

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6129 of 2021

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Saloni Kumari Daughter of Anil Kumar Seth @ Anil Kumar Resident of Main
Bazar Dharamshala Road, Barbigha, P.S. - Barbigha, District- Sheikhpura.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Social Welfare
Department, Government of Bihar, Patna
2. The Director, I.C.D.S., Social Welfare Department, Government of Bihar,
Patna
3. The Divisional Commissioner, Munger
4. The District Magistrate, Sheikhpura
5. The District Programme Officer, Sheikhpura
6. The Child Development Project Officer, Ghat Kusumbha, P.S. Korma,
District- Sheikhpura.
7. Madhusudan Mahto Son of Late Sahdeo Mahto Resident of Village -
Gadbadiya, P.S. - Korma, District- Sheikhpura.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bijendra Kumar, Advocate Mr. Devendra Prasad Singh, Advocate
For the Respondent/s	:	Mr. Sunil Kumar Mandal, SC 3 Mr. Arjun Prasad, AC to SC 3

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 21-04-2022

Heard learned counsel for the parties.

2. In the instant petition, petitioner has prayed for the
following relief/reliefs:

“That the present writ application is for
issuance of an appropriate writ/writs for quashing the
office order bearing memo no. 372 dated 12.09.2017
(Annexure-7) as issued by the District Magistrate,
Sheikhpura (Respondent No. 4) by which the
selection/appointment of the petitioner as Lady
Supervisor has been cancelled as well as the order
dated 23.10.2018 as passed in Civil Service Appeal
No. 14/2017 (Annexure – 8) passed by the Divisional
Commissioner, Munger (Respondent No. 3) affirming



the order of the District Magistrate dated 12.9.2017 (Annexure – 7).

And further direction be issued to reinstate the service of the petitioner and pay the remuneration/salary for the period of her retrenchment with all consequential benefit.

And any other relief/reliefs be granted to the petitioner for which he is entitled under the law.”

3. The petitioner was initially appointed as Lady Supervisor in the year 2011. She remained three days absent on different dates due to which show cause notice was issued to the petitioner on 30.05.2016. Thereafter, similarly she remained absent from 15.03.2017 to 18.03.2017 for a period of three days. Thus, another show cause notice was issued on 18.03.2017 and in the second show cause notice further the allegation is that petitioner has not undertaken the mapping properly. In the light of these allegations, on receipt of petitioner's explanation dated 25.07.2016 and 20.03.2017. The competent authority proceeded to cancel the order of appointment of the petitioner on 12.09.2017. Feeling aggrieved and dissatisfied with the order of cancellation, petitioner preferred appeal and it was rejected on 23.10.2018. Thus, the petitioner present this petition.

4. Learned counsel for the petitioner submitted that petitioner is working as Lady Supervisor since 2011 and there were no allegations against the petitioner. For remaining unauthorized absent for six days and that too with the reason that



she was suffering from certain illness, cancellation of appointment would be too harsh. If there are any mistakes in undertaking mapping, the next higher authority should have rectify the mapping. In the light of these facts and circumstances and the fact that the petitioner has not been subjected to enquiry on the allegation of certain alleged irregularities in mapping, the impugned orders are liable to be set aside.

5. *Per contra*, learned counsel for the respondents resisted the contention that there were allegations of remaining unauthorized absent on three spells in the year 2016 - 2017 for a period of six days. That apart there were certain irregularities in mapping by the petitioner which resulted in cancellation of process of appointment. In this regard, petitioner was provided show cause notice on two occasions namely on 30.05.2016 and on 18.03.2017 for which the petitioner's reply dated 25.07.2016 and 20.03.2017 were not satisfied, therefore, competent authority has proceeded to cancel the order of appointment issued to the petitioner. Further it has been upheld by the Appellate Authority on 23.10.2018, therefore, no interference is called for in respect of cancellation of appointment of the petitioner dated 12.09.2017 and further its confirmation on 23.10.2018.

6. Heard learned counsel for the respective parties.



7. Crux of the matter in the present petition is whether petitioner is entitled to enquiry or not? Further cancellation of appointment would be too harsh or not?

8. Undisputed facts are that petitioner was appointed as a Lady Supervisor in the year 2011 and she remained unauthorized absence for six days on three spells during the intervening period from 2016 to 2017. Show cause notices were issued on two occasions in the year 2016 and 2017 for which petitioner has submitted reply and taken the defence that for remaining unauthorized absence is due to illness. Even though petitioner has not produced medical certificate in support of the unauthorized absence, it is to be noted that remaining unauthorized absent for three spells that too for two to three days absent, the respondents cannot take contention that it must be supported by medical certificate. Medical certificate can be insisted only if there is any longer unauthorized absent. In the present case in 2016 petitioner remained absent for two days and one day and in the year 2017 for three days.

9. Further allegation is that petitioner had committed alleged misconduct while preparing mapping. In this regard, if there are any serious issue, the enquiry was warranted as to find out whether the petitioner has purposely conducted mapping in



order to do certain favours. The respondents have not held any enquiry against the alleged mapping issue is considered.

10. While cancelling order of appointment the authority has not referred to the show cause notice and reply and further authority has not asked the petitioner to furnish medical certificate in respect of remaining unauthorized absent. In the light of these facts and circumstances, cancellation of appointment for remaining absent and without holding enquiry in respect of alleged misconduct stated to have been committed by the petitioner in preparing mapping cannot be ignored, therefore, the petitioner has made out a *prima facie* case. Hence, orders dated 12.09.2017 (Annexure 7), 23.10.2018 (Annexure 8) stand set aside. Writ petition stands allowed. Petitioner shall be taken back to duty and extend all monetary benefits during the intervening period from the date of impugned order till reinstatement.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	27.04.2022
Transmission Date	

