

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1106 of 2018

In
Civil Writ Jurisdiction Case No.17378 of 2011

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Meera Devi, wife of Suresh Safi, Resident of Village - Kauaha, P.O. - Jaso,
P.S. - Basopatti, District - Madhubani.

... .. Appellant/s

Versus

1. The State of Bihar through the Secretary Social Welfare Department, Bihar, Patna.
2. Deputy Secretary, Social Welfare Department, Bihar, Patna.
3. District Magistrate, Madhubani.
4. District Programme Officer, Madhubani.
5. Child Development Project Officer, Basopatti, Madhubani.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Anirudh Kumar, Advocate.

For the Respondent/s : Mr. Gopal Krishna, AC to GA-2.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PURNENDU SINGH)

Date : 15-12-2022

In the present appeal, appellant has assailed the order dated 03.07.2018 passed in C.W.J.C. No. 17378 of 2011 whereby and whereunder learned Single Judge has pleased to dismiss the writ application filed on behalf of the appellant.

2. The brief facts of the case are that the appellant was selected on the post of Anganbari Sevika in the year 2008 at Anganbari Centre – 92, Mushahari Tola under Virpur Panchayat of Basopatti Block, District – Madhubani. On 20.09.2010,



inspection of Anganbari Centre – 92 was done by the Child Development Project Officer, Madhubani (hereinafter referred to as “C.D.P.O.”) and a report was sent to the District Programme Officer, Madhubani alleging several irregularities committed by the appellant. The District Programme Officer, Madhubani on the basis of the report submitted by the C.D.P.O. served a show cause on the appellant contained in Letter No. 1412 dated 10.11.2010 alleging therein several irregularities to have been committed by the appellant in which among others, the allegation regarding irregular distribution of take home ration and non-preparation and less-distribution of poshahar was alleged against the appellant. The appellant filed a detailed show cause within time on 16.11.2010. The District Programme Officer passed an order dated 26.11.2010 contained in Memo No. 1442 dated 29.11.2010 cancelling the appointment of the appellant as Anganbari Sevika.

3. Aggrieved with the order dated 26.11.2010 passed by the District Programme Officer, the appellant preferred an appeal before the Collector, Madhubani and the appeal of the appellant was dismissed vide order dated 28.02.2011/30.03.2011.

4. Learned counsel appearing on behalf of the appellant submitted that the appellant was running the Anganbari Centre efficiently and at no point of time any



complaint was made by any of the beneficiary regarding any type of irregularities. The Mukhiya of the Gram Panchayat Raj and Pramukh had never found any irregularity to have been committed by the appellant. The Child Development Project Officer due to some extraneous reasons on the basis of false and fabricated complaint alleged to be made by the beneficiary reported certain irregularities to have been committed by the appellant. It is further submitted that the appellant was served with a show cause dated 10.11.2010 and she had given her categorical reply on 16.11.2010 to each and every charge levelled against her by the C.D.P.O. within a week denying all the charges levelled against her. The District Programme Officer without holding an inquiry and without examining the beneficiaries has illegally cancelled the selection of the appellant vide order dated 26.11.2010. The C.D.P.O. was also not examined and the show cause filed by the appellant was not taken into consideration by the District Programme Officer. Aggrieved with the order passed by the District Programme Officer, appellant preferred an appeal before the Collector. The Collector without going into the merits of the case and taking into consideration of the fact that no inquiry was held in the present case has affirmed the order passed by the District Programme Officer without giving his own finding on the basis of the materials available on record.



5. Per contra, learned counsel appearing on behalf of the respondent submitted that there is no infirmity in the order passed by the District Programme Officer or the appellate order passed by the Collector, Madhubani. It is further submitted that the order passed by the District Programme Officer is in accordance with law and has been passed after giving proper opportunity to the appellant. The inquiry report submitted by the C.D.P.O. could not be brought on record in view of the fact that the records of the centres were burnt by the mob at Basopatti Block in the arson episode of Priti - Prashant case in October 2012 and in this regard he has referred to Para-6 of the counter affidavit much after the show cause issued to her. The District Programme Officer has not committed any illegality in cancelling the selection of the appellant. In support of his contention, he has referred to Para-12 of the counter affidavit filed in the present appeal which is hereunder:

“That it is respectfully submitted that the District Collector after pursuing the enquiry report of C.D.P.O. and the show-cause filed by the petitioner, and the order passed by the District Programme Officer and found no error in the order passed by District Programme Officer and confirmed the cancellation order of the District Programme Officer.

6. Learned counsel appearing on behalf of the respondent further submitted that the cancellation of appointment of appellant as Anganbari Sevika cannot be held to be perverse in absence of inquiry report of the C.D.P.O. and



cancellation order of the District Programme Officer which were already burnt by the mob. Accordingly, order passed by the Collector affirming the order of the District Programme Officer requires no interference by this Court.

