

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4425 of 2013

=====

Bibha Kumari W/O Sri Arun Kumar Akela Resident Of Shiv Puri, Bbm High
School Purnea, Distt- Purnea.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. THE SECRETARY, DEPARTMENT OF DEPARTMENT OF SOCIAL
WELFARE, GOVERNMENT OF BIHAR, OLD SECRETARIAT, PATNA.
3. THE DIRECTOR INTEGRATED CHILD DEVELOPMENT SCHEME
INDIRA BHAWAN EAST BORING CANAL ROAD, PATNA.
4. THE DIVISIONAL COMMISSIONER, PURNIA DIVISION, PURNIA.
5. THE DISTRICT MAGISTRATE, PURNIA.
6. THE CHILD DEVELOPMENT PROJECT OFFICER, K. NAGAR,
PURNIA.
7. THE DISTRICT PROGRAMME OFFICER, PURNIA.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Ajit Kumar Singh, Adv
For the Respondent/s	:	Mr. Raghwanand GA-XI & Mr. Sanjay Kumar Tiwari, Adv

=====

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 29-01-2018

Heard learned counsel for the parties.

2. This writ petition under Article 226 of the
Constitution of India has been filed for quashing the order dated
12.05.2012 passed by the District Magistrate, Purnea as
contained in Annexure-5 by which the services of the petitioner
has been terminated from the post of Lady Supervisor as well as



the order dated 21.11.2012 passed by the Commissioner, Purnea Division, Purnea by which his Service Appeal No. 87 of 2012 was rejected.

3. Briefly stated, the facts of the case as stated in the petition is that an advertisement was published on behalf of District Magistrate, Purnea for selection on the post of Lady Supervisor, on contract basis for one year with a clause that contract period can be extended, if performance was found to be satisfactory. The petitioner was selected on the post of Lady Supervisor at K. Nagar Block in the district of Purnea by memo dated 07.02.2011, and pursuant to her selection, she joined on the post of Lady Supervisor in the office of C.D.P.O. K Nagar Block, Purnea. An explanation was sought by letter dated 09.08.2011, from the petitioner by which District Programme Officer, Purnea alleging that the petitioner without visiting the Kendra has submitted her inspection report about the Kendra on 03.08.2011. The petitioner filed her detailed representation dated 17.08.2011 before the District Programme Officer, Purnea, stating that by mistake instead of 02.08.2011, in the inspection report, 03.08.2011 had been recorded. The C.D.P.O. K Nagar, informed the District Programme Officer, Purnea, by letter dated 20.08.2011 about the conduct of petitioner and by memo dated



01.09.2011, issued by the District Magistrate, Purnea, the petitioner was disengaged from the post of Lady Supervisor. Against the order dated 01.09.2011, she filed her Service Appeal No. 81 of 2011 and the service appeal was allowed by order dated 25.01.2012, and the matter was remitted back to the District Magistrate, Purnea for fresh consideration. The District Magistrate, Purnea after remand by his order dated 25.01.2012 rejected the application of the petitioner and the petitioner thereafter again filed Miscellaneous Appeal No. 50 of 2012 but the same was dismissed by order dated 01.08.2012. The petitioner had earlier filed CWJC NO. 19983 of 2012 against the order dated 01.08.2012 passed by the Divisional Commissioner, Purnea and this Court vide order dated 18.10.2012 disposed of the writ petition with a direction to move the Divisional Commissioner, Purnea within a period of 15 days and in pursuance thereto the petitioner filed her Appeal No. 50 of 2012 before the Divisional Commissioner, Purnea.

