

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15867 of 2013

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NIRMALA DEVI WIFE OF AWADHESH KUMAR RESIDENT OF
VILLAGE- BHURIA, P.S.- SANHAULA, DISTRICT- BHAGALPUR

... .. Petitioner/s

Versus

1. The State Of Bihar, Through The Principal Secretary, Department Of Social Welfare, Govt. Of Bihar, Patna
2. The Director, Integrated Child Development Scheme (I.C.D.S.), Bihar, Patna
3. The Divisional Commissioner, Bhagalpur Division, Bhagalpur
4. The District Magistrate, Bhagalpur
5. The District Programme Officer, Bhagalpur
6. The Child Development Project Officer, Sanhaula, District- Bhagalpur
7. The Anganwari Supervisor, Block- Sanhaula, District- Bhagalpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pravina Kumari
For the Respondent/s : Mr. KAUSHAL KR JHA AAG-14

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 14-03-2018

This writ petition under Article 226 of the Constitution of India has been filed to set aside the order dated 04.02.2011 (Annexure-5) passed by District Programme Officer, Bhagalpur by which the services of the petitioner has been terminated as well as order dated 06.11.2012 (Annexure-6) passed in Misc. Anganbari Appeal No. 112 of 2010-11 by which the District Magistrate, Bhagalpur has dismissed the appeal of petitioner as well as order dated 20.06.2013 passed by Divisional Commissioner, Bhagalpur Division, Bhagalpur in Bhagalpur Misc. (Anganbari) Appeal No. 120 of 2012-13.

2. Briefly stated, the facts of the case is that the



petitioner was appointed as Anganbari Sevika in the year 2003 and has been discharging her duties without any adverse remarks. An inspection of the centre of petitioner was done on 18.12.2010 by Senior Deputy Collector, Bhagalpur at the instance of District Magistrate, Bhagalpur and at the time of inspection the centre was opened and 24 children were present and Sahaika had gone to call other children and petitioner was present at the centre and was cooking meal and same was under preparation and display board was also placed and the beneficiaries also stated that Anganbari Centre was running properly and inspection report dated 04.01.2011 by the Inspecting Team was submitted to the District Magistrate as contained in Annexure-1 of writ petition with respect to inspection made by the District Inspection Team. The District Magistrate on the basis of inspection report submitted by the Inspecting Team held that so far as centre of petitioner is concerned it was found that Anganbari Centre was opened. The display board was not placed and Posahar of 24 children was under preparation and distribution of THR was irregular and has recommended for removal of petitioner on 18.12.2010.

3. In view of direction of District Magistrate, Bhagalpur, the respondent District Programme Officer vide



memo dated 13.01.2011 asked an explanation from the petitioner regarding inspection made by the Inspection Team but copy of inspection report was not enclosed with show cause. However, on the basis of contents of show cause and allegation made therein petitioner submitted her reply on 13.01.2011 and denied the allegation made against her or Anganbari Sevika. In her reply, she had stated that 28 children were present at the centre and due to intense cold remaining children had not come and Sahaika had gone to their home to bring the children at the centre. The Posahar was under preparation and THR were properly distributed among the beneficiaries and in support of her contention photocopy of distribution register was also placed and beneficiaries had not made any complaint with respect to Anganbari Centre of petitioner. It has been further submitted that the Anganbari building has been constructed over the land donated by her father-in-law to the governor of Bihar dated 16.03.2010. It has been further submitted that she was appointed in the year 2003 and has been discharging her duties with utmost devotion and as per guidelines issued by I.C.D.S., The District Programme Officer passed the order of termination on the letter of District Magistrate, Bhagalpur as in the letter itself it was indicated to initiate proceeding for



removal of petitioner and thereafter the D.P.O. being Subordinate Authority had no option but to remove her by his order dated 04.02.2011 (Annexure-5).

4. Petitioner being aggrieved by order of removal preferred an appeal being Misc. Anganbari Appeal No. 112 of 2010-11 before the District Magistrate, Bhagalpur and same was dismissed. The District Magistrate while dismissing her appeal had considered extraneous materials which were not a part of proceeding initiated against her on the basis of some written complaint filed against petitioner and, without giving a copy of such complaint to petitioner, the District Magistrate dismissed the appeal of petitioner and the revision preferred by the petitioner before the Divisional Commissioner was also dismissed on basis of certain reports of inspection for which petitioner was never apprised.

5. The Social audit was held in presence of all the beneficiaries of the centre on 17.01.2011 in which performance of centre for last three months was found satisfactory and it was found that the THR had been properly distributed among the beneficiaries.

6. By order dated 21.05.2015 this Court has held that any appointment made during pendency of writ petition will be



subject to outcome of writ petition. On 03.01.2018, four weeks time was granted to the State to file counter affidavit but, thereafter, by order dated 12.02.2018 at the request of counsel for the State two weeks time was further granted for filing counter affidavit but no counter affidavit was filed on behalf of State.

7. After hearing the parties and going through the materials available on record, this Court finds that the order passed by the District Programme Officer at the dictates and instance of District Magistrate is not sustainable in the eye of law and since District Magistrate himself was the appellate authority and upon his direction petitioner was removed from the service, as such, his order as an appellate authority is also not sustainable. Apart from this, the District Magistrate as well as Revisional authority had taken extraneous materials into consideration while dismissing the appeal and revision of petitioner and petitioner was not given proper opportunity or show cause by the District Programme Officer with respect to such allegations and said allegations which were not part of proceeding has been taken into consideration by the District Magistrate, the appellate authority as well as the Revisional Authority, as such, order passed by the authorities as contained



in Annexures 5, 6 and 7 are not sustainable either in law or on facts and, as such, same are set aside and petitioner is directed to be reinstated in service, however, without any back wages.

(S. Kumar, J)

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Uploading Date	
Transmission Date	