7. Heard the parties.

8. The ICDS scheme is a welfare scheme of the government with regard to pregnant woman and children. Anganbari Sevikas are appointed for dissemination of the welfare scheme. The appellant was appointed by the Aam Sabha held for Anganbari Centre – 92, Mushahari Tola under Virpur Panchayat of Basopatti Block, District – Madhubani. It appears from the fact of the present case that certain irregularities were reported by the C.D.P.O. and the same was communicated to the District Programme Officer. The District Programme Officer based on the alleged irregularities reported by the C.D.P.O. had issued a show cause notice to the appellant and without holding an inquiry and considering the show cause of the appellant and even without examining the C.D.P.O. and recording the finding passed an order dated 26.11.2010 contained in Memo No. 1442 dated 29.11.2010 in most mechanical manner. In Paragraph-6 of the counter affidavit filed on behalf of the respondent, it is stated that the inquiry report and the order of the District Magistrate cancelling the appointment of the appellant were burnt by the mob at Basopatti Block in arson episode of Priti -



Prashant case in October 2012 and in this regard Basopatti P.S.

Case No. 186 of 2012 dated 17.10.2012 was lodged.

9. Admittedly, the District Programme Officer had passed the order cancelling the appointment of the appellant on 26.11.2010 much before the said F.I.R. and perusal of the order dated 26.11.2010 contained in Memo No. 1442 dated 29.11.2010 also does not find any reference of any inquiry to have been held or the C.D.P.O. was examined. As such the respondent cannot be allowed to supplement such materials which have occurred on a latter stage.

10. Prima facie, the order passed by the District Programme Officer, it appears to this Court that the appellant had filed her reply to show cause and the appellant categorically denied the allegations levelled in the show cause notice dated 10.11.2010, however, based upon some ex-parte inquiry which took place without the participation of the appellant, the appellant was terminated by order dated 26.11.2010. Thereafter, the appellant preferred an appeal and the same was dismissed on 28/02/2011 / 30.03.2011.

11. Before terminating the appellant from service, the inquiry was held behind her back and show cause notice was issued to her nor any preliminary inquiry was conducted in the present case. The law is well settled that the authorities are bound by the principle of natural justice by providing minimum



opportunity of hearing to the employee before imposing harsh penalty like dismissal from service. Adherence to the principle of natural justice is one of the requisite principles to be followed by the quasi judicial authority. In this case, both the respondents the District Programme Officer and the District Magistrate have passed the order of termination dated 26.11.2010 in illegal and mechanical manner.

12. The law is well settled that the competent authority before imposing any penalty specified in the Rule or Guidelines as in the present case has to pass a detailed order and such order has to be a speaking order, meaning thereby such order can only be passed after providing sufficient opportunity of hearing to the aggrieved persons.

13. The Apex Court in the case of **Kranti Associates Private Limited and Another v. Masood Ahmed Khan and Others**, reported in **(2010) 9 SCC 496** in Para-47 has held as under:

47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial



or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor* [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija v. Spain* [(1994) 19 EHRR 553] EHRR, at 562 para 29 and *Anyia v. University of Oxford* [2001 EWCA Civ



405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

“adequate and intelligent reasons must be given for judicial decisions”.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.

14. Recently Apex Court in the case of **Esteem Properties Pvt. Ltd. Vs. Chetan Kamble and Others** reported in **2022 SCC Online SC 246**, while hearing appeal preferred against the judgment passed by the Bombay High Court in a Public Interest Litigation has held in Paragraph 33 as under:

33.....“*Apex Court has clearly advocated the importance of natural justice and an opportunity of hearing to be afforded to the affected party in any administrative and quasi-judicial proceedings umpteen number of times*”

15. This Court finds that learned Single Judge has simply relied upon the allegations made against the petitioner by the C.D.P.O. on the basis of certain complaint made by some of the beneficiaries but it has failed to find that any inquiry conducted with respect to the allegations made against the petitioner in her absence was in clear violation of principle of natural justice and hence cancellation of selection from taking her service was void. The orders passed by the District Programme Officer and the District Magistrate cancelling the selection of the petitioner are in violation of principles of natural



justice, particularly in conduct of inquiry.

16. Accordingly, the order passed by the District Programme Officer dated 26.11.2010 contained in Memo No. 1442 dated 29.11.2010 and the appellate order dated 28/02/2011/ 30.03.2011 are hereby quashed. The order dated 03.07.2018 passed in C.W.J.C. No. 17378 of 2011 by the learned Single Judge is accordingly set aside and the relief prayed by the appellant is allowed.

17. Petitioner is directed to be reinstated on the post of Anganbari Sevika and the authorities shall also extend her all the monetary and service benefits from 26.11.2010, the date she was terminated from service till reinstatement into service.

18. In the result, the appeal is allowed.

(P. B. Bajanthri, J)

mantreshwar/-

(Purnendu Singh, J)

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