4. The respondents have filed their counter affidavit in which it has been stated that under the scheme of ICDS, petitioner was appointed as Lady Supervisor and posted at K Nagar Block. The petitioner was entrusted with the supervision work and other stipulated work of Anganwari Centre, Gokalpur



Centre Code No. 4, Panchayat Gokulpur as well as other Anganwari Centres. The District Programme Officer, Purnea made an inspection of the aforesaid Anganwari Centre, and at the time of inspection of the Centre, apart from Sevika/Sahaika of the Centre No. 25, other women were also present. Anganwari Sevika Smt. Sunita Devi informed that the petitioner did not come to the Centre for inspection today, but from the inspection register maintained at the Centre it deciphered that on 03.08.2011 at about 9:30 am, the petitioner had made inspection of the Centre and petitioner had put her signature on the inspection register of 03.08.2011, and on that date petitioner ought to have been present in the V.H.S.N.D Programme. The District Programme Officer, Purnea found that the petitioner had made advance date comment on the inspection register. The District Programme Officer, Purnea served a show cause notice to the petitioner vide memo dated 09.08.2011 and comments from the concerned C.D.P.O. was also called. The petitioner submitted her show cause to the District Programme Officer, Purnea in which she stated that she made inspection on 02.08.2011, but by mistake in the inspection register date has been recorded as 03.08.2011, and it was only a mistake. In the show cause dated 09.08.2011 issued by the District Programme



Officer, Purnea to the petitioner, the misconduct was confined to postponing her date of inspection from 02.08.2011 as 03.08.2011. There were no any other period for which show cause was issued to the petitioner, as such the proceedings were confined only with respect to putting the date of 03.08.2011 while inspection was done on 02.08.2011.

5. The petitioner submitted her reply to the said show cause and stated that it was a mistake and she had inspected the Centre on 02.08.2011 and by mistake and slip of pen, the date was wrongly recorded as 03.08.2011 whereas it should be 02.08.2011. It was a bonafide mistake and slip of pen and her show cause reply should be accepted and proceeding should be dropped. The District Programme Officer, Purnea also called a report from C.D.P.O. and C.D.P.O in her report has stated that on previous occasions also petitioner was alleged of not performing her duty sincerely and diligently remained absent without any leave for which three time show cause was issued to her and she was let-off with a warning by the District Magistrate, Purnea without giving any specific finding on the charge for which she was show caused that on the inspection report she had inspected the Centre on 02.08.2011, but by mistake it was recorded as 03.08.2011, and the same was a mistake of slip or it was



deliberate act to show her inspection on 03.08.2011 but relying upon her past three misconducts for which she was let-off after giving warning, passed the order of removal from her service for violating the terms and conditions of her agreement and circular issued by ICDS dated 10.06.2008.

6. Petitioner preferred her appeal being Service Appeal No. 81 of 2011 before the Commissioner, Purnea Division and after hearing the parties, the Commissioner set aside the order passed by the District Magistrate, Purnea on the ground that before passing the order of removal, petitioner was not given any opportunity to defend herself and the order was passed in violation of principles of natural justice.

7. After remand, the District Magistrate, Purnea reheard the appeal filed on behalf of the petitioner and dismissed the appeal filed by the petitioner, against which, she again filed appeal before the Commissioner, Purnea Division and the same was rejected by order dated 01.08.2012.

8. The petitioner filed CWJC NO. 19983 of 2013 which was disposed of by order dated 18.10.2012, passed by this Court with a direction to the petitioner to file an appeal before the Divisional Commissioner, Purnea which has to be decided within 15 days. Although the Commissioner, Purnea Division



had already dismissed the appeal filed by the petitioner by order dated 01.08.2012, which was impugned in the said writ petition, as such it appears that the order was passed by the High Court as it was not brought to the knowledge of the Court that the appeal preferred by the petitioner before the Commissioner, Purnea Division already stood dismissed on 01.08.2012 and the same was impugned in CWJC No. 19983 of 2012, but in ignorance of said fact order dated 18.10.2012 was passed. It appears that for non compliance of order dated 18.10.2012 passed in CWJC No. 19983 of 2013, a contempt petition being M.J.C NO. 6110 of 2012, was filed which was disposed of on 05.12.2012 with a direction to the Commissioner to consider the review petition filed by the petitioner although there is no provision of filing of review against the order of Commissioner. However, in compliance of the order passed by the High Court the Commissioner, Purnea Division, Purnea, dismissed the Service Appeal No. 87 of 2012, which was filed pursuant to the order of High Court.

