

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7915 of 2011

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SUMAN KUMARI W/O Late Ravi Ranjan Kumar R/O Village - Repura Bali,
P.O. - Jaitpur, P.S. - Saraiya, Distirct - Muzaffarpur

... .. Petitioner

Versus

1. THE STATE OF BIHAR
2. The Director, Integrated Child Development Services, Bihar, Patna
3. The Divisional Commissioner, Tirhut Division, Muzaffarpur
4. The District Magistrate Muzaffarpur, District - Muzaffarpur
5. The District Programme Officer, Muzaffarpur District - Muzaffarpur
6. The Child Development Project Officer, Muzaffarpur District - Muzaffarpur
7. The Mukhiya, Gram Panchayat Raj, Rampur Bali, Block - Saraiya, District - Muzaffarpur
8. The Panchyat Secretary, Gram Panchayat Raj, Rampyur Bali, Block - Saraiya, District - Muzaffarpur
9. Bachchi Sharma W/O Sri Gopal Sharma R/O Repura, Rampur Bali, P.O. - Jaitpur, P.S. - Saraiya, District - Muzaffarpur

... .. Respondent

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Appearance :

For the Petitioner/s	:	Mr.Surendra Kishore Thakur Mr. Subodh Kumar
For the Respondent/s	:	Mr. Binay Kumar Pandey, AC to GA 2

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 01-07-2019

Heard learned Counsel for the petitioner and the learned
Counsel for the respondent State.

The writ petition has been filed claiming relief of
quashing of the order dated 7.2.2011 passed in Service Appeal
No. 215 of 2009, whereby order dated 23.1.2008 passed by
respondent No. 2 cancelling selection of respondent No. 9 as
Anganwari Sevika for Center No. 111 has been set aside.



The petitioner after cancellation of selection of respondent No. 9 under order dated 23.1.2008 issued by Director, Integrated Child Development Service, Bihar, Patna was selected as Anganwari Sevika for the same center.

Counsel for the petitioner submits that once the petitioner had come to be selected as Sevika for the center in question by order dated 23.1.2008, the appellate order passed by the Collector, that also after lapse of period of limitation, is unsustainable since the petitioner was not made party to the proceedings before the Collector.

Counsel for the respondent State, on the other hand, submits that the Collector's order is fully justified. The earlier order of cancellation of selection of respondent No. 9 dated 23.1.2008 was not preceded by any opportunity as contemplated under rules of natural justice. His further submission is that selection of the petitioner was subject to result of the proceedings which were to be undertaken by private respondent No. 9. It is submitted that the order has been passed after due consideration of the circumstances and therefore the same does not merit any interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.



Having considered rival submissions of the parties this Court would advert to the admitted fact that selection of the petitioner was subject to result of the proceedings pending to be taken by respondent No. 9 against cancellation of her selection by order dated 23.1.2008. It is also clear from the facts on record that prior to cancellation of petitioner's selection by order dated 23.1.2008 no opportunity whatsoever was given to the petitioner.

This Court is therefore of the opinion that cancellation of selection of respondent No. 9 by order dated 23.1.2008, was grossly unjust. The instant petitioner had no indefeasible right as her selection was contingent upon finality of the proceedings against the order dated 23.1.2008.

That apart, this Court would observe that interference with the order dated 7.2.2011 passed by the Collector on grounds of the same being violative of natural justice would result in revival of an illegal order dated 23.1.2008 which has been passed admittedly without affording any opportunity to respondent No. 9. Resort to jurisdiction under Article 226 seeking relief, effect of which would be to revive an illegality is wholly misconceived.

The instant case is squarely covered by decision of the Apex Court in the case of ***Raj Kumar Soni Vs State of U.P.***



reported in **(2007) 10 SCC 635**. Relevant extract of the said judgment relying of earlier judgments is being reproduced herein:-

“17. In M.C. Mehta v. Union of India this Court relying upon Venkateswara Rao observed; (SCC p. 244, para 17)

“The above case is a clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law.”

The writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

SNkumar/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	05.07.2019
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