

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19141 of 2016

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Chinta Devi, Wife of Paras Nath Kamat, Resident of Village- Parmanandpur, P.S.
Pratapganj, District- Supaul.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Director, I.C.D.S., Social Welfare Department, Government of Bihar, Patna.
4. The D.M., Supaul.
5. The District Programme Officer, I.C.D.S., Supaul.
6. The Child Development Project Officer, Raghapur, (Supaul).
7. Ful Kumari, Daughter of Dayanand Kamat, Resident of Paramanandpur, P.S.- Pratapganj, District-Supaul.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Singh, Adv.

For the Respondent/s : Ms. Kumari Amrita, GP-3.

Mr. Rajesh Kumar, AC to GP-3

For Private Respondent : Mr. Mithilesh Kumar Upadhaya, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 24-07-2018

Heard Mr. Shailendra Kumar Singh, learned counsel appearing for the petitioner, Ms. Kumari Amrita, learned Government Pleader No.3 for the State and Mr. Mithilesh Kumar Upadhaya who has registered appearance for the newly added Anganwari Sewika i.e. respondent no.7.

With the consent of the parties, the writ petition has been heard with a view to its final disposal at the stage of admission itself.

The petitioner is aggrieved by the order dated 29.08.2016 passed by the District Magistrate, Supaul in Anganwari Appeal



No.185/2014-28/2015, whereby while dismissing the appeal, he has affirmed the order dated 28.2.2014 of the District Programme Officer, Supaul passed in Case No.245 of 2013, whereby the petitioner has been dismissed from her post of Anganbari Sevika, Centre No.31, Village- Parmanandpur under Raghopur Block in the district of Supaul. Copies of the orders passed by the Appellate Authority and the District Programme Officer, Supaul are impugned at Annexures 6 and 4 series respectively.

The facts lie in a very narrow compass. The petitioner, an appointee of the year 1997 for the centre in question, was proceeded against by service of a show cause issued under the signature of the District Programme Officer, Supaul bearing Memo No.1829 dated 13.12.2013, a copy of which is impugned at Annexure 1, inter alia, for two charges, namely ;

- (a) The centre was found closed; and
- (b) The petitioner along with *Sahayika* was found absent.

Another allegation is that the sign-board was not hanging outside the centre. The petitioner filed her reply, a copy of which is at Annexure 2 in which she has mentioned that since she was undergoing medical treatment that she was not present when the inspection took place. In support, the petitioner has enclosed a certificate of a medical practitioner which certifies the treatment. Not being satisfied that the District Programme Officer, Supaul



issued the order of termination bearing Memo No.1034 dated 28.02.2014 which is a part of Annexure 4 series and which order has been affirmed by the District Magistrate, Supaul on the appeal filed, vide Annexure 6. Feeling aggrieved the petitioner is before this Court.

In short, for a single day absence the petitioner has been removed from service as an Anganbari Sevika which post she was holding since 1997 i.e. almost 2 decades of the impugned action. In between a selection process has followed, in which the private respondent has been appointed but her appointment is made conditional and subject to the outcome of the present proceeding. The appointment order of the private respondent is enclosed at Annexure 'A' to the counter affidavit filed on behalf of the respondent-State and is dated 19.12.2014.

I have heard Mr. Shailendra Kumar Singh, learned counsel appearing for the petitioner, Ms. Kumari Amrita, learned Government Pleader No.3 for the State and Mr. Mithilesh Kumar Upadhaya, learned counsel appearing for the private respondent whose appointment is conditional upon the outcome of the present proceeding as confirmed from the appointment letter itself.

Though Ms. Amrita, learned Government Pleader No.3 has been supportive of the impugned order to canvass that the centre in question was closed for many a day as would reflect from the order



impugned but the issue is whether the reasons assigned by the statutory authority for upholding the termination finds its place in the show cause at Annexure 1 or has gone beyond charge. The answer is in the negative. The show cause alleges that the centre was closed on 28.09.2013 and when the petitioner was found absent. In other words, it is for a single day closure and consequential absence of the petitioner that the order of termination was passed.

Clearly the order of termination has travelled beyond the charge. I would make reference to the two judgments of this Court in which it has been held that the authority vested with jurisdiction to terminate the services should be rather cautious in exercising such power for an extreme penalty of termination and has to be founded on equally serious allegations. It has been held that a single day absence would not constitute such an extreme circumstance so as to warrant a dismissal. Reference in this regard is made to a judgment of this Court reported in **2011(3) PLJR 140 (Punam Kumari vs. the State of Bihar)**. Reference is also made to the judgment reported in **2012 (3) PLJR 583 (Turant Lal Paswan Vs the State of Bihar)**, wherein the Division Bench considering a similar termination of a P.D.S. dealer, for a single day closure, has held it arbitrary.

For the reasons so discussed and the legal position settled in



the judgments referred to above, the impugned orders in upholding the termination, inter alia, on grounds of long absence is an order in perversity and travels beyond the charges framed and is accordingly quashed and set aside. The petitioner is reinstated on the post of Anganbari Sevika for Centre No.31, Village-Parmanandpur under Raghapur Block in the district of Supaul. Since the order of appointment of the private respondent enclosed at Annexure ‘A’ to the counter affidavit of the respondent State is conditional upon the outcome of the present proceeding it is accordingly quashed and set aside.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

SKPathak/Anjula

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08-08-2018
Transmission Date	NA

