

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12605 of 2016

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Shila Devi, wife of Sri Suresh Prasad Singh, resident of village- Bairiya, PS -
Piprahi, Block - Purnahiya, District - Sheohar.

.... Petitioner/s

Versus

1. The State of Bihar, through the Secretary, Social Welfare Department,
Government of Bihar, Patna.
2. The Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Collector, Sheohar.
4. The Deputy Director, Welfare, Muzaffarpur.
5. The District Programme Officer, Sheohar.
6. The Child Development Project Officer, Purnahiya, District - Sheohar.
7. Anu Devi, wife of Satyendra Singh, resident of village- Abhirajpur Bairiya, PS -
Piprahi, District - Sheohar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Naresh Chandra Verma, Adv.
Ms. Madhubala Verma, Adv.
For the Respondent/s : Mr. Arvind Kumar, AC to GA-9
For Respondent No.7 : Mr. Alok Kumar, Adv.
Mr. Virendra Kumar, Adv.
Mr. Pronav Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 29-06-2018

Heard Mr. Naresh Chandra Verma, learned counsel
appearing for the petitioner, Mr. Arvind Kumar, learned Assisting
Counsel to Government Advocate No.9 for the State and Mr. Alok
Kumar, learned counsel appearing for the private respondent.

The petitioner is aggrieved by the order dated
07.06.2016 passed by the Collector, Sheohar in Appeal Case No.24
of 2015, whereby in consideration of the contest raised regarding
shifting of the Anganbari centre that he has decided in favour of
the private respondent no.7 to hold that it is the centre run by the
petitioner which needs to be shifted to Ward No.13 while the



private respondent would continue to run her centre in Ward No.12. The Collector, thus, while allowing the appeal of the private respondent, has set aside the order of the District Programme Officer, Sheohar, whereby the claim of the petitioner to remain in Ward No.12 was upheld in consideration of the circular of the State Government in the Directorate of Child Development Services, Social Welfare Department dated 16.2.2012, a copy of which is at Annexure 2.

According to the petitioner, she was selected for appointment to the post of Anganbari Sevika at village Bariya-III within Purnahiya Block in the district of Sheohar for Centre No.69 situated in Ward No.12 under Bariya Gram Panchayat on 22.09.1998. According to the petitioner, it is nine years thereafter that the respondent No.7 was appointed as Anganbari Sevika for Centre No.68 situated in the same Ward No. 12 vide order passed on 08.08.2007.

It is because the petitioner was being disturbed in operating her Center No.69 at Ward No.12 and being asked to shift the same to Ward No.13 that she approached the District Programme Officer, Sheohar who sought instruction from the Child Development Project Officer, Purnahiya vide letter dated 01.03.2013 at Annexure-3. The petitioner relies upon the stipulation present in the advisory on delimitation circulated by the Director,



ICDS, Social Welfare Department at Annexure 2 which at Para No. vi(ख), inter-alia, provides that where two or more centres are operating in the same ward then the Sevika with lesser number of service would be shifted to the nearby ward.

It is taking note of the advisory circulated through letter dated 16.02.2012 that the dispute was resolved by the District Programme Officer, Sheohar in Case No.05 of 2015 vide order bearing Memo No. 392 dated 11.08.2015 to direct for shifting of Centre No.68 operated by the private respondent to the nearby Ward No.13. This aggrieved the private respondent to file appeal before the Collector registered as Appeal Case No.24 of 2015 and the Collector, Sheohar while noting that the order violated principles of natural justice inasmuch as that the private respondent had not been heard, allowed the appeal and set aside the order passed by the District Programme Officer, Sheohar vide order passed on 07.06.2016 but at the same time also decided the dispute in favour of the private respondent for her retention in Ward No.12 while asking the petitioner to move to the nearby Ward No.13 and it is feeling aggrieved that the petitioner is before this Court.

It is following the notice issued that the private respondent has appeared through counsel and counter affidavits have been filed by the State as well as the private respondent.

I have heard learned counsel for the parties and I have



perused the records which show that while the petitioner was appointed as Anganbari Sevika on 22.09.1998, the private respondent was appointed on 08.08.2007 and there is nothing on records of the proceeding to contest this position.

