

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 22513 of 2013

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Madhu Devi W/O Sri Ravindra Prasad, resident of Village- Bitho Sharif,
Police Station- Chandauti, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department, Patna.
2. The Director, Integrated Child Development Service I.C.D.S, Director Orate, Social Welfare Depart
3. The Commissioner, Gaya.
4. The Collector, Gaya.
5. The District Programme Officer, Gaya.
6. The Child Development Programme Officer, Gaya Rural, Gaya.
7. Kumari Sonali Sharma W/O Ajay Vishwakarma Village P.O- Bitho Sharif, Via- Buniyadganj, Police Station- Chandauti, Gaya Bihar- 823003

... .. Respondent/s

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Appearance:

For the Petitioner/s : Mr. Sunil Kumar Yadav, Advocate
For the State : Mr. U.P. Singh, AC to SC-4

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 10-08-2023

1. The present writ petition has been filed for quashing the order dated 26.11.2011, contained in Memo dated 28.11.2011, whereby and whereunder the services of the petitioner as



Anganbari Sevika has been terminated. The petitioner has also sought quashing of the appellate order dated 05.03.2013, passed by the District Magistrate, Gaya, whereby and whereunder the appeal filed by the petitioner has been dismissed.

2. The brief facts of the case, according to the petitioner, are that the petitioner was appointed as Anganbari Sevika in Bitho Sharif Lohar Tola, Anganbari Center under Kand Nawada Panchayat in the District of Gaya on 01.08.1990. On 11.11.2011, the Centre in question was inspected by the Minister, Social Welfare Department, Government of Bihar and several irregularities were found, whereafter a show cause notice dated 12.11.2011 was issued to the petitioner and without waiting for reply, the impugned order dated 26.11.2011, cancelling the selection of the petitioner as an Anganbari Sevika, was passed by the District Programme Officer, Gaya. The petitioner had then filed an appeal bearing Misc. Appeal No. 30 of 2012, however, the same has been rejected.

3. The learned counsel for the petitioner has at the outset, relied on a judgment rendered by a learned Division Bench of this Court in the case of *Mehin Nigar Begum vs. the State of Bihar & Ors.*, reported in *2023 (1) PLJR 323*, to submit that no



formal inquiry has been held prior to terminating the services of the petitioner, hence the impugned order of punishment stands vitiated in the eyes of law. The learned counsel for the petitioner has also relied upon a judgment rendered by a co-ordinate Bench of this Court in the case of ***Smt. Kumari Rani vs. the State of Bihar & Ors.***, reported in ***2011 (3) PLJR 519***, to contend that the appellate order should be a reasoned and a well discussed order, however, in the present case, the appellate order is neither a reasoned nor a well discussed order. Thus, it is submitted that the impugned order dated 26.11.2011 as also the appellate order dated 05.03.2013 are fit to be set aside.

4. *Per contra*, the learned counsel for the respondent-State has contended that the post of Anganbari Sevika is not a civil post in the Government service, as such protection under Article 311 of the Constitution of India is not available to the petitioner. It is next contended that since Anganbari workers are doing a honorary job under a scheme and are only paid honorarium as such they do not carry any function of the state, hence they cannot be said to be holding any post created by the Govt., thus the ordinary rules of recruitment are not applicable to them. Hence, the State is not required to comply with the constitutional scheme of equality, as provided for under Articles



14 & 16 of the Constitution of India. It is further submitted that the order of cancellation of the selection of the petitioner as Anganbari Sevika is just and proper as also in accordance with law and all reasonable opportunities were granted to the petitioner. It is contended that on 11.11.2011, the Centre in question was inspected by the Minister, Social Welfare Department, Government of Bihar and several irregularities were found to the effect that less than the requisite number of children were present at the center, children were not wearing dress, low quantity of THR was found to have been distributed and the composition of rice and Dal in the Khichadi was not as prescribed, whereafter, a show cause notice dt. 12.11.2011 was issued to the petitioner, however, since the petitioner did not file any reply to the show-cause notice, the District Programme Officer had passed the impugned order dt. 26.11.2011, cancelling the selection of the petitioner as an Anganbari Sevika. The petitioner had then filed an Appeal, a bare perusal whereof would show that there is no rebuttal of the irregularities committed by her and it has been merely stated that the irregularities committed by her are excusable and does not warrant extreme punishment of cancellation of her selection, hence, finding the Appeal to be devoid of any merit, the same was also rejected by



an order dated 05.03.2013 Thus, it is submitted that present petition is fit to be dismissed, being bereft of any merit.

