

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24271 of 2013

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Chameli Devi Wife Of Ravindra Prasad Kushwaha Resident Of Village -
Palar, P.S. - Bounsi, District - Banka

... .. Petitioner/s

Versus

1. The State Of Bihar , Through Principle Secretary, Social Welfare Department,
Govt. Of Bihar, Patna
2. The Director, Integrated Child Development Scheme, Welfare Department,
Indira Bhawan, Patna
3. The Divisional Commissioner, Bhagalpur Division, Bhagalpur
4. The District Magistrate, Banka
5. The District Programme Officer, Banka
6. The Child Development Project Officer, Bounsi, District - Banka

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Balram Kapri, Adv.
For the Respondent/s : Mr. Vinay Kriti Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 02-05-2018

This writ petition under Article 226 of Constitution of India has been filed for quashing the order dated 17.10.2012 passed by the District Programme Officer, Banka, by which service of petitioner has been terminated against Aanganwari Center no.95 (palar).

Briefly stated the case of the petitioner is that petitioner was selected for the post of Aanganwari Sevika in the year 2004 for Aanganwari Center no.95, namely, Palar under Bounsi Block of Banka District and thereafter she is working to the satisfaction of all and no complaint has been made against petitioner.



The Child Development Programme Officer, Bounsi (hereinafter referred to as 'CDPO') made a surprise inspection of the Aanganwari Center no.95 on 31.08.2012 and found some irregularities in running the Center for which she made entry in the Inspection Register (Annexure-1).

On the basis of said inspection report submitted by the CDPO, Bounsi, the District Programme Officer, Banka, issued a show cause notice dated 06.09.2012 by which petitioner was asked to submit her reply that why are selection be not cancelled for her alleged absence from the Aanganwari Center on the day of inspection i.e. 31.08.2012 (Annexure-2).

Petitioner submitted her reply on 12.10.2012 taking specific plea that on the day of inspection she was present at the Aanganwari Center which will be apparent from entry made in the Inspection Register. Petitioner further stated that since Shradh Ceremony was being performed nearby the Center, as such attendance of children was poor.

The District Programme Officer, Banka, issued show cause notice to explain her absence on the day of inspection but by order dated 17.10.2012 cancelled the order of selection on the ground that less than fourteen children were present at the Center.



It has been contended on behalf of petitioner that the show cause was issued to petitioner for her absence on the day of inspection but order of termination has been passed on the ground that less than fourteen children were present at the time of inspection and as such order of termination is not sustainable.

Petitioner preferred an appeal before the District Magistrate, Banka, being Aanganwari Appeal Case no. 145 of 2012-13 but same was rejected by order dated 07.06.2013 without considering the ground of appeal filed by petitioner. Petitioner preferred revision before the Divisional Commissioner, Bhagalpur, being Banka Miscellaneous (Aanganwari) Revision Case no. 68 of 2013-14 and same was dismissed by order dated 21.10.2013 on the ground of lack of jurisdiction.

A counter affidavit has been filed on behalf of the respondent in which it has been stated that petitioner was appointed as Aanganwari Sevika in the year 2004 for Aanganwari Center no.95 (Palar) under the Bounsi Block of Banka District.

The CDPO, Bounsi, inspected the Center on 31.08.2012 and during inspection Poshahar was being prepared and only ten children were present and villagers apprised the CDPO about irregularities in the distribution of Poshahar and same was entered in the Inspection Register.



The CDPO, Bounsi, thereafter submitted the inspection report to the District Programme Officer, Banka, who issued a show cause notice to the petitioner and after receiving the reply submitted by petitioner, she was terminated in the light of direction issued by the Director, ICDS, by letter no.2120 dated 20.06.2012 as there were only ten children present at the Center.

After hearing the parties and considering the materials available on record, it is an admitted position that petitioner was issued show cause notice, as contained in Annexure-2 to this petition by which allegation was made that on the day of inspection i.e. 31.08.2012 she was not present in the Aanganwari Center and she was show caused to submit her reply and petitioner submitted her reply that she was present at the Center. However, the District Programme Officer by his order, as contained in Annexure-4, has removed the petitioner on the ground that at the time of inspection only ten children were present at the Center and only 2kg Poshahar was being cooked and there was no distribution of money for dress and on such grounds petitioner has been dismissed from service and her appeal and revision have also been dismissed.



Petitioner has been dismissed by the authorities on the ground for which she was not show caused and as such no order of removal can be passed against petitioner which was not the allegation made in the show cause as such the orders passed by the District Programme Officer, Banka, as well as District Magistrate, Banka, are quashed.

The other grounds on the basis of which order of removal has been passed although for which petitioner was not show caused are that at the time of inspection only ten children were present whereas in view of letter no.2120 dated 20.06.2012 if the presence of children at the Aanganwari Center without any valid reason is less than fourteen, then removal of Aanganwari Sevika can be taken. However, in the present case petitioner has given a valid cause for presence of less number of children at the time of inspection and same was required to be considered by the authorities before passing an order of removal.

Petitioner has been working since 2004 and no complaint has been made against her and allegation in the show cause was with respect to her absence on the day of inspection dated 31.08.2012. However, she has been removed for different reasons for which she was never show caused as such the orders passed by the District Programme Officer, Banka, and District



Magistrate, Banka, are quashed and petitioner is directed to be reinstated within three months from the date of production/receipt of a copy of the order passed by this Court, however, without any back wages.

The writ petition stands allowed.

(S. Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	

