

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.401 of 2017

IN

C. REV. 25301 of 2013

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Nitu Kumari Wife of Sri Dilip Kumar, Resident of Village - Hathi Tola P.S.
Maner, District - Patna, Bihar.

.... Petitioner

Versus

1. The State of Bihar.
2. The Director, Integrated Child Development Scheme (I.C.D.S.) Indira Bhawan, Ram Charitra Singh Path, Boring Canal Road, Patna.
3. The District Magistrate, Patna.
4. The District Programme Officer (I.C.D.S.) Patna.
5. The Child Development Project Officer, Maner.
6. The Child Development Project Officer, Patna, Sadar - 5.
7. Sangeeta Devi wife of Shri Pintu Kumar Resident of Munji Tola P.S. Maner, District - Patna.

... Opposite Parties

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Appearance :

For the Petitioner : Mr. Surendra Kumar Singh
Ms. Sudha Chandra, Advocates.

For the Opposite Parties: Mr. Manish Kumar, Ac to AAG-6

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 16-05-2018

The present review petition has been filed against the judgment dated 06.09.2017 passed in C.W.J.C. No. 25301 of 2013, whereby, *inter alia*, a direction was given for reinstatement of the petitioner on the post of Anganwari Sevika after the impugned orders were quashed and the matter set aside for fresh decision by the District Programme Officer, Patna.

2. Learned counsel for the petitioner submits that the aforesaid judgment has been passed without impleading the review petitioner who had been appointed to the subject post in the meantime in terms of letter dated 25.03.2015 (Annexure-A).

3. Learned counsel for the respondents appears and has been heard.

4. Having heard the parties and on consideration of the



materials on record, this Court finds the review petition to be devoid of merit. It transpires that the writ petition had been filed in the year 2013 and it was during its pendency that the review petitioner was appointed in the year 2015. The cancellation of the petitioner's selection as Anganwari Savika was quashed in the writ petition by the judgment dated 06.09.2017 with a direction for her reinstatement.

5. From the above, it is apparent that the selection of the review petitioner was a fortuitous one, as she was appointed only after the post fell vacant by reason of cancellation of the writ petitioner's selection. As such, she was not a necessary party and cannot claim any right of hearing in the writ petition. Moreover, her appointment must be held to be dependent upon the outcome of the writ petition.

6. The above view finds support from the decision of the Hon'ble Supreme Court in Poonam vs. State of Uttar Pradesh & Others, 2016 (1) PLJR SC 218, wherein the Hon'ble Supreme Court has held in the context of a subsequent allottee of a fair price shop challenging an order setting aside the cancellation of allotment of the original allottee, as follows -

"48. In the instant case, shop no.2 had become vacant. The appellant was allotted the shop, may be in the handicapped quota but such allotment is the resultant factor of the said shop falling vacant. The original allottee, that is the respondent, assailed his cancellation and ultimately succeeded in appeal. We are not concerned with the fact that the appellant herein was allowed to put her stand in the appeal. She was neither a necessary nor a proper party. The appellate authority permitted her to participate but that neither changes the situation nor does it confer any legal status on her. She



would have continued to hold the shop had the original allottee lost the appeal. She cannot assail the said order in a writ petition because she is not a necessary party. It is the State or its functionaries, who could have challenged the same in appeal. They have maintained sphinx like silence in that regard. Be that as it may, that would not confer any locus on the subsequent allottee to challenge the order passed in favour of the former allottee. She is a third party to the lis in this context. The decisions which we have referred to hereinbefore directly pertain to the concept of necessary party. The case of Kailash Chand Mahajan (supra) makes it absolutely clear. ... in a case which relates to a post or position or a vacancy, if he or she who holds the post because of the vacancy having arisen is allowed to be treated as a necessary party or allowed to assail the order, whereby the earlier post holder or allottee succeeds, it will only usher in the reverse situation – an anarchy in law.”

7. In the above view of the matter, the review petition stands dismissed.

(Vikash Jain, J)

Md. Ibrarul/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18.05.2018
Transmission Date	N.A.