5. The learned counsel for the respondent-State has also referred to the guidelines issued by the Integrated Child Development Scheme, Bihar, Patna, vide letters dated 20.06.2012 and 14.03.2012, relevant portion whereof, are reproduced hereinbelow:-

“ कंडिका (2) को निम्न प्रकार पढा जाय (Letter dt. 20.06.2012) :-

केन्द्र संचालन की निर्धारित अवधि में किसी भी समय आंगनबाड़ी केन्द्र पर पंजीकृत बच्चों की संख्या बिना पर्याप्त कारण के चौदह या चौदह से कम पायी जाती है तो ऐसी स्थिति में उस केन्द्र की सेविका को चयनमुक्त करने की कार्रवाई की जाय।

Letter dt. 14.03.2012

जाँच के क्रम में किसी केन्द्र पर नाम पट्ट तथा लाभकों को दिये जाने वाली सामग्री की मात्रा का Prominent Display यदि नहीं पाया जाता है तो इसके लिए सेविका को चयनमुक्त करने की कार्रवाई की जाय।”

6. I have heard the learned counsel for the parties and perused the materials on record. At the outset, it would be relevant to refer to a judgment, rendered by the learned Division Bench of this Court, reported in **2004 (2) PLJR 833 (Sajjan**



Devi v. State of Bihar), paragraphs no. 11 to 16 whereof are reproduced herein below:-

“11. The first question to be considered is as to whether the engagement of Anganbari Sewika is an engagement on a post in the Government service. If their engagements are on the posts in the Government service and they have been appointed following a procedure, in that case their engagements cannot be cancelled on the ground of misconduct without holding a departmental enquiry as provided under the Rules. If in case, they are not holding a post in the Government service and their engagements are on the basis of contract of a service under a Scheme, then their services can be terminated in terms of the agreement after following a procedure consistent with the requirement of principle of natural justice.

12. The Scheme has been made to provide help to the poor and downtrodden persons covered by the Scheme as stated above. Engagement is made only by holding an interview and no payment of salary is being made nor the appointment is being made against any post in the Government service. Honorarium is paid for performing the duties for a particular period. In case, their services are not found satisfactory, they can be removed from the post of Anganbari Sewika. Term of appointment clearly shows that they are not engaged in Government service nor are they holding any post in the



Government Service, having umbrella of protection under Article 311 of the Constitution of India. In case, it is found that they are not performing duties, for which they were engaged, then in terms of the engagement letter they can be removed. They cannot claim initiation of a regular departmental enquiry prior to their disengagement.

13. Thus, the post of Anganbari Sewika is not a post in the Government service and as such the private respondents cannot claim protection under Article 311 of the Constitution of India.

14. It appears from the record that inspections were held several times and the private respondents were found absent from their duties. It was also found that while on duty, they did not discharge their duties, for which they were engaged and, thereafter, show-cause notices were served upon them and they did not file any show-cause and, thereafter, their engagements were cancelled.

15. Requirement of principle of natural justice has been complied with and as they are not in Government service, they cannot claim a regular proceeding prior to disengagement, or removal by treating the aforesaid act as misconduct. Even alternatively it is assumed that they were on temporary employment in the Government service then also it is found that the authorities after having taken into consideration their past conduct as a



motive and after giving an opportunity of hearing to them have disengaged them and as such they cannot claim any infirmity in their disengagement on the ground of violation of principle of natural justice.

16. Thus, the orders dated 13.2.1989 and 18.2.1989 passed by the authorities cancelling the engagement of the private respondents as Anganbari Sewika, who had filed C.W.J.C. No. 290 of 1991 challenging their cancellation of engagement as Anganbari Sewika are held to be valid orders and they do not suffer from any irregularity and, accordingly, C.W.J.C. No. 290 of 1991 filed by the private respondents is dismissed.”

7. This Court would also refer to a judgment rendered by the Hon'ble Apex Court, reported in **(2007) 11 SCC 681 (State of Karnataka & others v. Ameerbi and Others)**, wherein it has been held that the post of Anganwadi workers are not statutory post and they have been created in terms of the Scheme as also the Anganwadi workers are not holders of civil post since they do not carry on any function of the State as they do not hold post under a statute, their posts are not created, recruitment rules ordinarily applicable to the employees of the State are not applicable in their case, hence, the State is not required to comply with the constitutional scheme of equality, as enshrined under Articles 14 and 16 of the Constitution of India.



