matter in accordance with law bearing in mind the stipulations present in this order, expeditiously and preferably within six weeks thereafter.

The writ petition is allowed.

Bibhash/-

(Jyoti Saran, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	3.03.2017
Transmission Date	NA

