

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2161 of 2021

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Kamla Devi w/o Rajendra Prasad, resident of Village - Aura, P.S. Magadh University, Bodh Gaya, District - Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Social Welfare Department, Bihar, Patna.
2. The Director, I.C.D.S., Bihar, Patna.
3. The District Magistrate, Gaya.
4. The District Programme Officer, Gaya.
5. The C.D.P.O., Bodh – Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rakesh Singh
For the Respondent/s : Mr. Prashant Pratap, GP-2

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

Date : 31-03-2022

Heard the learned counsels for the parties.

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

“That the present writ application is being preferred by the petitioner seeking quashing of order dated 15.12.2019 passed by respondent no. 3 issued vide Memo No. 669 dated 03.02.2020, whereby he has pleaded to affirm the order of District Programme Officer, Gaya and also for setting aside the order dated 01.03.2017 passed vide Memo No. 01.03.2017 by respondent no. 4 cancelling the selection of petitioner as Anganbari Sevika of Anganbari Centre, Aura, District- Gaya.”

3. The petitioner was appointed as Anganwari Sevika



in the year 1988. The official respondents have conducted inspection of the petitioner's Anganwari Centre, Aura (124), District- Gaya on three occasions, namely, in the year 2015 and found that petitioner was absent in the result warning was issued. Similarly, on 27.04.2016 and 14.09.2016, respondents have warned the petitioner. On 27.04.2016, petitioner has been punished that she is not entitled to 15 days honorarium.

4. Petitioner once again remained absent and it was found by the inspecting authority. Thus, notice was issued on 18.01.2017 for which petitioner has submitted explanation. In her explanation, she has submitted that Sahayika was suffering from stomach illness. The concerned authority has proceeded to terminate the services of the petitioner on 01.03.2017. It was subject-matter of appeal before the appellate authority and the appellate authority has affirmed the order of termination on 15.12.2019. The petitioner has presented this petition in questioning the order dated 01.03.2017 and 15.12.2019.

5. Learned counsel for the petitioner submitted that petitioner has rendered service from the year 1988. It was beyond the control of the petitioner that on the date of inspection, she remained absent on account of illness. The same has been reiterated against the show cause notice. However, the



authority has not considered. If the authority intends to reject the petitioner's explanation in that event the authority should have asked the petitioner to furnish medical certificate so as to ascertain whether illness of the petitioner was genuine or not. It is also submitted that if the termination is based on the allegations in that event enquiry is warranted, irrespective of regular holder of the post or temporary employee as held by the Apex Court.

6. Per contra, learned counsel for respondent resisted the aforesaid contention and submitted that petitioner remained absent on three occasions during the period from 2015 to 2016. The same has been taken note of. Petitioner's explanation has been taken into consideration before passing order dated 01.03.2017 in terminating the services of the petitioner/ dispensing the services of the petitioner and there is no infirmity in the order dated 15.12.2019.

7. Undisputed facts are that the petitioner was appointed in the year 1988. She remained absent on three occasions in the year 2015 and 2016. She was punished by imposing warning and in one incident her 15 days honorarium has been deducted/withheld.

8. Perusal of the order dated 01.03.2017, it is to be



noted that there is no discussion relating to genuineness of the illness of the petitioner as on the date of remaining absent read with the inspection made by the concerned official. If authority disputed the illness of the Sahayika in that event authority should have asked the petitioner to furnish medical certificate. Therefore, there is non-application of mind while considering the petitioner's explanation and in passing order dated 01.03.2017. Hence petitioner has made out a *prima facie* case. Accordingly, orders dated 01.03.2017 and 15.12.2019 are set aside.

9. The concerned authority is hereby directed to re-instate the petitioner forthwith. It is made clear that the petitioner is not entitled to arrears of salary from the date of dispensing her services from 01.03.2017 till today. Remaining service benefits whatever she is entitled shall be extended to her from the date of re-reinstatement.

10. Accordingly, the present petition stands allowed.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.04.2022
Transmission Date	

