

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.192 of 2016

=====

Indu Kumari, Wife of Sri Kant Singh, Resident of Village- Satsa, P.S.- Kochas,
District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Social Welfare Department, Govt. of Bihar, Patna.
3. The Deputy Director, Welfare, Patna Division, Patna.
4. The Director, I.C.D.S., Social Welfare Department, Govt. of Bihar, Patna.
5. The District Magistrate, Rohtas at Sasaram.
6. The District Programme Officer, Rohtas, Sasaram.
7. The Child Development Programme Officer, Block Kochas, District- Rohtas.
8. Jai Mala Devi @ Jai Mala Kumari, W/o Saroj Kumar, Resident of Village-
Satsa Ward No. 12, P.S.- Kochas, District- Rohtas.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar, Adv.

For the Respondent/s : Mr. Ramadhar Singh, GP-25

For the Respondent No.8 : Mr. Arun Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 01-02-2018

Heard Mr. Shashi Bhushan Kumar, learned counsel
appearing for the petitioner, Mr. Ramadhar Singh, learned
Government Pleader No.25 for the State and Mr. Arun Kumar,
learned counsel appearing for the private respondent no.8.

With the consent of the parties the writ petition has been
heard with a view to its final disposal at the stage of admission
itself.

The petitioner is aggrieved by the order dated 8.8.2015
passed by the Deputy Director, Welfare, Patna Division, Patna in
Anganwari Miscellaneous Appeal No.157 of 2012, whereby the



Deputy Director, Welfare, Patna Division, Patna while allowing the appeal of the appellant who is respondent no.8 herein, has issued direction to appoint her as Anganwari Sevika in Village- Satsa-2, Ward No.6, Centre Code No.111 in the district of Rohtas. A copy of the order is impugned at Annexure 6 to the writ petition. The petitioner is also aggrieved by the consequential order passed by the Child Development Project Officer, Kochas in the district of Rohtas bearing Memo No.451 dated 1.12.2015, a copy of which is impugned at Annexure 7 whereby the order of the Deputy Director, Welfare is sought to be implemented and the petitioner has been relieved from the post.

The facts leading to the writ petition briefly stated is that the respondent no.8 herein was initially appointed as Anganwari Sevika for the centre in question and whose appointment was questioned by one Nand Kumari in CWJC No.6958 of 2010 and vide judgment and order passed on 13.1.2011 a coordinate Bench of this Court disposed of the writ petition with a direction to the District Magistrate, Rohtas to examine the matter and dispose of the same within a period of three months from the date of receipt/production of a copy of the said order.

The matter was enquired into by the District Magistrate, Rohtas in Miscellaneous Anganwari Sevika Case No.9 of 2011 and



vide order passed on 29.12.2011, a copy of which is placed at Annexure 4, finding mass irregularities in the selection process that the appointment was cancelled and a direction was issued to the Child Development Project Officer, Kochas to initiate a selection process afresh for appointment of Anganwari Sevika for the centre in question. Feeling aggrieved the private respondent came before this Court in CWJC No.3424 of 2012 but on preliminary objection raised by the State as to the alternative remedy that the respondent no.8 chose to withdraw the writ petition which was accordingly dismissed as withdrawn vide order passed on 15.3.2012, a copy of which is placed at Annexure 5 to the writ petition.

In the selection process that ensued following the order of the District Magistrate at Annexure 4, the writ petitioner was appointed. The appointment obviously was made subject to the challenge that was being pursued by the private respondent. The private respondent after withdrawing the writ petition approached the Commissioner, Patna Division, Patna and who transferred the matter to the Deputy Director, Welfare, Patna Division, Patna giving rise to Anganwari Miscellaneous Appeal No.157 of 2012. The Deputy Director, Welfare, Patna Division, Patna vide order passed on 8.8.2015 at Annexure 6 allowed the appeal and set aside the order passed by the District Magistrate, Rohtas dated



29.12.2011 enclosed at Annexure 4 to the writ petition. The private respondent was restored to her post. It was now the turn of the writ petitioner to come before this Court as her appointment has been set aside by the same order.

I have heard learned counsel for the parties and I have perused the records and the issues stand noted in the order passed by this Court on 30.1.2018 which reads thus:

- “The removal has been questioned on grounds that:
- (a) In terms of the guidelines of 2011 which was in force, no appeal lay against the order of the District Magistrate, Rohtas at Sasaram passed on 29.12.2011, whereby directions have been issued for holding a selection process afresh and thus bringing to an end the appointment of the private respondent;
 - (b) Though the private respondent questioned the order of the District Magistrate, Rohtas dated 29.12.2011 in CWJC No.3424 of 2012 but chose to withdraw the writ petition for alternative remedy which was not available to her any more;
 - (c) The private respondent having participated in the fresh selection process held pursuant to the order of the District Magistrate dated 29.12.2011 and having lost the contest to the petitioner, she cannot turn back to question her earlier termination; and
 - (d) The private respondent seeking relief after withdrawing the writ petition had filed an appeal before the Commissioner, Patna Division, Patna who in turn transferred the appeal to the Deputy Director, Welfare, Patna Division, Patna numbered as Appeal Case No.157 of 2012 and who by the impugned order has quashed the termination order of the private respondent even though neither the Commissioner had any jurisdiction to entertain the appeal nor the Deputy Director, Welfare could have sat in appeal over



the order of the District Magistrate.

The records transpire that the order impugned was stayed by a coordinate Bench of this Court on 5.4.2016 and thus the petitioner continues on her post.”

There is no dispute that the appellate power is vested in the District Magistrate to hear the appeal arising out of an order passed by the District Programme Officer and whose order in appeal is final with no further forum available under the guidelines. It is again not in dispute that the District Magistrate certainly is superior in hierarchy to the Deputy Director, Welfare even though he also enjoyed appellate jurisdiction from time to time under the guidelines in force. In any view of the matter the Deputy Director, Welfare even assumingly if enjoys the jurisdiction of appellate authority certainly he could not have sat in appeal over the order of the coordinate authority i.e. the District Magistrate, Rohtas whose order was in exercise of appellate powers under the guidelines. In other words, the Deputy Director, Welfare was sitting in appeal over an order passed by an authority exercising appellate jurisdiction. The order thus is lacking in jurisdiction. Even though the appointment of the petitioner herein was conditional and subject to the outcome of the challenge made by the private respondent but she had a right of hearing which mandatory obligation has not been



carried out. The infirmity in the orders impugned are many and on either of the grounds so discussed above the orders impugned are unsustainable. Accordingly the order of the Deputy Director, Welfare, Patna Division, Patna dated 8.8.2016 passed in Anganwari Miscellaneous Appeal No.157 of 2012 impugned at Annexure 6 together with the order bearing Memo No.451 dated 1.12.2015 passed by the Child Development Project Officer, Kochas impugned at Annexure 7 are quashed and set aside.

The writ petition is allowed. The petitioner is restored to her post. The interim order passed on 5.4.2016 is confirmed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17-02-2018
Transmission Date	NA

