

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18934 of 2016

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1. Puja Bharti, Wife of- Mukesh Kumar Rai, Resident of Village- Sakarpur, P.S.-
Hasanpur, District- Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Social Welfare Department,
Government of Bihar, Patna.
2. The Divisional Commissioner, Darbhanga.
3. The District Magistrate, Samastipur.
4. The District Programme Officer, District I.C.D.S. Cell, Samastipur.
5. Child Development Project Officer, Hassanpur, Samastipur.
6. Smt. Kanchan Devi Wife of Ranjit Kumar Rai Village- Sakarpura, Ward No. 6,
P.S.- Hassanpur, District- Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sudhanshu Kumar Lal, Adv.

Mr. Pritish Kumar Lal, Adv.

For the State (Respondent 2 to 5): Mr. Manish Kumar, AC to AAG-6

For the Respondent no. 6 : Mr. Y.V Giri, Sr. Adv.

Mr. Sanjay Kumar Giri, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 24-08-2018

Heard Mr. Sudhanshu Kumar Lal, learned counsel appearing for
the petitioner, Mr. Manish Kumar, AC to AAG 6 for the State and Mr.
Y.V Giri, learned Senior counsel assisted by Mr. Sanjay Kumar Giri for
the private respondent.

The petitioner is aggrieved by the order bearing memo No. 1651
of dated 15.02.2012 passed by the District Programme Officer,
Samastipur whereby she has been removed from the post of Anganbari
Sevika, Anganbari Kendra No. 157 Sakarpura, Kumhartoli within
Sakarpura Gram Panchayat in the District of Samastipur impugned at
Annexure 4. The order is confirmed by the Commissioner, Darbhanga



Division vide order passed on 04.10.2016 impugned at Annexure-6.

The pleadings on record would confirm that the petitioner had earlier moved this Court in C.W.J.C. No. 11264 of 2012 but was allowed to exhaust departmental remedy available, pursuant where to she moved in appeal before the Commissioner, Darbhanga, Division which has been dismissed and she is again before this Court.

The foundation for the proceedings lies on an inspection report of the District Magistrate held on 21.01.2012, a copy of which is placed on record vide Annexure-A of the counter affidavit of the State. Finding some irregularities in the functioning of the centre No. 157 of which the petitioner held the post of Anganbari Sevika that the observation made, led to initiation of proceedings against the petitioner and when a show cause was issued by the District Programme Officer on 02.02.2012, a copy of which is impugned at Annexure-2. The petitioner filed her reply contesting the allegations of irregularities in functioning of the centre duly supported by the local residents, a copy of which is impugned at Annexure-3 but not being satisfied that her services were terminated by the District Programme Officer vide order bearing No. 1651 dated 15.02.2012 impugned at Annexure-4. Feeling aggrieved she moved this Court in C.W.J.C. No. 11264 of 2012 and vide order passed on 25.07.2012 of a coordinate bench, the writ petition was disposed affording liberty to the petitioner to exhaust departmental remedy of appeal, which order is enclosed at Annexure-5. It is following the liberty



that she moved in appeal before the Commissioner, Darbhanga Division registered as Appeal No. 50 of 2012 which has been dismissed on 04.10.2016 vide Annexure-6. Feeling aggrieved she is back in this Court.

The argument advanced by Mr. Lal, learned counsel for the petitioner to question the orders impugned is that although the proceedings rested on the inspection report of the District Magistrate, Samastipur yet no copy of the report was handed over to the petitioner. It is also the argument of Mr. Lal that the allegations put up in show cause impugned at Annexure-2 are vague for it gives no descriptive details in support of the allegation. It is the submission of Mr. Lal that in the nature of the allegations made, the petitioner filed her reply denying the same but has resulted in the order impugned. It is submitted by Mr. Lal that the order of removal is merely reiterating the allegation, without meeting the defence of the petitioner and is resting on no evidence.

Since during the pendency of this writ petition the private respondent had been appointed in place of petitioner, that I.A No. 1333 of 2018 was filed seeking amendment in the relief portion as well as for addition of the private respondent which was allowed vide order passed on 27.02.2018. Following the notice issued that the respondent No. 6 has appeared through counsel Mr. Sanjay Kumar Giri as led by Mr. Y.V.Giri, learned Senior counsel.

While Mr. Manish Kumar has defended the impugned action in



reference to the inspection report which according to him alleged irregularity in functioning of the centre which was attributable to the petitioner, it is the argument of Mr. Giri, learned Senior counsel appearing for the private respondent that since no attempt was made by the petitioner to get the proceedings for fresh appointment stayed, the private respondent cannot be disturbed from her post and even in case the writ petitioner succeeds, the respondents be directed to accommodate her in a nearby ward. It is filing a supplementary affidavit today, that Mr. Giri informs that a vacancy is available in ward No. 3 which is situated adjacent to the ward No. 6 where the Centre No. 157 is situated. It is his submission that since the post of Anganbari Sevika in ward No. 3 is being looked after by the Anganbari Sevika of ward No. 7 who is holding dual charge, the State may be directed to consider accommodation of the private respondent on the vacant post in the nearby ward No. 3 which according to Mr. Giri learned Senior counsel, is just across the road of ward No. 6.

