

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1155 of 2018

=====

Mamta Kumari, Wife of Lal Mukhia, resident of Village- Jhitaki, P.O. Mahishi, P.S.- Mahishi, District- Saharsa.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Social Welfare Department, Patna.
2. The District Magistrate, Saharsa.
3. The Incharge Officer, District Legal Branch, Saharsa.
4. The District Programme Officer, Saharsa.
5. The Child Development Project Officer, Mahishi, Saharsa.
6. Laxmi Devi, Wife of Shatrughan Mukhia, Ward No. 13, P.O. and P.S.- Mahishi, District- Saharsa.

... .. Respondent/s

=====

Appearance :

For the Petitioner	:	Mr.Chandrashekhar Verma, Advocate
		Mr.Radha Mohan Pandey, Advocate
For the State	:	Mr.Rajesh Kumar, AC to GP3
For Respondent No.6	:	Mr.Sanjeev Verma, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 11-10-2022 Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for private respondent.

Petitioner has participated in the process of selection of Aanganwari Sevika to Centre No.208, Madhya Tola at Panchayat-Pastwar in Saharsa district. She was the second empanelled candidate in the merit list, whereas the first empanelled candidate (Private Respondent No.6) was selected. The selection of Respondent No.6 was later on canceled at the instance of another applicant in the process of selection by the District Programme Officer under Order dated 14.11.2014. The



private Respondent No.6 assailed the Order by way of appeal before the District Magistrate, Saharsa. The appeal of the private Respondent No.6, namely Aanganwari Appeal No.75 of 2016, was allowed by the District Magistrate under order dated 23.03.2017, communicated under memo no.1505 dated 26.09.2017, directing that the private Respondent No.6 be reinstated as Sevika for the centre in question.

Learned counsel for the petitioner submits that after the selection of respondent no.6 was canceled by the D.P.O., Saharsa, under order dated 14.11.2014, petitioner being the second empanelled candidate had been issued a selection letter dated 24.06.2015, whereafter she was the Aanganwari Sevika for the Centre in question and, therefore, the order passed by the Appellate Authority without hearing the petitioner is unsustainable. The order of the Appellate Authority having penal consequences could not have been passed behind the petitioner's back and, therefore, the same is unsustainable.

On hearing the rival parties, this Court would find that the petitioner had made an application for being impleaded as a party in the appeal before the District Magistrate, Saharsa. Her application for impleadment was rejected on 11.02.2017, which fact is noticed in the final order dated 23.03.2017 passed by the



District Magistrate. The petitioner after rejection of her application for embleadment has taken no steps to assert that she was required to be heard in the appeal. Having waved her opportunity for raising such an issue by not challenging the Order dated 11.02.2017, the petitioner is now estopped from contending that she was required to be heard in the writ proceedings.

The Court would also take notice of the clear stipulation in her selection letter at Clause-2, which reads as follows:-

"आपका चयन सेविका/सहयिका के रूप में बिहार सरकार के समाज कल्याण विभाग के आई.सी.डी.एस. निदेशालय द्वारा निर्धारित चयन मार्गदर्शिका - 2011 एवं आपके द्वारा उपलब्ध करायी गयी सूचनाओं / प्रमाण पत्रों के आधार पर किया गया है। अगर भविष्य में उक्त सूचनाएँ/ प्रमाण पत्र गलत पाये जाते हैं या आपके द्वारा अपने कर्तव्यों का संतोषपद ढंग से निर्वहन नहीं किया जाता है तो आपका चयन रद्द करते हुए आपको कार्यमुक्त किया जा सकता है। कार्यमुक्त होने की स्थिति में पुनः उसी या अन्य किसी आँगनबाड़ी केन्द्र पर सेविका/सहयिका के पद के लिए आपका दावा मान्य नहीं होगा। सक्षम न्यायालय द्वारा ऐसे मामलों में पारित आदेश के आलोक में पूर्णचयनित किया जा सकेगा (emphasis mine)।"



The selection of the petitioner was with a clear stipulation that it was subject to orders passed by a Court of competent jurisdiction.

This Court would also observe that if the Respondent No.6 had not been removed, the petitioner would not have been selected. The vacancy has occurred due to removal of respondent no.6. The moment removal of respondent no.6 has been held to be unsustainable, she would be entitled to be put back in the same position as her right to continue as Aanganwari Sevika revives, once the eclipse of the impugned removal is over by virtue of the order passed in Appeal by the District Magistrate. The petitioner has no legal right to continue as Sevika for the centre in question, independent of respondent no.6, and her right to continue, which cannot in any way be denied by the petitioner. It is nobody's case that the petitioner has been removed on basis of any charges, allegation or stigma.

In support of this conclusion this Court would consider it useful to reproduce certain paragraphs of *Judgment* of the Apex Court in the case of ***Poonam vs State of Uttar Pradesh*** reported in ***(2016) 2 SCC 779***, paragraphs 49, 53 & 54 of which reads as follows:-

“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 [Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay, (1992) 2 SCC 524] 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.”

The writ application is, therefore, devoid of merits and is dismissed.

(Madhuresh Prasad, J)

shashank/-

U			
---	--	--	--

