

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 19312 of 2018

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Renu Kumari wife of Late Sudhir Prasad Singh resident of village - Nurichak,
P.O. Bouri, P.S. Kashichak, District- Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Nawada.
3. The District Programme Officer, Social Welfare Department, Nawada.
4. The Child Development Project Officer, Kashichak, Nawada.
5. The Block Development Officer, Kashichak, Nawada.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dilip Kumar Tewari, Advocate
For the Respondent/s : Mr. Sunil Kumar Mandal, SC-3

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date : 04.09.2021

The instant case has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

2. The present writ petition has been filed for quashing the order dated 21.03.2018 passed in Case No. 18214/2016 by the District Magistrate, Nawada, whereby and whereunder the appeal of the petitioner has been rejected. The petitioner has also prayed for quashing the original order dated 05.08.2016



passed by the District Programme Officer, Social Welfare Department, Nawada in Case No. 48 (Miscellaneous) Kendra Sanchalan/2016, whereby and whereunder the selection of the petitioner on the post of Anganwari Sevika has been cancelled.

3. The brief facts of the case are that after being selected on the post of Anganwari Sevika at Centre No. 20, Chandinama East Kashichak, Nawada, the petitioner was working honestly and sincerely. The petitioner is stated to be suffering from kidney problem since 2004 and was/is undergoing treatment by the doctors at Patna. On 21.07.2016, since the petitioner was not feeling well, she had filed an application for grant of leave from 24.07.2016 to 31.07.2016. In the morning of 23.07.2016, the condition of the petitioner became critical, hence she got herself treated by the local doctor but the medicines given by the said doctor did not result in any improvement in the condition of the petitioner, hence she was taken to the Sadar Hospital, Nawada, as is also apparent from the prescription dated 23.07.2016 annexed as Annexure -2 to the writ petition. Subsequently, the petitioner was taken to Jamshedpur by her brother for better treatment. It is a matter of record that on 23.07.2016, while the petitioner was undergoing treatment, the B.D.O., Kashichak, Nawada had inspected the centre in question where the



petitioner was posted and had found that the meal was being cooked by the Sahayika. Subsequently, upon receiving the report of the B.D.O., Kashichak, Nawada, the respondent no. 3 had issued a show cause notice to the petitioner stating therein that during the inspection of the centre on 23.07.2016, the petitioner was found absent and the quality of food was also found to be bad as also only five students were found present, hence the petitioner was directed to submit her show cause reply. The petitioner had appeared on the date of hearing fixed before the respondent no. 3 i.e. on 01.08.2016 and had produced the medical certificate in support of her case i.e. being absent for one day, however, the respondent no. 3 by the impugned order dated 05.08.2016 cancelled the selection of the petitioner as Angwanwari Sevika. The petitioner had then filed an appeal before the District Magistrate, Nawada, however, the same has also been rejected by the impugned order dated 21.03.2018. The learned counsel for the petitioner has submitted that a bare perusal of the impugned order dated 05.08.2016 passed by the respondent no. 3 would show that the respondent no. 3 has rejected the case of the petitioner on the ground that in case of emergency, the petitioner ought to have got herself treated at the nearest Primary Health Centre instead of going to the hospital



situated at a long distance, hence her conduct appears to be doubtful, to which it is submitted that the petitioner is suffering from kidney ailments which cannot be treated at any Primary Health Centre inasmuch as there is no facility for treatment of kidney problem, as such since the condition of the petitioner had become critical, she was taken to the Sadar Hospital, Nawada by the villagers, thus the contention of the respondent no. 3 is not correct. It is also submitted that the petitioner had in fact produced the medical certificates in support of her innocence but the same have not been considered by the respondent nos. 2 & 3. The learned counsel for the petitioner has further submitted that the punishment of cancellation of the selection of the petitioner as Anganwari Sevika for absence on only one day is too harsh and excessive, hence is fit to be set aside. The learned counsel for the petitioner has relied upon a Division Bench judgment of this Court in the case of ***Phul Kumari vs. The State of Bihar & others*** reported in ***2019(1) PLJR 1***; paragraph nos. 8 to 12 whereof is reproduced herein below:-

“8. Heard learned Counsel appearing on behalf of the respective parties at length. At the outset it is required to be noted that the original writ petitioner was serving as an Anganwari Sevika for last two decades and she was dismissed from her post of Anganwari Sevika for



remaining absent for one day. According to the appellant herein, she remained absent for three days.

9. Be that as it may, considering the fact that the original writ petitioner remained absent due to sickness/illness for which necessary certificate/ document was submitted and having found that the order dismissing her from the post of Anganwari Sevika for remaining absent for one/three days to be too harsh and as such there was a justification found for remaining absent, as such, the learned Single Judge rightly quashed and set aside the order dismissing her from the post of Anganwardi Sevika. Even for not displaying the board, such a harsh and extreme penalty of dismissal was not warranted in view of the fact that the original writ petitioner served as an Anganwari Sevika for more than two decades.

10. In view of the above, as such we see no reason to interfere with the impugned judgment and order passed by the learned Single Judge allowing the writ petition and quashing and setting aside the order dismissing the original writ petitioner from the post of Anganwari Sevika. At the outset, it is required to be noted that so far as the authority who passed the order of dismissal has not challenged the impugned judgment and order and it is the appellant, original Respondent No. 7, who was appointed in place of the original writ petitioner, has challenged the impugned judgment and order passed by the learned Single Judge.



