

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.16462 of 2016**

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1. Tara Devi wife of Budheshwar Gupta  
2. Shrutiya Devi wife of Lal Bahadur Chaudhary  
3. Rekha Devi wife of Sanjay Mandal All resident of Village- Sarisavpahi, P.S.-  
Pandaul, District- Madhubani.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department,  
Bihar, Patna.  
2. Director, I.C.D.S., Bihar, Patna.  
3. District Magistrate, Madhubani.  
4. District Programme Officer, Madhubani.  
5. Child Development Project Officer, Pandaul Block, Madhubani.  
6. Shyam Sundar Devi wife of Ram Bahadur Chaudhary Mukhiya Gram Panchayat  
Raj Sarisavpahi, P.S.- Pandaul, District- Madhubani.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Naresh Chandra Verma, Adv.

For the Respondent/s : Smt.Kumari Amrita, GP3

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 26-06-2018**

Heard Mr. Naresh Chandra Verma learned counsel appearing  
for the three petitioners and Mr. Mithlesh Kumar Upadhyay, AC to  
GP 3 for the State.

The petitioners are aggrieved by the order dated 29.07.2016  
passed by the Collector, Madhubani in Anganbari Appeal No. 46 of  
2012-13 whereby their services as Anganbari Sevika have been  
terminated.

Some undisputed facts leading to the orders impugned as taken  
note from the writ petition is, that these petitioners were selected as  
Anganbari Sevika by Aam Sabha way back on 13.02.2004. While the



petitioner No.1, was appointed as Anganbari Sevika for Nautol Anganbari Centre No. 118, the petitioner No. 2, Shrutiya Devi was appointed as Anganbari Sevika for Harijan Tola Centre No.122 and petitioner No. 3, Rekha Devi was appointed as Anganbari Sevika for Kamati Tola, Centre No. 124. All the centres are situated within Gram Panchayat Raj Sarisavpahi within the District of Madhubani. The appointment took place way back on 13.02.2004.

Be it noted that while these appointments were being regulated under the departmental circulars, for the first time a guideline was framed by the Social Welfare Department in the year 2006 making stipulations regarding the eligibility conditions for such appointments. According to Mr. Verma since the stipulations so introduced in the guidelines enforced in 2006 required the Anganbari Sevika to be a resident of Tola concerned and that only in case of non availability of a suitable candidate within the Tola, to explore the possibility in the neighbouring Tola, that mischievously an issue of residence was raised by the then Mukhiya of the Gram Panchayat in 2012 when she filed an application before the District Magistrate, Madhubani on 09.07.2012 at Annexure-2 seeking termination of the service of the petitioners and the proceeding in question was initiated mechanically. In reference to the order impugned at Annexure-4 which is the ordersheet of the proceedings before the District Magistrate,



Madhubani and contains the order impugned dated 29.07.2016 he submits, that the District Magistrate, Madhubani without bothering to take notice of this relevant aspect, has terminated the service of the petitioners by retrospectively applying the stipulations relating to evidence as contained in the guidelines brought in force in the year 2006.

Though an issue of non service of notice has also been raised by the petitioners but the order impugned mentions an issuance of notice which the petitioners, claim, was never served on them.

Mr. Upadhyay learned State counsel while supporting the impugned action based on guidelines would not contest that the appointments in question are of much prior to the enforcement of the 2006 guidelines. Law is very clear on the issue and an executive instructions cannot have a retrospective applicability nor can be applied to past transactions. There is no dispute that the guidelines so framed by the Social Welfare Department in the year 2006 and thereafter, have not been made retrospective to reopen past appointments, concluded by the departmental circulars nor can these appointments be reviewed after such long lapse of time more particularly where no infirmity is pointed as per the circular in force.

The Mukhiya of the Gram Panchayat has clearly overstepped her jurisdiction in trying to reopen a concluded matter after 8 years of



the appointment and even more surprising is the approach of the District Magistrate, Madhubani who has mechanically proceeded to endorse the recommendation to pass the impugned order which is a manifestation of mechanical discharge and result of an abuse of statutory power. There is nothing in the guidelines which makes it applicable to past transactions nor anything is brought on record to demonstrate any infirmity in the appointments as per the circulars in force in 2004. The respondent District Magistrate has clearly acted without jurisdiction to reopen the appointment of the petitioners made in 2004 i.e. much prior to the enforcement of the guidelines.

For the reasons discussed, the order of termination of the petitioners passed by the District Magistrate dated 29.07.2016 in Appeal No. 46 of 2012-13 cannot be upheld and is accordingly quashed and set aside. The petitioners are restored to their respective post(s).

The writ petition is allowed.

**(Jyoti Saran, J)**

Bibhash/Ranveer

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