

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1354 of 2018

In
Civil Writ Jurisdiction Case No.17604 of 2015

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Chanda Sinha Wife of Sajay Kumar, Resident of Village- Birnia, Police
Station- Bahadurganj, District- Kishanganj.

... .. Appellant/s

Versus

1. The State Of Bihar and Ors
 2. The District Magistrate-cum-Collector, Kishanganj.
 3. The District Programme Officer, Kishanganj.
 4. The Child Development Project Officer, Bahadurganj, District- Kishanganj.
- Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Abdul Wadood, Advocate
		Mr. Bijay Kumar Pandey, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha -GA-7

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 27-09-2022

The present appeal is arising out of the order dated 07.08.2018 passed by the learned Single Judge in CWJC 17604 of 2015 by which the claim of the appellant-petitioner for setting aside the order dated 24.09.2015 issued by the District Magistrate-cum- Collector, Kishanganj (respondent no.2) in Appeal Case No. 13/2012 affirming the order dated 18.01.2012 by the respondent no. 3- the District Programme Officer of Kishanganj was affirmed.

2. The matrix of facts giving rise to the present appeal is/are as follows:-



3. Vide letter No. 43 dated 11.09.1997, the appellant-petitioner was selected as an 'Anganwadi Sevika' by the respondent number 4, the Child Development Project Officer, Bahadurganj, Kishanganj (henceforth for short, "the CDPO"), pursuant to the recommendation made by the Deputy Development Commissioner vide letter no. 255 dated 03.09.1997, (as contained in Annexure-1 to the writ application).

4. Vide letter No. 21 dated 07.01.2012, the respondent no. 3, the District Programme Officer, Kishanganj (henceforth for short, "the DPO") issued show cause notice to the appellant-petitioner with the allegation that upon visit to the Aanganwadi Centre, it was found that :

- (i) the centre was closed;
- (ii) there was no children at the said Centre;
- (iii) the Centre is running in her house;
- (iv) the 'Aanganwadi Sevika' is her own mother-in-law.

5. On 16.01.2012, the appellant-petitioner appeared and filed show cause stating that due to severe cold wave, the children who had assembled at Aanganwadi Centre at 10:00 A.M had left home early after taking their respective



meals. It was further submitted that they were present and the Center was opened. The further contention of appellant-petitioner is that in absence of any Government building, her house was being used as the Aanganwadi Centre and so far as the allegation of Aanganwadi Sahayika being her mother-in-law is concerned, she submitted that the said 'Sahayika' belongs to another caste and is not her mother-in-law. The show cause further narrated that the beneficiaries have submitted that the Center is running smoothly.

6. However, ignoring her show cause and without conducting any enquiry in the matter, the respondent no.3 terminated her service on 18.01.2012 beside terminating the Aanganwadi Sahayika too with direction for taking steps for fresh selection.

7. The appellant- petitioner thereafter, preferred appeal before the respondents-District Magistrate, Kishanganj who vide order dated 24.09.2015 which was issued vide memo no. 571 dated 28.09.2015 (in Appeal Case No. 13 of 2012) chose not to interfere with the order of the respondents "the DPO" and rejected her appeal.

8. Aggrieved by the said decisions of the respondent DPO and the District Magistrate respectively, the



appellant- petitioner preferred CWJC No. 17604 of 2015.

9. The contention of the appellant- petitioner before the writ Court was that ignoring her show cause and/or conducting any enquiry, the respondent No. 3 terminated her services as 'Aanganwadi Sevika' and the appeal too was dismissed by the respondent no. 2 in a routine manner.

10. The matter was heard at length on 07.08.2018 whereafter the learned Single Judge dismissed the writ petition accepting the version put forward by the respondents dismissed the writ petition stating the same is devoid of merit.

11. Aggrieved, the appellant- petitioner preferred appeal which is now before this Court.

12. Heard learned counsel for the parties.

13. The contention of the appellant- petitioner is that she was selected/appointed in the year 1997 and there was no complaint against her for 14 long years and she had worked to the complete satisfaction of the beneficiaries as well as the respondents. It is further submitted by the counsel representing the appellant-petitioner that on 06.01.2012, the State was reeling under severe cold wave and in the aforesaid background, the children after taking their meal left home early and as such during the inspection, no child was present. It is his further



submission that once the appellant- petitioner was put on show cause and she submitted reply refuting the allegations made therein, the respondents were duty bound to conduct an enquiry in the matter, which unfortunately was not done and within a days of submission of the show cause in the matter, the order in question was passed. The appeal before the District Magistrate, Kishanganj too was rejected in a routine manner without any application of mind. The learned Single Judge has not appreciated factual aspects of the matter and in non-consideration of Appellant- Petitioner's plea like show cause.

14. *Per contra*, learned counsel for the State put forward its submission that the order in question was passed after inspection in which her hut was found closed and there were no children. It was further found that the 'Aanganwadi Sahayika' is her mother-in-law and as such the writ Court rightly dismissed her writ application and after a decade, no interference is needed.

