

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22436 of 2013

=====

Soni Kumari Wife Of Awadhesh Kumar Yadav, D/O Vakil Yadav Resident Of
Village- Bela Tikar, P.S.- Banka, District- Banka

... .. Petitioner/s

Versus

1. The State Of Bihar, Through Director Social Welfare Department, Govt. Of Bihar, Patna
2. The Commissioner-Cum-Secretary, Welfare Department, Govt. Of Bihar, Patna
3. The Divisional Commissioner, Bhagalpur Division, Bhagalpur
4. The District Magistrate, Banka
5. The Deputy Development Commissioner, Banka
6. The District Programme Officer, Banka
7. The Child Development Project Officer, Banka
8. The Mukhia, Lodhi Gram Panchayat Banka, District- Banka

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Balram Kapri, Adv.
For the Respondent/s : Mr. Ajay, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 02-05-2018

This writ petition under Article 226 of Constitution of India has been filed for quashing the order dated 09.08.2012 passed by the District Magistrate, Banka in Anganwari Case no. 129 of 2011-12 by which the District Magistrate Banka has removed petitioner from the post of Anganwari Sevika as well as order dated 24.06.2013 passed by the Divisional Commissioner, Bhagalpur Division, Bhagalpur in Banka Miscellaneous Aanganwari Appeal Case no. 136 of 2012-13 dismissing the appeal of the petitioner.



Briefly stated the case of the petitioner is that petitioner was appointed on the post of Aanganwari Sevika for Aanganwari Center no. 77 (Bela Tikar) vide Memo dated 01.02.2011 (Annexure -1) and petitioner was discharging her duty with devotion and sincerity.

A complaint was made by Gayatri Devi, who is Sahayika of the aforesaid Center, before the Deputy Development Commissioner against the petitioner of misbehaving with her and not running the Aanganwari Center properly.

The Deputy Development Commissioner, Banka, made a surprise inspection of the Center and submitted his report to the District Magistrate on 25.01.2012 (Annexure-2).

The Deputy Development Commissioner in his report submitted to the District Magistrate has found malfunctioning of the Center and the District Magistrate issued a show cause to the petitioner, however, during the proceeding the District Magistrate also accepted intervenor application on behalf of one Rekha Devi, who challenged the selection process by filing intervenor petition before the District Magistrate.

The District Magistrate, Banka, by his order dated 09.08.2012 cancelled the selection of the petitioner. Against the order passed by the District Magistrate petitioner filed a writ



petition being C.W.J.C. no. 2547 of 2013, which was disposed of on 13.03.2013 with an observation to file appeal before the Divisional Commissioner against the order passed by the District Magistrate (Annexure-5).

Petitioner thereafter filed an appeal before the Divisional Commissioner, Bhagalpur, being the Appellate Authority, and raised points of jurisdiction and competency of the District Magistrate in entertaining complaint against the petitioner and passing the order by the District Magistrate who had no jurisdiction to entertain such complaint and jurisdiction is of the District Programme Officer, and as such order passed by the District Magistrate was without jurisdiction but Divisional Commissioner, Bhagalpur, did not appreciate the point raised by the petitioner and her appeal was dismissed.

As per ICDS guidelines of 14.06.2010 the District Programme Officer is the competent authority to entertain complaint under clause 8.5 of guidelines against irregularities committed at the Aanganwari Center and District Magistrate is the Appellate Authority and Commissioner, the Revisional Authority whereas as per clause 8.2 in case of irregularities in selection process the District Magistrate will entrust enquiry to C.D.P.O., D.P.O., S.D.O., or A.D.M., and equivalent Officer and will pass



order after hearing all parties and against said order appeal will lie before the Divisional Commissioner.

However fresh guidelines was issued by I.C.D.S on 04.11.2011 and previous circular dated 14.06.2010 to that extent was modified under which as per clause 10.2 complaint made against the selection is to be made before the District Programme Officer who will hear the objection and after hearing all the parties will pass appropriate order with respect to the selection made on the post of Aanganwari Sevika and Sahayika against which appeal lie before the Deputy Director, Social Welfare and District Magistrate had no authority to entertain complaint with respect to Aanganwari Centers.

The second procedure relates to complaint regarding irregularities committed in the running of the Aanganwari Center in which complaint will be entertained by the District Programme Officer and against his order appeal will lie before the District Magistrate. In the present case, the Deputy Development Commissioner had made an enquiry against the irregularities committed in the functioning of Aanganwari Center as such, the District Programme Officer was the Competent Authority to initiate any proceeding against the petitioner after issuing her show cause with a copy of the enquiry report and allegations made



against her. But against the guidelines issued by the ICDS, the District Magistrate himself started proceeding for alleged irregularities committed, as such the whole proceeding was without jurisdiction.

After hearing the parties and perusing the materials available on record, this Court finds the District Magistrate under the guidelines dated 04.11.2011 which was effective on the date when proceeding was initiated issued by the ICDS was not competent to entertain any complaint against the irregularities in functioning of the Aanganwari Center and same was to be considered and decided by the District Programme Officer, Banka, and District Magistrate, Banka, was the Appellate Authority to hear appeal against the order passed by the District Programme Officer. Even for irregularities committed in selection process D.P.O. was the competent authority to initiate proceeding and Deputy Director Welfare was the Appellate Authority.

As such the whole proceeding initiated by the District Magistrate was without jurisdiction and accordingly the order passed by the District Magistrate as well as order passed by the Divisional Commissioner in appeal are quashed and matter is remitted to the District Programme Officer, Banka, who will pass



appropriate order after hearing all the parities in accordance with law.

With the aforesaid direction and observation this writ petition is allowed to the extent as indicated above.

(S. Kumar, J)

sudip/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

