

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3533 of 2016

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Rupwanti Kumari W/o Sri Manoj Kumari Ram R/o Village- Paspipra Po
Shukul Pipra p.s Mohania District kaimur at Bhabua.

... .. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary , Department of Social Welfare ,Govt. of Bihar Patna.
2. The Principal Secretary , Department of Social Welfare ,Govt. of Bihar Patna.
3. The Director , Department of Social Welfare ,Govt. of Bihar Patna.
4. The Director, I.C.D.S. Bihar, Patna.
5. The Commissioner, Patna Division, Patna.
6. The District Magistrate-cum-Collector, Kaimur at Bhabua./
7. The District Programme Officer I.C.D.S. Kaimur at Bhabua.
8. The Child Development Project Officer, Mohania District Kaimur at Bhabhua.
9. The Block Development Officer, Mohania District Kaimur at Bhabhua.
10. The Panchayat Secretary, Gram Panchyat Raj- Dadar , Block Mohania District Kaimur at Bhabua.
11. The Mukhiya, Gram Panchyat Raj- Dadar , Block Mohania District Kaimur at Bhabua.
12. Rinku Kumari@Rinku Devi W/o Sri Shyam Bihari Singh R/o Village-Paspipra , P.s -Mohania District Kaimur at Bhabhua.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Durga Nand Jha
For the State	:	Mr. Gyan Prakash Ojha, GA 7
		Mr. Uday Shankar Pandey, AC to GA 7
For Respondent No. 12	:	Mr. Vivekanand Singh

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

8 14-11-2019 Heard learned Counsel for the petitioner, respondent

State as well as the private respondent.

Alleging that reinstatement of respondent No. 12 as

Anganwari Sevika for the center in question was not in



accordance with law, Counsel for the petitioner submits that such reinstatement of respondent No. 12 is without hearing the petitioner, who had come to be selected as Sevika for the center in question while the dispute of respondent No. 12 arising out of cancellation of her selection was pending before the authorities.

The matter has now finally been decided by the Divisional Commissioner upon remand as per order passed in CWJC No. 16613 of 2012 and respondent No. 12 has been selected for the center in question. The issue therefore which arises for consideration is whether the order could have been passed by the Divisional Commissioner even though the petitioner had come to be selected in the meantime.

The issue now stands decided by this Court relying upon the decision of the Apex Court in the case of ***Poonam vs. State of U.P. & ors*** reported in ***(2016) 2 SCC 779***.

The Apex Court in the said case has considered similar circumstances and has held as follows:-

“We have referred to the said decision in Ramesh Hirachand Kundanmal v. Municipal Corpn. Of greater Bombay reported in (1992) 2 SCC 524 in extenso as there is emphasis on curtailment of legal right. The question to be posed is whether there is curtailment or extinction of a legal right of the appellant. The writ petitioner before the High Court was trying to establish her right in an independent manner, that is, she has an



independent legal right. It is extremely difficult to hold that she has an independent legal right. It was the first allottee who could have continued in law, if his licence would not have been cancelled. He was entitled in law to prosecute his cause of action and restore his legal right. Restoration of the legal right is pivotal and the prime mover. The eclipse being over, he has to come back to the same position. His right gets revived and that revival of the right cannot be dented by the third party”.

In view of the law laid down by the Apex Court, this Court earlier in the case of ***Indu Kumari Yadav vs. The State of Bihar & ors.*** in ***CWJC No. 14220 of 2014*** has also decided another similar case.

Reinstatement of respondent No. 12 being challenged on the ground that petitioner was required to be heard on account of her selection in the meantime therefore would not require any interference in the matter as respondent No. 12 has the primary right in the matter. It is also worth noting that neither the petitioner nor respondent No. 12 ever assumed the status of a Government Servant, and at best were working as an agent of the government for dissemination of social welfare measures.

The fact that the petitioner has come to be selected in the meantime would not denude respondent No. 12 of her right



and the fruits of her dispute which has finally been decided under the orders of the Divisional Commissioner under order dated 26.5.2015/29.7.2015.

This Court would also take into consideration that no stigma is attached to the petitioner's removal. She therefore is not precluded from selection in future, if there are vacancies, and if she is otherwise qualified.

For the reasons indicated hereinabove the writ petition is devoid of merit and the same is dismissed.

SNkumar/-

(Madhuresh Prasad, J)

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