

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.276 of 2016

Arising out of

Civil Review No. 123 of 2013

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Anita Kumari, aged about 29 years, wife of Rakesh Kumar, resident of village
Machara, Post Patiyama, P.S. Sakurabad, District- Jehanabad, Bihar

.... Appellant/s

Versus

1. The Commissioner Magadh Division Gaya, Bihar
2. The District Magistrate District Jehanabad
3. The Child Development Project Officer, Ratni Furdpur District Jehanabad
4. The Chairman Take Home Rasan Implementation Committee Aganbari Kendra
Machara Kendra Ratni Furdpur, District- Jehanabad Bihar
5. Smt. Sunaina Sinha, W/o Ganesh Kumar Machara Code 210 Panchayat
Narayanpur Prakhand, Ratni Furdpur, District- Jehanabad

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajesh Dayal, Advocate

For the Respondent/s : Mr. K.K. Jha, AAG.-8

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 17-04-2017

Seeking exception to an order passed by the learned
Writ Court on 09.09.2015 in Civil Review No. 123 of 2013, this
appeal has been filed under Clause 10 of the Letters Patent.



2. Appellant filed a writ petition being C.W.J.C. No. 20625 of 2010 and it is seen that by an order passed on 16.04.2012 the writ petition was dismissed. After dismissal of the writ petition, an appeal was filed being L.P.A. No. 864 of 2012 and the appeal was withdrawn on 25.02.2013 with liberty to pursue the remedy of review before the learned Writ Court. Thereafter, the Review Application was filed and the Review Application has also been dismissed.

3. A perusal of the order passed in the writ petition on 16.04.2012 goes to show that services of Respondent No. 5 were terminated on account of dereliction of duties. On the vacancy caused because of her termination, appellant was appointed. In the meanwhile, Respondent No. 5 preferred an appeal against her termination and the appellate authority, namely, the Commissioner on 12.08.2010 allowed her appeal, set aside her termination and directed for her reinstatement. Consequently, therefore, the appellant who was appointed on the vacancy created after termination of Respondent No. 5 Smt. Sunaina Sinha had to make room and, therefore, she was removed and Respondent No. 5 appointed for complying with the order passed by the Commissioner.

4. The grievance of the appellant before the Writ Court was that the Commissioner passed the order without hearing her. She was not impleaded as a party. The learned Writ Court rejected this



contention and recorded the following reasons:-

“Counsel for the petitioner submits that she was not impleaded as a party in the Appeal. The Court finds no substance in the same. The appeal was not against the appointment of the petitioner but with regard to the termination of the respondents. Counsel for respondent no. 5 has relied upon a similar order in C.W.J.C. No. 592 of 2012 holding that if the removal was held to be bad, the person appointed in the meantime pursuant to the removal has to make way for the original appointee by the operation of the law.

The Court finds no merit in the application. It is accordingly dismissed.”

5. In doing so, we are of the considered view that the learned Writ Court has not committed any error. Admittedly, appellant's appointment to the post in question was made on account of the vacancy created by termination of Respondent No. 5 and once the termination of Respondent No. 5 is set aside in a statutory appeal, the consequence is as if the order of termination was never issued and the incumbent continued to hold the post. That being the legal effect of the order of termination having been set aside, the appellant has to make room for reinstatement of Respondent No. 5 and that being the legal position, we find no reason to interfere into the matter.

6. The Letters Patent Appeal is, accordingly,



dismissed.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	26.04.2017
Transmission Date	