15. The matter was earlier taken up on 14.07.2020 and this Court after hearing the parties at length were *prima facie* satisfied that in the absence of domestic enquiry on the allegation that the Aanganwadi Centre was closed on the particular day, when the inspection was made, the



authorities should not have proceeded to terminate/dismiss the services of the appellant-petitioner. The order dated 14.07.2022, is incorporated herein below for the proper appreciation of the case.

“Prima facie the appellant has made out a case on the ground that in the absence of domestic enquiry on the allegation that Anganwari Centre was closed due to severe cold on a particular date which was inspection date. In the absence of holding a domestic enquiry the authorities proceeded to terminate/dismiss the services of the appellant/Anganwari Sevika.

During pendency of the litigations the concerned authority must have recruited Anganwari Sevika afresh. Therefore, question of displacing newly appointed Anganwari Sevika may not be appropriate. Therefore, we are of the suggestion to the respondent-authorities whether the appellant could be compensated by paying a sum of Rs. 5 lakhs, having regard to the length of service of the appellant or whether appellant could be accommodate to the post of Anganwari Sevika with a consequential benefits.

Learned counsel for the appellant is also hereby directed to ascertain



whether appointment of new Anganwari Sevika was with any rider that such selection and appointment of new incumbent is subject to outcome of litigation filed by the appellant or not?

Re-list this matter on 28.07.2022”.

16. Subsequent to the said order the State filed supplementary counter affidavit and it is important to bring on record paragraph nos 5 to 8 of the said affidavit.

“ 5. that it is most humbly and respectfully stated and submitted that vide Memo No:- 704 dated 29.06.2018 of the District Programme Officer, Kishanganj directed for organizing General Meeting for requirement on the vacant post of Sevika Sahayika and in that memo it has been clearly mentioned that the selection for those centres which are sub-judice before Hon’ble High Court at Patna shall be influenced by the order of Hon’ble High Court.

6. that it is stated and submitted that in the light of abovementioned Memo No:- 704 dated 29.06.2018 of the District Programme Officer, Kishanganj, the selection of Priyanka Kumari has been done as Aganwari Sevika for Aganwari Centre No:- 192, Ward No:- 02, Motiganj Biraniya



Bahadurganj.

7. that it is relevant to State that in the appointment letter issued to Priyanka Kumari, selected Sewika for Anganwari Centre No:- 192, Ward No:- 02, Motiganj Biraniya, Bahadurganj with categorical stipulation that the appointment shall be covered by any order of court of law.

8. That it is most humbly and respectfully submitted that there is not any departmental circular/guideline to pay compensation in connection with the dismissal of Anganwari Sevika/ Sahayika that it is most humbly and respectfully further stated and submitted that there is also not any departmental circular/guideline obtained to these respondents regarding accommodation of Anganwari Sevika/ Sahayika therefore, it is not possible to these respondents to accommodate the appellant”.

17. The matter was finally taken up on 27.09.2022 and this Court after taking into consideration the rival contentions as also the affidavits made therein is of the considered view that the respondents-authorities completely erred in terminating the appellant- petitioner on vague charges which were never enquired into before they came to the said



conclusion. Once the respondent-District Programme Officer issued the show cause and the appellant- petitioner refuted each and every point through her reply, he was duty bound to hold an enquiry to come to a definite conclusion.

18. However, in a complete whimsical manner and ignoring the Government guidelines, an order was passed for removal of the appellant-petitioner from the post of 'Aanganwadi Sevika' and the Collector sitting in appeal also chose not to apply his mind and only evaluated the observation made by "the DPO" to reject her appeal.

19. We further hold that the learned Writ Court too erred in not appreciating the aforesaid factual aspects of absence of any enquiry in the matter and instead chose to dismiss the writ petition accepting the respondents version. More over Appellant- Petitioner was working from 11.09.1997 and displacing abruptly on 18.01.2012, would be too harsh and in the absence of domestic inquiry.

20. Accordingly, both the orders vide memo no. 571 issued by the respondent 2, District Magistrate cum Collector, Kishanganj and dated 18.01.2012 issued by the respondents no. 3, the District Programme Officer, Kishanganj and order of the learned Single Judge are hereby set aside.



21. The District Magistrate cum Collector, Kishanganj shall take immediate decision to reinstate the appellant- petitioner.

22. The aforesaid exercise shall be done only after providing due opportunity to the present incumbent in accordance with law.

23. However, for the period Appellant-Petitioner was out of job, she will be entitled to 50 per cent of the salary arrears of salary be calculated disbursed within four months, failing which on arrears Appellant-Petitioner is entitle to interest @ 6% p.a. and for all other service benefits for the aforesaid period shall be considered as continuity in service for all purpose.

24. With the aforesaid observation, the present appeal stands allowed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Jagdish/neha/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.10.2022
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