

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14673 of 2013

SMT. SUSHAMA DEVI W/O SATENDRA PASWAN RESIDENT OF
VILLAGE- JAFFARCHAK, POLICE STATION- BELCHHI, DISTRICT-
PATNA.

... .. Petitioner/s

Versus

1. The State Of Bihar Through Its Principal Secretary Welfare Department, Bihar, Patna.
2. The Director, Integrated Child Development, Service, Bihar, Patna.
3. The District Magistrate, Patna.
4. The District Programme Officer, Patna.
5. The District Programme Officer, Patna.
6. The Child Development Programme Officer, Bakhtiyarpur, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Baidyanath Thakur, Adv. Mr. Anil Kumar Tiwary, Adv.
For the Respondent/s	:	Mr. Umesh Narayan Dubey, AC to GP27

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 19-03-2018

This writ petition under Article 226 of Constitution of India has been filed to quash order dated 3.5.2013 passed by the District Magistrate, Gaya, in Case No. 105 of 2012 by which the District Magistrate rejected the appeal of petitioner and affirm the order passed by the District Programme Officer by which services of petitioner on the post of Aanganwari Sevika has been terminated.

Petitioner was appointed as Aanganwari Sevika in the year 1997 and thereafter she completed training and joined as Aanganwari Sevika, Muzaffarpur, having Code No. 206 under the CDPO, Bakhtiyarpur, Patna, and has been working for the last 15 years.

The Centre was inspected by State Level Team on 4.5.2012. It is alleged that on the said date Sevika and Sahayika were absent from the Centre. On the basis of report submitted the District Programme Officer (Respondent No. 4) issued a show cause



notice dated 20.6.2016 to reply regarding irregularities found by the said Inspection Team at the Centre. The petitioner submitted her reply on 29.3.2012 to the District Programme Officer (Respondent no. 4) and denied all charges. The Centre was inspected on 4.5.2012 by the State Level Team and they found the Centre closed and both Sevika and Sahayika were absent.

It has been submitted by petitioner that she was seriously ill and handed over her leave application to Sahayika and directed her after closing the Centre leave application be sent to CDPO, Bakhtiyarpur. In the meantime, the Centre was inspected and Sahayika was present and produced the leave application of petitioner but Inspection Team did not take any notice of her leave application.

Petitioner was under treatment of Dr. Bharat Singh since 19.4.2012 and all of a sudden she became seriously ill on 4.5.2012 at 6 A.M. and she visited Dr. Bharat Singh on 4.5.2012 for her treatment and for that reason she was absent on the date of inspection.

It has been contended that on the date of inspection 19 children were present and in the Attendance Register Sahayika had made her attendance and as such the allegation that the Centre was closed is not true as there is overwriting in the inspection report.



The funds of Poshahar and THR was not allotted in the months of April 2012 and May 2012 and Poshahar was not prepared and therefore attendance of children were thin but same has not been believed by authorities. The lady supervisor had visited the Centre on 22.5.2012 and the issue of Poshahar was discussed with her.

After hearing, the District Programme Officer without considering the reply of petitioner by order dated 29.6.2012 terminated the services of petitioner. Petitioner thereafter filed appeal before the District Magistrate, Patna, but the appellate authority also dismissed the appeal of petitioner. It has been submitted on behalf of petitioner that guidelines has been issued by the ICDS with regard to punishment to be imposed in case of irregularities found at the Centre and as per guidelines if Aanganwari Sevika/Sahayika is absent without any valid reason she can be removed but in present case she had valid reason for not being present on 4.5.2012 when Centre was inspected by State Level Inspection Team. Inspection was made by Assistant Director, ICDS, when petitioner was not present there and only if explanation was not satisfactory and convincing, order of removal can be imposed. Although petitioner produced the evidence regarding her treatment on the said date but the same was not considered and order of termination was passed against her.



A counter affidavit has been filed on behalf of Respondents in which it has been stated that petitioner had produced medical prescription from which it appears that she was for the first time treated on 19.4.2012 and on 4.5.2012 she had gone to doctor for check up. The medical prescription produced by the petitioner has not been doubted by the authorities but the allegation is that she did not submit leave application to the CDPO to remain absent on 4.5.2012. It has been submitted by learned counsel for petitioner that petitioner is working as Aanganwari Sevika since 1997 and no complaint has been made against her regarding functioning of the Centre and same has been found to be satisfactory as inspected by the authorities on different dates. She had a valid reason for being not present at the Centre on 4.5.2012 and she had also given her leave application to the Aanganwari Sahayika to send to the CDPO but the same was not sent by Sahayika. It has further been submitted that on account of one day absence and the Aanganwari Centre remaining closed at the time of visit of the said Inspection Team, the order of termination of services of petitioner is too harsh.

It has been further submitted that copy of inspection report was not furnished to the petitioner which they have accepted in their counter affidavit and same is in violation of ICDS guidelines.



The inspection report subsequently obtained by petitioner is full of overwriting and cutting which creates serious doubt in the manner inspection report was prepared. It has been submitted that with similar allegation Sahayika was also removed but by order dated 26.7.2013 she has been reinstated. Lastly it has been submitted that inspection was made by officer who is higher in rank to District Programme Officer and he had recommended to remove petitioner. District Programme Officer had no option but to remove her and such mode of removal has been deprecated by High Court in CWJC No. 2905 of 2012 and analogous cases.

There is genuine reason for the petitioner of being not present at the Centre and as such order passed by the authority is contrary to the guidelines issued by the ICDS for imposing punishment on the Aanganwari Sevika, as such, the order passed by the authority is set aside and petitioner is directed to be reinstated in service forthwith, however, without back wages.

(S. Kumar, J)

sudip/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.04.2018
Transmission Date	

