

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12455 of 2011

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REENA GUPTA W/O Shri Sanjay Kumar Gupta R/O Vill.- Shambhopur, P.O.
and P.S. Sarai, Distt.- Vaishali

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR and ORS
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur
3. The District Magistrate, Vaishali At Hajipur, Distt.- Vaishali
4. The Deputy Development Commissioner, Vaishali At Hajipur, Distt. Vaishali
5. The Block Development Project Officer , Bhagwanpur, Distt.- Vaishali
6. The Child Development Project Officer, Hajipur, Distt.- Vaishali
7. The Child Development Project Officer ,Bhagwanpur, Distt.- Vaishali
8. The Mukhiya, Gram Panchayat Raj Akbarpur Mahali, Under Bhagwanpur,Block Distt.- Vaishali
9. Neelu Kumari W/O Lalit Kumar R/O Village - Teliya Sarai, P.O. Sarai,P.S.- Sarai, Distt.- Vaishali

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Suman Kumar Singh
For the State	:	Mr.Prabhat Kumar, AC to GA 11
For private respondent		Mr. Vijay Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 29-07-2019

Heard counsel for the petitioner and counsel for the respondents-State as well as counsel for the private respondent.

Petitioner has been selected as Aanganbari Sevika for Centre at Sambhupur, Old Code No. 17, New Code No. 27. Selection was made by Aam Sabha on 04.08.2008, upon vacancy created by ouster of respondent no.9 from her functioning as Aanganbari Sevika for the same Center.



Petitioner's counsel submits that petitioner has been removed by order dated 15.03.2011 passed by C.D.P.O, pursuant to order passed by Commissioner, Tirhut Division on appeal bearing Service (Misc.) Appeal No. 30 of 2010. The same was filed by respondent no.9 against cancellation of her selection pursuant to order dated 15.03.2011 passed by C.D.P.O.

Counsel for the petitioner submits that the matter had been remanded to the Commissioner under order passed by this Court in C.W.J.C.No. 18664 of 2008. Petitioner had neither been impleaded as a party in the said writ proceedings nor she has been impleaded as a party in Service Appeal No. 30 of 2010. On account of order being passed without affording the petitioner opportunity of hearing, counsel for the petitioner submits that cancellation of her selection and reinstatement of respondent no.9 is unsustainable.

It is submitted that petitioner was a necessary party in both writ proceedings as well as appeal proceedings before the Commissioner and for such lapse order passed by the Commissioner stands vitiated.

Counsel for the State-respondent submits that order of the Commissioner, Tirhut Division has taken note of the fact that respondent no.9 had been removed as Anganbari Sevika without



any opportunity of hearing being granted to her and as such order canceling her selection has been set aside and direction for reinstatement was issued by the Commissioner, Tirhut Division. It is a fact that petitioner in the meantime came to occupy the post. Petitioner had no independent right and at best had right to continue during pendency of the appeal of respondent no.9. Once the authority came to the conclusion that respondent no.9 had been removed illegally, they were under legal obligation to reinstate her. This Court is in agreement with the submission advanced by counsel for the State. The order therefore issued by the Commissioner, Tirhut Division does not require any interference.

Submission that petitioner was not made a party is not based on any independent right of the petitioner. It is only when respondent no.9 was removed that petitioner had been selected on vacancy so created. If respondent no.9 had not been removed, petitioner would not have been selected. Respondent no.9 being the earlier/ first appointee was legally entitled to prosecute her cause of action for being restored as Anganbari sevika for the center in question. Once her legal right to continue revives, she has to be put back. Appointment of petitioner, in the meantime cannot defeat the claim for reinstatement of respondent no.9. In this connection, this court would refer to decision of the apex court in



the case of Poonam versus State of Uttar Pradesh and others
reported in (2016) 2 SCC 779.

Petitioner has not been removed on account of any stigma or on the basis of any charge. This Court would thus observe that on account of petitioner's removal pursuant to the order of the Commissioner dated 06.12.2010, petitioner would not suffer any disqualification for selection in future.

Writ petition is dismissed.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.9.2019
Transmission Date	NA

