

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2211 of 2016
In
Civil Writ Jurisdiction Case No. 3176 of 2014**

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Punam Kumari, Wife of Rajiv Ranjan, resident of village - Chakjainaw,
P.O. Gonawan, P.S. Harnaut, District - Nalanda.

.... Appellant

Versus

1. The State of Bihar through the Secretary, Social Welfare Department,
Bihar, Patna.
2. The Director, I.C.D.S., Bihar, Patna.
3. The Deputy Director Welfare, Patna.
4. The District Magistrate, Nalanda.
5. The District Programme Officer, Nalanda.
6. The Child Development Project Officer, Harnaut, Nalanda.
7. Kumari Kusum Prasad Wife of Awadhesh Kumar resident of village -
Chakjainaw, P.O. Gonawan, P.S. Harnaut, District - Nalanda.

.... Respondents

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Appearance :

For the Appellant : Mr. Gautam Bose, Senior Advocate,
M/S. Vikash Jha and Ajay Kumar,
Advocates.

For the Respondent No. 7 : M/S. Arun Kumar and Anil Kumar Singh,
Advocates.

For the State : Mr. Amesh Kumar, A.C. to A.A.G. 8.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

6 17-04-2017 Seeking exception to an order dated 16.11.2016, this
appeal has been filed under Clause 10 of the Letters Patent.



The respondent no. 7 herein, namely, Kumari Kusum Prasad, was appointed as Anganwari Sevika, in Kendra-Chackjainaw, Block-Harnaut, Code No. 101, in the District of Nalanda. While she was so working, it seems that an inspection of the Centre was conducted on 12.09.2012 and finding various irregularities in the functioning of the Centre, a show cause notice was issued to her and thereafter vide order passed on 25.10.2012, Annexure-8 in the record of the writ petition, her appointment as Anganwari Sevika was terminated. She challenged her termination by filing an appeal before the competent Appellate Authority and when this was dismissed, the writ petition in question was filed. In the meanwhile, on account of the vacancy created by termination of the service of respondent no. 7, Kumari Kusum Prasad, the appellant herein, Smt. Punam Kumari was appointed on the vacant post. However, the learned Writ Court found that in the impugned order dated 25.10.2012, passed by the District Programme Officer, Nalanda, an explanation to the show cause notice submitted by the petitioner Kumari Kusum Prasad has not been considered. Her evidence has not been taken properly and her termination has been brought about in an illegal manner. It was further found that the Appellate Authority without affording the opportunity of hearing and without considering all these questions, has dismissed the



appeal. Finding the District Programme Officer to have passed the order in violation of requirement of law, the learned Writ Court has allowed the writ petition.

Learned senior counsel Mr. Gautam Bose, appearing for the appellant, vehemently argued that the post of Anganbari Sevika, is not a post in the Establishment of the Department rather it is under the Scheme of Central Government and an appointee does not have any right to claim any lien on the post. In support of his contention, he invited our attention to the judgment of the Hon'ble Supreme Court in the case of the **State of Karnataka & Ors. Vs. Ameerbi & Ors**, 2007(11) S.C.C. 681. That apart, he took us through the evidence of respondent no. 7 and tried to indicate with the findings recorded by the Single Bench was not proper interference be made as the learned Writ Court has acted in excess of jurisdiction and interfered into the reasoned orders passed by the District Programme Officer and the Appellate Authority.

We have heard the parties and considered the judgment referred in the case of the **State of Karnataka & Ors. Vs. Ammerbi & Ors.**(Supra). So far as the judgment referred in the case of Ameerbia (Supra) is concerned, this will not apply in the facts and circumstances of the present case because that was a case



where the Anganbari Sevika aggrieved by certain service condition imposed upon her challenged it before the Administrative Tribunal Karnataka and in the matter of examining the question with regard to the jurisdiction of the Central Administrative Tribunal in interfering with the service matter pertaining to a Anganbari Sevika. The law laid down was that Anganbari Sevika are appointed under the scheme, they are not civil post holders, and therefore, the Central Administrative Tribunal has no jurisdiction in the matter. The said judgment, we are of considered view, does not apply to the facts and circumstances of the case. Present is a case where the respondent no. 7, Anganbari Sevika, was appointed and while she was working, on 12.09.2012 certain inspection was conducted and eight irregularities amounting to acts of omission and commission were found against her, she was issued with a show cause notice asking her to submit an explanation to the acts of omission and commission as alleged against her. She submitted a detailed reply answering the allegations made against her and while taking action against her, in the impugned order Annexure-8 dated 25.10.2012, the District Programme Officer in the matter of accepting the inspection note and the allegations found at the time of inspection did not consider even a single defence or explanation of the



petitioner. It was only not considered the explanation and defence was not discussed. The Appellate Authority also upheld the order of the District Programme Officer, without recording any reason or showing application of mind except for recording submissions made before him by the counsel representing the parties. Taking note of all these facts, we are of the considered view that even in the matter of appointment to a post under a Scheme when action is taken and as a consequence thereof the employee concerned is visited with a stigmatic order, the principles of natural justice are required to be followed. Grant of opportunity of hearing and passing of an order, speak in nature after considering the explanation has to be adhered to.

Sri Gautam Bose, learned senior counsel has vehemently argued that the submissions of the petitioner, respondent no. 7 herein, and explanation have been considered. We are not in agreement with the said contention of the learned senior counsel.

On perusal of Annexure-8, the impugned order of the District Programme Officer, we find that in the order of termination, in the first para, there is discussion on the nature of appointment of an Anganbari Sevika. In paragraph no. 2, the principles with regard to the appointment of an Anganbari Sevika



in the backdrop of the certain order passed by the Supreme Court are taken note of and thereafter in third paragraph, the irregularities as was found or established at the time of inspection on 12.09.2012 are recorded and thereafter in the last paragraph, the order of termination is passed. No where in this order, we find there to be any discussion or consideration of the explanation and defence of the petitioner. When this order travelled in appeal to the Appellate Authority, the said Authority after taking note of various facts discussed as was argued before him by the appellant and the respondents simply agrees with the District Programme Officer and had dismissed the appeal with reasoning on record.

We are of the considered view that both the District Programme Officer and the Appellate Authority have not passed an order in accordance to the requirement of law when an adverse order is passed based on acts of omission and commission or acts of misconduct, the same should show consideration of the explanation or defence of the employee and should be a speaking order, showing application of mind, this requirement of law has not been followed in the present case both by the District Programme Officer and the Appellate Authority and, therefore, after taking note of all these facts, if the learned Writ Court has allowed the writ petition. We see no reason warranting



reconsideration.

The appeal stands dismissed.

(Rajendra Menon, CJ)

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(Sudhir Singh, J)

