

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15130 of 2018

=====

Minu Kumari @ Minu Kumari Devi W/o Ravindra Sahani, resident of Village- Dumari, Post- Dumari, Dumari Urt. Mahamadpur Mobark, District- Muzaffarpur, Bihar 843119

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Social Welfare Department
2. The Director ICDS Bihar, Patna.
3. The Commissioner of Tirhut (Muzaffarpur) Division, Muzaffarpur
4. The District Magistrate, Muzaffarpur.
5. The District Programme Officer of Muzaffarpur.
6. The Child Development Project Officer, Mushahari, Gramin Muzaffarpur.
7. The In- charge Medical Officer, Mushahari, Gramin, Muzaffarpur.
8. Smt. Sangita Kumari, Wife of Upendra Sahni, resident of Village- Dumari, Police Station- Mushari, District- Muzaffarpur and at present Aanganbari Center No. 156 Mushari Gramin Block- Mushari, Police Station- Musharhi, District- Muzaffarpur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr Mrityunjay Kumar, Advocate
For the Respondent/s	:	Mr Md Raisul Haque, SC X
		Mr Md Obaidullah, AC to SC X

=====

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 17-10-2022

Heard learned counsel for the petitioner and the respondents.

2 Subsequent upon the cancellation of selection of Respondent No 8 under order dated 23.07.2011 passed by the District Programme Officer, the petitioner was selected as Angan Bari Sevika for the Center in question. Respondent No 8 had gone



in appeal before the District Magistrate and has succeeded in the appeal. By virtue of setting aside of her removal under order dated 07.11.2017 passed by the District Magistrate, she has been reinstated as Angan Bari Sevika for the Center in question.

3 Learned counsel for the petitioner submits that the order has been passed after seven years whereas the requirement under the Guideline is to pass an order within a month. The petitioner, who had become the Angan Bari Sevika of the Center in question, has wrongly been removed.

4 The learned State Counsel submits that since Respondent No 8 had succeeded before the District Magistrate, she was entitled to the fruits of the order resulting in her reinstatement.

5 Upon consideration of the rival submission, this Court would observe that the petitioner had no independent right for continuing as an Angan Bari Sevika. Petitioner was appointed only upon removal of private Respondent No 8. Had she not been removed, the petitioner would not have been appointed. Private Respondent No 8 was pursuing the remedy available against her removal, which has been set aside by the competent authority and, therefore, she was entitled to the fruits of the order. The law in this regard is well settled in the case of *Poonam -Versus- State of*



Uttar Pradesh & Others, (2016) 2 Supreme Court Cases 779,

paragraph 53 of which reads as follows:

“53. We have referred to the said decision in Ramesh Hirachand case⁴⁵ 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.”

6 Under such circumstances, petitioner has no independent right and by virtue of appointment created by removal of Respondent No 8, the petitioner cannot claim indefeasible right to continue as Angan Bari Sevika. Once it has been held that Respondent No 8 was wrongly removed, the petitioner, who by virtue of removal of Respondent No 8, had occupied the office, Respondent No 8 was legally entitled to be reinstated. Respondent No 8 cannot be denied the fruits of the order setting aside her removal.



7 The petitioner cannot, thus, assail the order on the ground that she was not impleaded as a party.

8 Writ petition is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.10.2022
Transmission Date	NA

