

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.106 of 2020

In
Civil Writ Jurisdiction Case No.17349 of 2015

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Reshmi Devi Wife of Sri Deobansh Paswan resident of village- Manjurah, P.s.
and Distt.- Aurangabad

... .. Appellant/s

Versus

1. The State of Bihar
2. The Director, Integrated Child Development Service, Department of School Welfare, Indira Bhawan, Ram Charitra Singh, Path, Patna
3. Divisional Commission, Magadh Division, Gaya
4. Disttict Magistrate/Collector, Aurangabad, District- Aurangabad
5. District Programme Officer, Aurangabad, District- Aurangabad
6. Child Development Project Officer, Aurangabad, District- Aurangabad

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Rajendra Kumar Jain, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAJAN GUPTA
and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJAN GUPTA)

Date : 19-05-2022

The present appeal has been filed against the judgment dated 04.04.2018 passed in CWJC No. 17349 of 2015 whereby and where under the writ petition has been dismissed.

2. The writ petitioner- appellant herein had filed a writ petition for quashing the order dated 23.05.2009 passed by the District Programme Officer, Aurangabad in Case No. 9 of 2009 whereby



and where under the services of the petitioner as Anganbadi Sevika at Gram Panchayat, Khaira Bind, Manjurahi Anganbadi Center in the District of Aurangabad had been terminated as also the appellate order dated 16.02.2010 passed by the District Magistrate, Aurangabad in Anganbadi Service Appeal No. 30 of 2009 apart from having challenged the order dated 07.09.2011 passed by the Divisional Commissioner, Magadh Division in Appeal No. 82 of 2010.

3. The brief facts of the case, according to the appellant, are that she was selected and appointed as Anganbadi Sewika, whereafter she was performing her duty sincerely, however, on 22.05.2009 the District Panchayat Raj Officer, Aurangabad along with Block Panchayati Raj Officer had visited the center of the appellant herein which was found to be closed and a report to said effect was submitted before the District Programme Officer, Aurangabad stating therein that upon inspection, the said center was found closed and several persons had complained that



the beneficiary children have not received *Poshahar* (take home ration). It is the further case of the appellant herein that the District Programme Officer, Aurangabad, upon having received the said enquiry report, had terminated the services of the appellant vide order dated 23/05/2009, without issuance of any show cause, which was challenged by the appellant herein in CWJC No. 12208 of 2009, however, the same was disposed off by a learned Single Judge of this Court vide order dated 15.09.2009 and the appellant herein was granted liberty to file an appeal. The appellant herein had then filed an appeal vide Anganbadi Appeal No. 30 of 2009 before the Collector, Aurangabad, however, the same was dismissed by an order dated 16.02.2010. The appellant herein had then challenged the said order dated 16.02.2010 by filing a writ petition bearing CWJC No. 7396 of 2010, however, the same was permitted to be withdrawn vide order dated 23.08.2010 passed by a learned Single Judge of this Court with liberty to the appellant herein to file appeal before the



Commissioner, Magadh Division, Gaya. The appellant herein had then filed an appeal before the Divisional Commissioner, Magadh Division, Gaya, however, the same had been dismissed vide order dated 07.09.2011, which has been challenged before this Court. It is submitted that the order dated 23.05.2009 has been passed terminating the services of the appellant herein without issuance of any show cause, hence, the same is fit to be set aside.

4. Per contra, the learned counsel for the Respondent State has submitted by referring to the counter affidavit filed in the writ proceedings that gross irregularities were found at the center where the appellant was posted upon inspection conducted by the District Panchayat Raj Officer, Aurangabad and Block Panchayati Raj Officer, Aurangabad jointly on 22.05.2009 and moreover, the said center was also found to be closed and the appellant herein was found to be absent. It is also submitted that on the date of inspection i.e. 22.05.2009, date had also been fixed for



distribution of take home ration but the take home ration could not be distributed amongst the targeted beneficiaries due to closure of the center. It is further submitted that upon consideration of the inspection report dated 22.05.2009, a proceeding vide Anganbari Sevika Termination Case No. 09 of 2009 was initiated by the District Programme Officer, Aurangabad and the entire materials on record were considered whereupon it was found that the directions/ guidelines issued by the Director, I.C.D.S., Bihar, Patna vide letter dated 15.05.2009 has been clearly violated by the appellant herein. It is also submitted that the Hon'ble Apex Court has also issued strict guidelines for distribution of *Poshahar* and take home ration amongst the targeted beneficiaries and any failure to do so is to be treated as disobedience of the direction of the Hon'ble Supreme Court of India. It is also submitted that in the aforesaid guidelines issued by the Director, I.C.D.S., Bihar, Patna dated 15.05.2009, it has also been postulated that in case of non-distribution of



take home ration on the date fixed, the services of the concerned Sevika is to be cancelled and no explanation shall be accepted with regard to the same. In such view of the matter, the District Programme Officer, Aurangabad had issued an order dated 23.05.2009 terminating the services of the appellant herein.