11. Now, so far as the direction issued by the learned Single Judge against setting aside the appointment of original Respondent No. 7 is concerned, at the outset it is required to be noted that as such the same is a consequence of allowing the writ petition and quashing and setting aside the order dismissing the original writ petitioner as an Anganwari Sevika. Once her dismissal order is being set aside, in that case, she has to be reinstated and when the appellant, original Respondent No. 7, was appointed in place of original writ petitioner, the necessary consequences shall follow.

12. In view of the above and for the reasons stated above, we see no reason to interfere with the impugned judgment and order passed by the learned Single Judge in C.W.J.C. No. 19141/2016.”

4. The learned counsel for the petitioner has also referred to a judgment rendered by this Court in the case of **Prabha Devi vs. The State of Bihar & Others** reported in **2018(3) PLJR 800**, paragraph nos. 7 to 10 whereof are reproduced herein below:-

“7. It is a well settled law that an action of termination has a serious consequence on the livelihood of the incumbent and would amount to violation of the rights enshrined under Article 21 of the Constitution. In any view of the matter, the order of termination dated 29.04.2012 as also the appellate order are not only harsh and excessive but also takes into consideration extraneous evidence and materials, which were never



part of the record i.e. the version of the Sahayika to the effect that the petitioner was an aggressive woman, was attending duties only twice a week and used to abuse and assault other employees, hence on this score also the impugned orders dated 13.02.2013 and 30.12.2014 are vitiated and fit to be set aside.

8. Another aspect of the matter is that the petitioner was seriously ill as is apparent from the various certificates annexed to the writ petition, issued by the doctors/hospital, which have not been controverted by any evidence by the respondents. The law on the subject matter under consideration is quite clear, as has been laid down by this Court in a judgment reported in 2011(3) PLJR 140, paragraph no. 6, 8 & 9 whereof are reproduced herein below:-

“6. Learned counsel for the State has taken the stand that the factum of absence is not disputed. Non-delivery of take home ration is also not disputed and it is primary responsibility of the petitioner to take proper steps with regard to grant of leave. Authorities have only done what was required to be done on the failure of the petitioner to deliver.

8. The Court therefore opines that the respondent authorities have been insensitive as shown above and they have taken a hyper-technical view in terminating the service of the petitioner for one day. The punishment of termination is not only harsh and excessive but also arbitrary per se and violative of Article 14 of the Constitution of India.

9. This writ application is allowed. The order of termination contained in Annexure-2 dated 14.8.2009 passed by the District Programme Officer



as well as the order in appeal contained in Annexure-11 passed by the District Magistrate are quashed. The petitioner would be allowed to rejoin and carry her responsibility. Petitioner is also well advised to seriously discharge her duty and responsibility.”

9. It would be relevant to further rely on a judgment passed by this Court in a case reported in 2011(3) PLJR 140 (Punam Kumari vs. State of Bihar), paragraph nos. 8 & 9 whereof are reproduced herein below:-

“8. The Court therefore opines that the respondent authorities have been insensitive as show above and they have taken a hyper-technical view in terminating the service of the petitioner and that too for absence of the petitioner for one day. The punishment of termination therefore is not only harsh and excessive but also arbitrary per se and violative of Article 14 of the Constitution of India.

9. The writ application is allowed. The order of termination contained in Annexure-2 dt. 14.08.2009 passed by the District Programme Officer as well as the order in appeal contained in Annexure-11 passed by the District Magistrate are quashed. The petitioner would be allowed to rejoin and carry her responsibility. Petitioner is also well advised to seriously discharge her duty and responsibility.”

10. For the reasons mentioned hereinabove, I find that the punishment of termination inflicted on the petitioner herein is too severe and harsh and not at all commensurate to the allegations of one day absence on the part of the petitioner herein, hence the same is not sustainable in the eyes of law. Accordingly, the order passed by the District Programme Officer, Kaimur at



Bhabua dated 29.04.2012, the order dated 13.02.2013 passed by the Collector, Bhabua at Kaimur as also the order dated 30.12.2014 passed by the Deputy Director, Welfare, Patna Division, Patna are hereby quashed.”

5. Per contra, the learned counsel for the respondent-State has submitted that since a serious allegation has been leveled against the petitioner of not only being absent for one day from her duties but also the quality of food being served to the children at the centre in question having been found to be bad, the petitioner has been justifiably proceeded against and accordingly her selection has rightly been cancelled by the respondent no. 3 as also her appeal has been aptly rejected by the respondent no. 3, hence there is no ambiguity whatsoever.

6. I have heard the learned counsel for the parties and perused the materials on record, from which it is apparent that the petitioner has been terminated from the post of Anganwari Sevika merely on account of her being absent from her duties for one day, regarding which the petitioner had submitted medical certificates/prescriptions, issued by the Sadar Hospital, Nawada, which have not been disputed by the respondents in the present proceedings, hence this Court finds that the action of the respondents in cancelling the selection of the petitioner on the post of Anganwari Sevika is not only severe and harsh but



also not commensurate to the severity of the allegation of one day absence, leveled against the petitioner, hence the same is not sustainable in the eyes of law. Accordingly, the order dated 05.08.2016 passed by the District Programme Officer, Social Welfare Department, Nawada and the order passed by the District Magistrate dated 21.03.2018, are hereby quashed. As a result of quashing of the impugned orders dated 05.08.2016 and 21.03.2018, this Court directs the respondents to reinstate the petitioner forthwith along with full back wages and all other admissible consequential benefits.

7. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/AFR	AFR
CAV DATE	18.08.2021
Uploading Date	06.09.2021
Transmission Date	

