

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14898 of 2014

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Nilu Kumari W/o Nikhil Priyadarshni Resident of Mohalla - East Gandhi
Maidan, P.S. Jehanabad, District - Jehanabad

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Social Welfare Department, Bihar, Patna
3. Commissioner, Magadh Division, Gaya
4. Deputy Director, Welfare, Magadh Division, Gaya
5. District Magistrate, Jehanabad
6. C.D.P.O., Jehanabad
7. Sangeeta Kumari W/o Vidyabhushan Sharma C/o Shashi Bhushan Sharma,
Resident of Mohalla - East Gandhi Maidan, P.S. Jehanabad, District -
Jehanabad

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar Sinha, Advocate
For the Respondent/s : Mr. B.K. Sinha, AC to AAG-V

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 24-09-2019

Heard learned counsel for the petitioner and learned
counsel for the respondent-State.

2. The respondent no.7 was originally selected as
Aanganwari Sevika for the center in- question and her selection
was cancelled on account of her absence on 11.01.2008 at about
12.35 in the afternoon when the center was inspected. The
respondent no.7 assailed cancellation of her selection before the
Authorities on the ground that after completing the work for the
day at center in -question, she had to leave the center on



account of demise of her father. The sudden demise of father of respondent no.7 was considered to be an adequate mitigating circumstances in her favour. The Appellate Authority, therefore, allowed the appeal preferred by respondent no.7 and directed that she be reinstated and cancellation of her selection was held to be bad. The order was passed by the Commissioner on the respondent no.7's Aanganwari Appeal No. 45 of 2008. The instant petitioner, in the meantime, had been selected on the vacancy created by cancellation of the respondent no.7 selection. Since the Commissioner had passed the order on the appeal of respondent no.7 without impleading the petitioner as a party therein, the order was set aside and the petitioner was allowed to appear before the Appellate Authority, namely, the Commissioner in the Aanganwari Appeal No. 45 of 2008. The Division Bench of this Court in L.P.A. No. 1431 of 2011 directed the Commissioner to dispose of the appeal after hearing the instant petitioner.

3. The matter was thereafter considered by the Deputy Director, Welfare, Magadh Division, Gaya in Aanganwari Appeal No. 45 of 2008 after hearing the petitioner and the respondent no.7. The petitioner, therefore, has been heard and the order has now been passed again by the Deputy Director,



Welfare (Appellate Authority) directing reinstatement of respondent no.7.

4. At this juncture, this Court would refer to the decision of the Apex Court in the case of ***Poonam vs. State of U.P. & Others reported in (2016) 2 SCC 779***. The Court would refer to para 53 of the judgment of the Apex Court which reads 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”.

5. Law in this regard is quite clear.

6. The respondent no.7, being the first selected candidate, had a better right to continue as *Aanganwari Sevika* on account of a decision by the authorities that cancellation of her selection was not in accordance with law. The instant petitioner



had acquired the position of *Aanganwari Sevika* only on the basis of same falling vacant on account of removal of the respondent no.7. Once the petitioner has succeeded in establishing her claim, that her removal was not in accordance with law, she is entitled to benefits of such adjudication, for which the petitioner would have to make way. Removal of the petitioner is not based on any stigma or on the basis of any allegation. This aspect of the matter has been considered by the Deputy Director Welfare in his order, wherein, he has clearly held that removal of the petitioner would not operate as a Bar in future selection of the petitioner or would not cause any stigma. He has further held that the experience acquired, in the meantime, will enure to the benefit of the petitioner in the process of the selection in future. The order of the Deputy Director Welfare requires no interference.

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

(Madhuresh Prasad, J)

shyambihari/-

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CAV DATE	
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