It is undisputed that both Centre Nos. 68 and 69 lie within the same Ward No.12. Going by the advisory issued by the Directorate through letter bearing Memo No. 622 dated 16.02.2012 at Annexure-2 more particularly paragraph vi (ख), it is the private respondent having lesser service tenure, who needs to be moved out from Ward No.12 to nearby Ward No.13 together with Centre No.69 operated by her. Paragraph-vi(ख) of the circular reads thus:

“आंगनबाड़ी सेविका/सहायिका :- जहाँ तक संभव होगा सेविका/सहायिका जिस वार्ड की निवासी (बहू/बेटी) है, उसी वार्ड में स्थित आंगनबाड़ी केन्द्र की सविका/सहायिका हांगी।

आंगनबाड़ी केन्द्र के relocation/नए परिसीमन के फलस्वरूप आंगनबाड़ी सेविका/सहायिका की shifting के लिए निम्न प्रक्रिया अपनाई जाएगी:-

(क)

(ख) अगर दो या उससे ज्यादा सेविका/सहायिका नये परिसीमन में एक ही वार्ड की निवासी हो जाती है तो एक को उस वार्ड से सटे निकटतम वार्ड के आंगनबाड़ी केन्द्र में स्थानान्तरित कर दिया जाएगा। पास के केन्द्र पर स्थानान्तरण उस सेविका/सहायिका का किया जाएगा जो कम अवधि से सेविका/सहायिका के रूप में कार्य कर रही हो। यह प्रक्रिया इस प्रकार अपनाई जाएगी जिससे की सेविका/सहायिका की shifting कम से कम हो।”

It is noting the stipulation present in the advisory that the



District Magistrate, Sheohar was directed to file counter affidavit but he has chosen to delegate the authority in favour of the Senior Deputy Collector who has not even bothered to go through the order passed by this Court on 14.12.2017 and thus has not responded to the issues noted therein. In a mechanical fashion that the Senior Deputy Collector has proceeded to support the order passed by the Collector, Sheohar in so far as it takes notice of violation of principles of natural justice by the District Programme Officer, Sheohar to set aside the order but yet does not explain as to why the advisory of the Directorate at Annexure 2, has been ignored which gives preference to the Anganbari Sevika having longer tenure.

The casual manner in which the affidavit is filed completely ignoring the issues noted by this Court in the order recorded on 14.12.2017, persuades this Court to impose cost on District Magistrate, Sheohar for the lapse, but for the persuasive argument of Mr. Arvind Kumar, learned AC to GA-9 who invites the attention of this Court to the second advisory of the Directorate at Annexure 'D' to submit that even though an advisory on the shifting of centre was circulated vide Memo No.622 dated 16.02.2012 enclosed at Annexure 2 as well as at Annexure 'C' to the counter affidavit but this advisory was stayed by a subsequent advisory issued by the Directorate on 27.04.2013 and which was in



operation at the time of passing of the order by the District Programme Officer, Sheohar as well as the District Magistrate, Sheohar. Now going by the submission of Mr. Arvind Kumar, AC to GA-9 neither of the centers could be shifted in view of the stay so directed by the Directorate. The relevant extract of the advisory dated 27.04.2013 reads under:

- “ ”
1. ऑगनबाड़ी केन्द्रो का वार्ड के आधार पर परिसीमन के फलस्वरूप दिनांक 12.03.2013 तक जहाँ शिफ्टिंग कार्य तथा चयन प्रक्रिया पूर्ण कर केन्द्र संचालित किया जा रहा है, उसे यथावत रहने दिया जाय तथा दिनांक 12.03.2013 के पश्चात् किसी भी प्रकार का शिफ्टिंग के कार्य पर तत्काल अगले आदेश तक रोक लगायी जाती है। दिनांक 12.03.2013 के पूर्व इस संबंध में यदि कोई शिकायत प्राप्त हुआ हो तो एक प्रतिवेदन भेजा जाय ताकि विभाग में इसकी समीक्षा की जा सके। यदि महादलित टोले में पूर्व से स्थित केन्द्र को गैर महादलित टोले में 12.03.2013 के पूर्व भी शिफ्ट किया गया है तो उसे निरस्त किया जाय। ”

In my opinion, if there was a stay operating as regarding shifting of the centres then neither of the two centres in question could be shifted and the orders of the District Programme Officer and the District Magistrate in circumstances noted, are rendered illegal.

In result the order bearing Memo No.392 dated 11.08.2015 of the District Programme Officer, Sheohar together



with the order dated 07.06.2016 of the Collector, Sheohar passed in Appeal Case No.24 of 2015, whereby the Centre Nos.68 and 69 have been directed to be shifted respectively, cannot be upheld and are accordingly quashed and set aside. As a consequence, the two centres would continue to operate in Ward No.12 until a final decision is taken by the Directorate in the light of the position reflecting from the circular dated 27.4.2013. It is clarified that this order would not preclude the authorities to proceed afresh in the matter in case the Directorate chooses to vacate the stay order present in the advisory dated 27.4.2013.

The writ petition is allowed with the direction
aforementioned.

(Jyoti Saran, J)

SKPathak/Mukesh

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16-07-2018
Transmission Date	NA

