

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10074 of 2011

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SUNANINA KUMARI Wife of Raj Kumar Ram R/o village Kutalupur PS
Silao District Nalanda

... .. Petitioner/s

Versus

THE STATE OF BIHAR and ORS

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Vishwajeet Kumar Mishra

For the Respondent/s : Mr.Vivek Anand Amritesh AC to SC 28

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 08-07-2019

Heard counsel for the petitioner and counsel for the respondents-State.

Petition has been filed for quashing of order dated 22.08.2009 passed by District Magistrate, Nalanda in Anganbari case no. 70/2003 as well as order dated 11.03.2011 passed by the Commissioner, Patna Division in Misc. Appeal Case no. 181/2009 whereby petitioner's claim for being selected as Anganbari sevika for center Kutlupur has been rejected.

The brief background is that respondent no.10 was originally selected as Anganbari sevika for center in question. Residence of respondent no.10 falls outside the Posahar area on that ground, she was removed. On account of her removal, petitioner came to be selected in 2003. Respondent no.10, in the



meantime, had approached the authorities raising grievance of her removal on account of delimitation of area of the center in question.

Originally, selection of respondent no.10 was done at a time when her residence fell within nutrition area of the center where she was selected as Anganbari sevika. Authorities have found that respondent no.10 could not have been made to suffer on account of subsequent delimitation of the nutrition area. In view of aforesaid finding injustice meted out to respondent no.10 was directed to be rectified by the authorities by restoring her as Anganbari sevika for center in question.

As a result of the aforesaid order, petitioner who, in the meantime, came to be selected has been required to make way of selection of respondent no.10.

Counsel for the petitioner submits that the petitioner was appointed under due procedure and on fulfillment of all requisites. Right to continue as Anganbari sevika has been vested in the petitioner. As such, order of the authorities reinstating respondent no.10 is illegal. It is also submitted that petitioner was indulging in illegal activity in running center in question.

As regards first submission, this court would observe that the decision of the authorities that respondent no.10 could not



be made to suffer is legally sustainable. Respondent no.10 was initially selected as Anganbari sevika for the center in question. Injustice meted out to respondent no.10 on account of her wrong and illegal removal is therefore, required to be rectified by the authorities.

The writ petitioner had no independent right. She had come to be appointed on a vacancy occurring due to illegal removal of the respondent no.10. Respondent no.10 had originally been selected and was well within her right to challenge her removal, which she has done promptly. Once it has been found that removal of respondent no.10 was not in accordance with law, she cannot be denied the fruits of such determination on account of appointment of the petitioner, in the meantime, which at best has occurred under fortuitous circumstance. In fact, relying on decision of the Apex Court in the case of [**Poonam versus State of U.P. reported in (2016) 2 SCC 779**] this court would go to the extent of adding that the petitioner herein was not even a necessary party before the authorities considering validity of cancellation of selection/removal of respondent no.10.

This court would consider it appropriate to reproduce two paragraphs of judgment of the Apex Court in the case of Poonam(supra).



“Para-49. In the instant case, shop no.2 had become vacant. The appellant was allotted the shop, may be in the handicapped quota but such allotment is the resultant factor of the said shop falling vacant. The original allottee, that is the respondent, assailed his cancellation and ultimately succeeded in appeal. We are not concerned with the fact that the appellant herein was allowed to put her stand in the appeal. She was neither a necessary nor a proper party. The appellate authority permitted her to participate but that neither changes the situation nor does it confer any legal status on her. She would have continued to hold the shop had the original allottee lost the appeal. She cannot assail the said order in a writ petition because she is not a necessary party. It is the State or its functionaries who could have challenged the same in appeal. They have maintained sphinx like silence in that regard. Be that as it may, that would not confer any locus on the subsequent allottee to challenge the order passed in favour of the former allottee. She is a third party to the lis in this context.

Para-50. The decisions which we have referred to hereinbefore directly pertain to the concept of necessary party. The case of Kailash Chand Mahajan makes it absolutely clear. We have explained the authority in J.S. Yadav’ and opined that it has to rest on its own facts keeping in view the declaratory relief made therein, and further what has been stated therein cannot be regarded as a binding precedent for the proposition that in a case of removal or dismissal or termination, a subsequently appointed employee is a necessary party. The said principle shall apply on all fours to a fair price shop owner whose licence is cancelled. We may hasten to add, this concept will stand in contradistinction to a case where the land after having vested under any statute in the State has been distributed and possession handed over to different landless persons. It is because of such allotment and delivery of possession in their favour, that is required under the statute rights are created in favour of such allottees and, therefore, they are necessary parties as has been held in [Ram Swarup & Ors. vs. S.N. Maira & Ors.](#) The subtle distinction has to be understood. It does not relate to a post or position which one holds in a fortuitous circumstance. It has nothing to do with a vacancy. The land of which possession is given and the landless persons who have received the Pattas and have remained in possession, they have a right to retain their possession. It will be an anarchical situation, if they are not impleaded as parties, whereas in a case which relates to a post or position or a vacancy, if he or she who holds the post because of the vacancy having arisen is allowed to be treated as a necessary party or allowed to assail the order, whereby the earlier post holder or allottee succeeds, it will only usher in the reverse situation – an anarchy in law.”

As regards other submission alleging irregularity in running the center in question, this court would observe that the same is not relevant to the instant case.



Order has been passed by the authority after due notice to the petitioner and after hearing the petitioner.

For the reasons aforesaid, this court is not inclined to interfere with the order impugned in writ petition.

Writ petition is dismissed.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	5.8.2019
Transmission Date	NA