5. It is further submitted by the learned counsel for the Respondents that the issue of non-grant of an opportunity to the appellant herein stands redressed in as much as while the appellant herein had assailed the said order dated 23.05.2009 before this Court in CWJC No. 12008 of 2009, a learned Single Judge of this Court, instead of interfering with the said order dated 23.05.2009, had granted liberty to the appellant herein to file appeal before the District Magistrate, Aurangabad and the said opportunity granted to the appellant herein was also availed by the appellant in as much as she filed an appeal bearing Anganbadi Appeal No. 30 of 2009 and the District Magistrate, Aurangabad, after hearing the learned counsel for



the respective parties as well as after considering all the facts and circumstances of the case and the material available on record, had dismissed the appeal of the appellant herein by an order dated 16.02.2010. Thereafter, the appellant had also preferred an appeal before the learned Commissioner, Magadh Division, Gaya vide Appeal no. 82 of 2010, however, the same was also, after detailed hearing, dismissed by a reasoned order dated 07.09.2011. The learned counsel for the respondent State has pointed out that the appellant herein had also filed an appeal before the Director, I.C.D.S., Bihar, Patna, however, the same was returned back to the appellant herein by an order dated 17.09.2013 passed by the Assistant Director, I.C.D.S., Bihar, Patna, nonetheless, the said order dated 17.09.2013 has never been challenged by the appellant herein, hence no cause of action survives.

6. We have heard the learned counsel for the appellant and gone through the materials on record. It would be apt to reproduce the relevant



portion of the impugned judgment dated 04.04.2018, herein below:-

“3. The petitioner has now filed the instant writ petition seeking to challenge all the orders issued right from the order dated 23.5.2009, issued by the District Programme Officer upto order dated 7.9.2011, in Appeal No. 82 of 2010, passed by the Divisional Commissioner, Magadh Division, Gaya rejecting petitioner’s appeal. All the said orders have earlier been challenged by the petitioner by filing writ petitions as noted above.

4. The petitioner has filed instant writ petition without assailing order dated 17.9.2013 of the Assistant Director, ICDS returning her appeal by assigning the reason that he was not competent authority to consider petitioner’s appeal.

5. Merely by relying upon order dated 30.4.2015, passed in C.W.J.C.No. 446 of 2014 & 3489/2015 filed by other similarly situated other Anganbadi Sewika namely Bimla Devi and Kavita Devi. Petitioner has approached this Court to challenge all the said orders, the last being order dated 7.9.2011. That also has been done belatedly without assailing order dated 17.9.2013, returning petitioner’s appeal.

6. In view of the aforesaid facts, this



Court finds that no relief can be granted to the petitioner at such belated stage. This Court also notices that since order dated 17.9.2013, passed by the Assistant Director, ICDS, Bihar, has not been challenged, no ground has been made to interfere with the same. The petitioner cannot be permitted to assail all the orders right from the orders passed by the District Programme Officer to the Appellate authority by way of instant proceeding.

7. The writ petition appears to be misconceived and the same is dismissed.”

7. We find from the records that the appellant herein had challenged the order dated 07.09.2011 passed in Appeal No. 82 of 2010 by the Commissioner, Magadh Division, Gaya, only in the year 2015, belatedly by filing a writ petition bearing CWJC No. 17349 of 2015, though during the interregnum period she had preferred one another writ petition bearing CWJC No. 12938 of 2012, which was disposed off vide order dated 23.08.2012, relegating the appellant herein to avail the remedy of filing an appeal before the



Director, I.C.D.S., Bihar, Patna. Thereafter, the appellant had filed appeal before the Director, I.C.D.S., Bihar, Patna, however, the same was returned to the appellant herein on 17.09.2011, which till date, has not been challenged either before the learned Single Judge or before this Court. Consequently, we find that the appellant has been granted ample opportunity to put forth her defence against the order of termination dated 23.5.2009 passed by the District Programme Officer, Aurangabad not only before the District Magistrate, Aurangabad but also before the Commissioner, Magadh Division, Gaya, who had meticulously examined the case of the appellant and has come to the conclusion that there is no infirmity in the order dated 23.5.2009 passed by the District Programme Officer, Aurangabad, terminating the services of the appellant herein, hence no interference is warranted at this belated stage as far as the order of termination dated 23.05.2009 is concerned. We also, in the facts and circumstances of the case, find no infirmity in



the impugned judgment dated 4.4.2018 so as to warrant any interference, consequently, the appeal stands dismissed not only on merit but also on the ground of delay in as much as there is a delay of about 638 days in filing the appeal, for which no cogent much less sufficient cause has been shown so as to warrant condonation of delay in filing the appeal.

(Rajan Gupta, J)

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	NAFR
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