

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.784 of 2021

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Ginni Kumari, female, aged about 30 years, Wife of Vinod Gupta resident of
village- Shahpur, P.S.- Sonbarsa Raj, District- Saharsa

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Bihar, Patna
2. The Principal Secretary, Department of Social Welfare, Government of Bihar, Patna
3. The Director, Department of Social Welfare(I.C.D.S.), Government of Bihar, Patna
4. The Divisional Commissioner, Koshi Division, Saharsa
5. The Regional Development Officer, Koshi Division, Saharsa
6. The District Magistrate, Saharsa
7. The District Programme Officer, Saharsa
8. The Block Development Officer, Sonbarsa Raj, District- Saharsa
9. The Child Development Project Officer, Sonbarsa Raj, District- Saharsa
10. The Anganbari Lady Supervisor, Child Development Project, Sonbarsa Raj, District- Saharsa
11. The Mukhiya, Gram Panchayat Shahpur, P.S.- Sonbarsa Raj, District- Saharsa
12. Renu Kumari wife of Bhushan Gupta resident of village and P. O.- Shahpur, P.S.- Sonbarsa Raj, District- Saharsa

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Amarnath Jha, Adv.
For the State	:	Mr. Gyan Prakash Ojha, GA-7
For the Respondent no 12	:	Mr. Pramod Mishra with Mr. V.K. Mukul, Advocates

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 20-07-2022

Heard learned counsel for the petitioner, learned counsel
for the State and learned counsel for the private Respondent



No.12.

2. The private Respondent No.12 was earlier serving as '*Sevika*' at the center in question. She was removed based on some inspection conducted by a lady supervisor. The order of removal was assailed by the respondent No.12 in C.W.J.C. No 10274 of 2014. This Court, by order dated 28-11-2017, remanded the matter to the Appellate Authority considering the grounds raised in the appeal filed by the Respondent No.12 in Anganwari Appeal No. 04 of 2012.

3. It is the petitioner's case that, in the meantime, she had been selected as '*Sevika*' for the center in-question. The appeal of Respondent No. 12, upon remand, was numbered as *Anganwadi* Appeal Case No. 11 of 2017-2018. The cancellation of selection of respondent No.12 was not found to be in accordance with law. Accordingly, the order passed by the District Programme Officer, Saharsa in *Anganwadi* Case No. 89/2011-12 was set aside. As a consequence to which, the respondent No.12 was being reinstated.

4. The petitioner, in the meantime, has come to occupy the position based on a selection letter dated 17-02-2014 (Annexure-1). Clause- 2 of the selection letter explicitly recorded that the selection is subject to result of the decision of



the competent court in the pending dispute. It is in this circumstance that the petitioner was required to make way for Respondent No.12 to join as *Anganwadi Sevika* for Center No.20, Ward No.7, Sahpur, Purab Baazar. The petitioner was, thus, required to be removed and her selection was cancelled under order dated 04-07-2020, which has been assailed in the instant proceedings.

5. It is submitted by the petitioner's counsel that the order dated 04-07-2020 is violative of the principles of natural justice and without hearing the petitioner.

6. In view of the facts and circumstances, taken note of above, this Court finds that the selection of the petitioner was subject to the decision of the competent Court in the pending dispute. The petitioner would not have been selected if respondent No.12 had not been removed. She, thus, had no right to selection independent of the Respondent No.12. Therefore, her selection was made with explicit condition that it was subject to result of Court proceedings. The selection of the petitioner has also not been cancelled due to any allegation and does not carry any stigma. Petitioner's selection has been cancelled to make way for the respondent no.10 to avail the benefits of the order passed in her favour. The plea of natural



justice raised by the petitioner in the facts and circumstances is untenable as would be evident from decision of the Hon'ble Apex Court in case of **Poonam vs. State of Uttar Pradesh** reported in **(2016) 2 SCC 779** is worth consideration. Paragraph Nos. 49, 53 and 54 are relevant to the instant case, which are being reproduced:-

“49. In the instant case, Shop No. 2 had become vacant. The appellant was allotted the shop, may be in the handicapped quota but such allotment is the resultant factor of the said shop falling vacant. The original allottee, that is, the respondent, assailed his cancellation and ultimately succeeded in appeal. We are not concerned with the fact that the appellant herein was allowed to put her stand in the appeal. She was neither a necessary nor a proper party. The appellate authority permitted her to participate but that neither changes the situation nor does it confer any legal status on her. She would have continued to hold the shop had the original allottee lost the appeal. She cannot assail the said order in a writ petition because she is not a necessary party. It is the State or its functionaries who could have challenged the same in appeal. They have maintained sphinx like silence in that regard. Be that as it may, that would not confer any locus on the subsequent allottee to challenge the order passed in favour of the former allottee. She is a third party to the lis in this context.....

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

54. In view of the aforesaid premises, we do not perceive any merit in this appeal and, accordingly, the same stands dismissed. There shall be no order as to costs.”

7. Having regard to the facts and circumstances, as noted above and the legal position, this Court is not inclined to interfere with the cancellation of the petitioner’s selection under the 01-07-2020 passed by the District Magistrate, Saharsa in *Anganwari* Appeal No. 11 of 2017-18 as contained in Annexure-3 to the writ petition.

8. The writ petition is dismissed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	11-08-2022
Transmission Date	