9. The respondents have submitted that appointment on the post of Anganwari Supervisor is not a Government service but the same is contractual appointment by way of agreement entered between the parties and conditions of service is



determined on the basis of terms of agreement and guidelines and circulars issued by ICDS and as such employees have no protection under Article 311 of the Constitution of India and if any proceeding is drawn against them for violating the terms and conditions of agreement or guidelines and circular issued by ICDS, the only requirement is compliance of principles of natural justice and granting full opportunity to the delinquent to present her defence against the charges as framed against her. It is an admitted fact that the petitioner was show caused by the District Programme Officer, Purnea for her putting signature in inspection register as maintained in Anganwari Centre as 03.08.2011, although admittedly she had not inspected the Centre on 03.08.2011 and allegation against her was that in spite of not visiting the Centre, she had put an advance date of inspection as 03.08.2011, and in her reply she has stated that it was just a slip of pen and mistake as she had visited the Centre on 02.08.2011, and in other register as maintained in Anganwari Centre date has been given as 02.08.2011 but only in inspection register by mistake the date has been recorded as 03.08.2011.

10. The District Programme Officer, Purnea alongwith comments of C.D.P.O and show cause notice which was issued to the petitioner and her reply, sent the records to the District



Magistrate, Purnea to take appropriate action on the basis of show cause notice and reply filed by the petitioner. However, the District Magistrate, Purnea without giving any specific finding with regard to the charges, as alleged, in the show cause for postponing her date of inspection from 02.08.2011 to 03.08.2011, did not give any finding against such misconduct and relying upon the report of C.D.P.O. regarding past conduct of petitioner, in which, she was let-off after giving the warning, passed the order of removal of the petitioner. It is true that appointment on the post of Anganwari Supervisor is not an appointment but only engagement and that too on contractual basis and said contract can be renewed by the employer on satisfactory performance of Anganwari Supervisor and as such, if the appointing authority had reason to believe that her performance has not been satisfactory and there has been lapses, negligence and lack of devotion towards her duty, the disciplinary authority is not bound to renew the contractual appointment. However, this was not the reason upon which petitioner was proceeded and she was show caused on a specific misconduct for putting signature as 03.08.2011 in the inspection register, although admittedly on that date she had not visited the Centre and as such scope of misconduct, show cause and charge



cannot be enlarged by passing the order by the disciplinary authority on materials other than for which she had been show caused. The disciplinary authority if comes to the finding that the charges of misconduct for which show cause was issued to the petitioner is proved then he is entitled to consider the past conduct although for which petitioner was let-off by giving warning while imposing punishment in the present case. But in the present case, there is no finding that the charges against the petitioner for which she was issued show cause was proved in enquiry, and as such without proving her guilt the order of punishment on the basis of past misconduct in which she was let-off after giving warning cannot be basis for her removal, as such the order passed by the District Magistrate, Purnea as well as Commissioner, Purnea Division, Purnea is not sustainable in the eye of law and is set aside. However, since the appointment of petitioner was contractual no order of reinstatement or payment of back wages can be passed. The matter is remanded back to the District Magistrate, Purnea and if he finds that the petitioner's explanation regarding her charges with respect to postponing the date of inspection as recorded in inspection register as 03.08.2011 is bonafide mistake and petitioner had visited the centre on 02.08.2011 and there was no deliberate act



on behalf of the petitioner and the same was bonafide mistake, the Collector may give specific finding about this misconduct on the basis of materials available on record and if he finds that misconduct for which petitioner was show caused and proceeded is not established he may consider to review the contract of the petitioner for her further engagement as Anganwari Supervisor.

11. With said observation and direction, writ petition is disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	20.02.2018
Transmission Date	N.A.

