

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1623 of 2018

In

Miscellaneous Jurisdiction Case No.3065 of 2017

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Sonali Kumari W/o Ram Nandan Kumar R/o Tata Colony, Ward No. 2, Madhopur Panchayat, P.S.- Maner, District- Patna at present Anganwari Sewika at Centre Code No. 91, Tata Colony, Ward No. 2, Madhopur Panchayat, P.S.- Maner, District Patna.

... .. Appellant/s

Versus

1. The State Of Bihar Bihar.
2. The Director, Integrated Child Development Scheme (ICDS), Indira Bhawan, Ram Charitra Singh Path, Boring Canal Road, Patna.
3. The District Magistrate, Patna.
4. The District Programme Officer, (ICDS) Patna.
5. The Child Development Project Officer, Maner, Patna.
6. Madhu Devi W/o Shri Jagannath Pd. Yadav R/o Tata Colony, Madhopur, P.S. Maner, District Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Bishnu Kant Dubey, Advocate
For the State	:	Mr.Gyan Prakash Ojha, GA-7
For the respondent no.6	:	Mr. Abhay Shankar Jha, Advocate
		Mr. Sanjay Kr. Jha, Advocate
		Mr. Hrishiksh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 27-02-2020

Heard learned counsel for the appellant, learned counsel for the State as well as learned counsel for private respondent no.6.

2. In this appeal, the appellant is confining his challenge to the judgment and order dated 03.10.2018 passed in M.J.C. No.3065 of 2017 arising out of C.W.J.C. No.25609 of



2013.

3. The appointment of private respondent no.6 namely, Madhu Devi, as Anganbari Sevika, in Tata Colony, Madhopur, Centre, Code No. 91, was cancelled on the ground that on 26.05.2012. An inspection was conducted at 11:40 A.M. and the Centre was found to be closed and the Sevika and Sahaika were absent. The challenge was made before the Writ Court and the ground was taken that the Inspecting Team visited the Centre at 1.30 P.M. on 26.05.2012 i.e. after working hours, so the question that the centre would remain open at 1.30 P.M. does not arise, inasmuch as the authorities have failed to consider the relevant guidelines of the ICDS as contained in Memo No. 956 dated 14.03.2012, Clause III (1) whereof specifically requires that in case of irregularities found in course of inspection, statements of three beneficiaries must be recorded in order to provide transparency in the proceedings. On this ground, the Writ Petition has been allowed and the matter has been remanded back to the District Programme Officer, Patna, to consider the matter afresh in accordance with law. It was also directed by the Writ Court that the private respondent shall be reinstated on the post, in question, without any delay.

4. When the time has come for implementation of the order of the Writ Court and reinstatement of the private respondent, the present appellant has moved before this Court in



M.J.C. No.3065 of 2017 for modification/review/recall of the judgment dated 06.09.2017 passed in CWJC No. 25609 of 2013. However, the same was dismissed by the learned Single Judge vide judgment and order dated 3.10.2018.

5. The point has been raised by the appellant that she was appointed through an advertisement by due process of law and there is no illegality in her appointment, but it is clear from the Advertisement No. 1/2016 that any appointment would be subject to the order of the Court and a right was reserved to cancel or amend the advertisement at any time and also selection of the appellant by letter dated 27.09.2016 made it clear that the selection would be subject to the terms and conditions of the advertisement. So right from the beginning the appellant was knowing pendency of the case and her appointment will be affected if it goes in favour of original Anganwari Sevika, i.e., the respondent no.6. The claim of the appellant that she is a necessary party and without her presence the order cannot be said to be valid one is completely misconceived as has been held in the case of ***Poonam vs. State of Uttar Pradesh and Others*** reported in ***2016 (1) PLJR (S.C.) 218*** that appellant cannot be treated to be a proper or necessary party and, as such, her impleadment in the case was not at all necessary for adjudication of the dispute in between the respondent no.6 and the State. As the appellant at the relevant



time was not one of the candidate along with the respondent no.6, as such, there was no litigation between the appellant and the respondent no.6.

6. As the appellant, in the present appeal, has not challenged the order passed in the writ Court, in such circumstance, this Court is not required to dwell the issues raised in the writ proceeding. Only this Court has to confine its consideration with regard to the validity of the order passed in the Review Application. As the order of the Review Court is based upon the judgment of the Hon'ble Supreme Court, we do not find any error in the order passed in the Review Application.

7. In such view of the matter, we do not find any merit in this appeal, accordingly, the same is dismissed.

(Shivaji Pandey, J)

(Anjani Kumar Sharan, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
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