

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11047 of 2015

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Nitu Rai @ Nitu Devi wife of Shri Hemant Rai, resident of village Manoripur,
P.S. Kusheshwar Asthan, District Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Deputy Director, Welfare Darbhanga Division, Darbhanga.
3. The D M Darbhanga.
4. The District Programme Officer, Darbhanga, District Darbhanga.
5. The Child Development Programme Officer, Kusheshwar Asthan, District Darbhanga.
6. Bimla Devi, wife of Shivji Paswan, daughter of Late Jagdish Paswan, resident of village Harauli, P.S. Kusheshwar Asthna, District Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Upendra Pratap Singh
For the Respondent/s : Mr.Abbas Haider- Sc16

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 18-08-2023

The present writ petition has been filed seeking the following relief:-

“1(i). For issuance of writ of mandamus commanding upon the respondent to allow the petitioner to work on the post of Anganbari Sevika at Moharipur Centre in the Block of Kusheshwar Asthan having its Centre No. 079 as the petitioner was appointed after following all the formalities and in accordance with the guidelines and also completed training.”



2. The learned counsel appearing for the Respondent-State has submitted that initially, the private respondent no. 6 was appointed on the post of Anganbari Sevika at Manoripur Centre, Block-Kusheshwar Asthan, bearing Centre No. 079, however, subsequently, her selection was cancelled, whereafter fresh selection procedure was conducted with regard to the centre in question and the petitioner was then selected and appointed, vide letter dated 17.12.2013, as Anganbari Sevika. It is further submitted that in the meantime, the private respondent no. 6 had filed an appeal before the Deputy Director Welfare, Darbhanga Division, Darbhanga, who, by an order dated 5.12.2013, passed in Appeal No. 65 of 2013, had issued directions for restoring the services of the private respondent no. 6 and in compliance of the same, the petitioner was removed from service and the private respondent no. 6 was reinstated in service on the post of Anganbari Sevika.

3. The learned counsel for the Respondent has further submitted, by referring to the advertisement, published in Hindustan Newspaper on 21.6.2013, pertaining to appointment of Anganbari Sevika at the aforesaid Centre, in pursuance whereof, the petitioner had been appointed, that in the said advertisement itself, under Clause 4, it had specifically been



mentioned that if any case is going on in any forum/ Court with regard to the service matter of the Sevika / Sahayika of the aforesaid centre in question, the selection made in pursuance to the said advertisement shall be subject to the final outcome of the pending case. Hence, it is submitted that since the aforesaid appeal bearing Appeal No. 65 of 2013 was pending before the learned Court of Deputy Director Welfare, Darbhanga Division, Darbhanga and during the interregnum period, the petitioner was appointed, whereafter the said appeal was allowed, by an order dated 5.12.2013, and it was directed that the services of the private respondent no. 6 be restored, the Respondents have restored the services of the private Respondent No. 6, resulting in removal of the petitioner from the said post, which is a consequential effect, hence, the petitioner has no locus to challenge the reinstatement of the private respondent no. 6 on the post of Anganbari Sevika.

4. Having regard to the facts and circumstances of the case, considering the submissions made by the learned counsel for the Respondent-State and taking into account the averments made in the counter affidavit, not refuted by the petitioner, inasmuch as no rejoinder affidavit has been filed, this Court finds that as a consequence of passing of the order dated 5.12.2013, by the



Deputy Director Welfare, Darbhanga Division, Darbhanga, in Appeal No. 65 of 2013, the services of the private respondent no. 6 has been restored, which has led to inevitable removal of the petitioner herein. It is a well settled law that in case an incumbent, who is entitled in law to prosecute his cause of action and restore his legal rights, does so and his / her rights are restored, the eclipse being over, he/she has to come back to the same position, hence, in such a situation revival of rights of such an incumbent cannot be assailed. Reference in this connection be had to a Judgment rendered by the Hon’ble Apex Court in the case of Poonam Vs. The State of Uttar Pradesh & Ors., reported in (2016) 2 SCC 779.

5. Having regard to the facts & circumstances of the case & for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, hence, the same stands dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.08.2023
Transmission Date	NA