Responding to the argument of the respondent, it is submitted by Mr. Lal that even though copy of the enquiry report was not handed over to the petitioner, the fairness in the State's action to enclose the report at Annexure-A goes to support the argument of the petitioner that the removal was resting on no evidence because the report of the District Magistrate, Samastipur in so far as it concerns the Centre No. 157, though charges the Child Development Project Officer of being casual in



approach, makes no allegation against the Anganbari Sevika.

I have heard learned counsel for the parties and I have perused the records.

As observed above, the foundation for the entire proceeding rests on the enquiry report of the District Magistrate, Samastipur fairly enclosed at Annexure-A to the counter affidavit of the State. In so far as the report on the Anganbari Centre No. 157, in which centre the petitioner held the post of Anganbari Sevika, is concerned, though the District Magistrate has commented upon the functioning of the centre as not satisfactory but the charge is actually set up against the Child Development Project Officer of being negligent towards his duties and of promoting corruption. The report puts the Child Development Project Officer on a notice for filing reply but nowhere indicts the petitioner of failing in her duty.

The report of the District Magistrate in fact raises issues on the very initiation of proceeding against the writ petitioner because nowhere in the report, the petitioner as the Anganbari Sevika of the Centre, has been indicted. This Court thus fails to appreciate the need for initiation of the proceeding by the District Programme Officer, making reference to this report of the District Magistrate as manifest from the show cause issued to the petitioner impugned at Annexure-2 because the District Magistrate has nowhere commented on any misconduct of the petitioner nor charged her on her discharge of duty.



In my opinion, in absence of any direction present in the report of the District Magistrate, Samastipur requiring the District Programme Officer to initiate proceedings against the Anganbari Sevika rather choosing to put the Child Development Project Officer on notice of show cause, the District Programme Officer has traveled beyond his jurisdiction to show cause the petitioner on misconduct or irregularities in complete misreading of the report. This is the first illegality in the proceeding.

The second illegality in the proceedings is that it is resting on a vague show cause because it is by simply alleging illegalities in functioning of the centre and in distribution of take home ration that the petitioner has been put to show cause without any specific details for such alleged misconduct. The allegations have been rightly contested by the petitioner through her reply impugned at Annexure-3 denying those allegations and in seeking the endorsement of the local villagers.

The third illegality is that though no single instance of either violation in the functioning of the centre nor in the distribution of the take home ration has been discussed by the District Programme Officer yet he, while reiterating the allegation, has proceeded to cancel the appointment of the petitioner which order is not only illegal but is a perversity because it is mechanical. It is rather unfortunate that the attention of the Commissioner, Darbhanga Division having been invited by the petitioner by filing appeal, the Commissioner has also



mechanically endorsed the order of the District Programme Officer which as held, is resting on no evidence.

For the reasons discussed, neither the order of termination passed by the District Programme Officer dated 15.02.2012 is capable of being upheld nor the order of the Commissioner, Darbhanga Division is sustainable in law and consequently these orders impugned at Annexures-4 and 6 respectively are quashed and set aside.

The pleadings on record would show that it is following the removal of the petitioner that a selection process was initiated. Objecting thereto, the petitioner filed an application before the Child Development Project Officer on 18.01.2018 vide Annexure- 8 to I.A No. 1333 of 2018 praying for the stay of the selection process since her writ petition was pending before this Court but the Aam Sabha was held on 19.01.2018 and in which the private respondent was selected for appointment following which an appointment letter bearing No. 18 dated 19.01.2018 at Annexure – R/6F to the counter affidavit of the respondent No. 6 was issued. It is obvious that this appointment of the private respondent was on the vacancy caused by the illegal removal of the writ petitioner and thus the appointment was conditional on the outcome of the challenge posed by the writ petitioner through the present writ proceeding.

Since the order of removal of the petitioner as affirmed by the Commissioner impugned at Annexures-4 and 6 to the writ petition, has been quashed, the private respondent would have to make way for writ



petitioner for her reinstatement on the post because there cannot be two Anganbari Sevikas for the same centre. Consequently, the appointment order dated 19.01.2018 of the private respondent is quashed to enable the authority to reinstate the petitioner on her post.

In so far as the prayer of Mr. Giri as regarding accommodation of the private respondent to nearby ward is concerned, in my opinion this Court is not in a position to give any direction because it is entirely within the domain of the State in its Social Welfare Department to consider the utility of the private respondent for her accommodation anywhere else and they would be free to do so. This Court however, would refrain from issuing any direction in this regard.

The writ petition is allowed. Let the writ petitioner be reinstated on the post forthwith and within a week of receipt/production of a copy of the order.

(Jyoti Saran, J)

Bibhash/Ranveer

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11.09.2018
Transmission Date	NA