8. This Court now deems it fit and proper to refer to a judgment rendered by the learned Division Bench of this Court in the case of ***Babita Kumari v. The State of Bihar and others***, reported in ***2016 SCC Online Pat 9434***, paragraphs no. 7 and 8 whereof are reproduced herein below:-

“7. Having considered the rival contentions, we do not find any merit in the present appeal. The charges against the appellant were very clear as would be apparent from the show cause dated 22.02.2012, which was issued in light of the findings in the enquiry report as well as the relevant documents/registers which were required to be maintained at the Centre. Reply given by the appellant, copy of which has been brought on record, does not indicate any justification and rather it has been stated that on 24.09.2011 at the time of Inspection, the children were still coming and on 07.10.2011, she herself had gone to call the children and during that time the inspection was held. It was further stated by the appellant that on 30.09.2011 she had become ill due to being drenched by rain. We find that such explanation is vague and evasive and does not inspire confidence. The spirit and object of running Anganbadi Centers cannot be overemphasized and the purpose is to ensure the welfare of children from the lowermost and deprived strata of society. Any lapse in execution of the said



scheme has to be taken very seriously. Closure of even one day entails the beneficiaries going without their meals, which cannot be overlooked. Thus, we do not find any infirmity in the decision of the authorities cancelling her selection as well as the procedure adopted by them prior to passing such order.

8. For the reasons aforesaid, the Letters Patent Appeal, being devoid of merit, stands dismissed.”

9. This Court would next rely upon a judgment rendered in the case of ***Seema Kumari v. The State of Bihar and others***, reported in ***(2015) SCC Online Pat 7267***, paragraphs no. 9 to 11 whereof, are reproduced herein below:-

“9. As noted above, the Anganbari Sevika is not a government servant and has no protection under Article 311(2) of the Constitution of India so as to envisage the concept of regular departmental proceeding. The petitioner was given a notice. She was informed about the allegation against her. She had filed her show-cause reply which was considered by the District Programme officer and when the order went against her, she had also been given adequate opportunity by the appellate authority who, in fact, had himself got the matter verified by referring the matter to the Bihar Sanskrit Board.

10. In that view of the matter, this Court would not find any error in the impugned order of termination of



the services of the petitioner when it is found that the petitioner had got appointment by producing a document in support of qualification which was found to be incorrect/forged.

11. Thus for the reasons indicated above, this application must fail and is, accordingly, dismissed.”

10. It would be apt to refer to yet another judgment rendered by the learned Division Bench of this Court in the case of ***Neetu Kumari v. The State of Bihar and others***, reported in ***2011 (4) PLJR 20***, paragraphs no. 4 and 5 whereof are reproduced herein below:-

“4. In our considered view, the post of Anganbari Sevika is not a post having security of tenure or protection under Article 311 of Constitution of India. Considering the very nature of engagement which provides of honorarium, we are of the view that in case the appellant still feels aggrieved, she may approach the Civil Court for damages. There is nothing at stake in such a scheme other than honorarium. For such contractual engagements the relief of reinstatement is not appropriate and even if there is breach of the scheme or any other principle of law, the claim should ordinarily be permitted, if found good on merits, only for damages.

5. The appeal is dismissed.”



11. Again, it would be apposite to refer to a judgment rendered by a co-ordinate Bench of this Court dated 10.01.2023, passed in ***C.W.J.C. No. 16533 of 2013 (Neema Prasad @ Smt. Neema Devi v. The State of Bihar and others)***, paragraph no. 2 whereof is reproduced herein below:-

“2. The petitioner assails the order of the District Magistrate rejecting the appeal of the petitioner with regard to the non-appointment on the post of Anganwadi Worker. The post of Anganwadi Worker is not a cadre post and the same is governed by guidelines issued in that respect. It is not a post under the State services and a writ petition therefore would not be maintainable with regard to the same. The appeal being heard by the District Magistrate is also under the guidelines issued for the said purpose. Keeping in view thereto, no interference is warranted in writ jurisdiction.”

12. Now coming back to the present case, this Court finds that a show-cause notice dated 12.11.2011 was issued to the petitioner wherein it had been alleged that an inspection was conducted by the Minister, Social Welfare Department, Government of Bihar on 11.11.2011, of the Centre in question and during the course of inspection following irregularities were noticed:-



- (i) the children present at the center were much less than the requisite strength;
- (ii) the children were not wearing appropriate dress;
- (iii) the quantity of rice and pulse in *Khichari* was much less than the prescribed quantity;
- (iv) Take Home Ration being distributed to the beneficiaries was much less than the prescribed quantity.

The District Programme Officer had then by a well reasoned order dated 26.11.2011 cancelled the selection of the petitioner as Anganbari Sevika, on account of the aforesaid gross irregularities committed by the petitioner as also since the petitioner did not submit any reply to the show cause notice, whereafter the petitioner had filed an appeal bearing Misc. Appeal No. 30 of 2012 *inter alia* pleading therein that the allegations levelled against her are simple in nature, hence the same do not warrant infliction of punishment and that the District Programme Officer had failed to consider that the allegations levelled against the appellant are excusable, thus he ought not to have taken a decision to terminate the services of the petitioner in haste. The appellate authority, i.e. the District Magistrate, Gaya, by the impugned order dt. 05.3.2013, upon consideration of the materials on record and after hearing the



parties, including the petitioner herein has come to the conclusion that during the course of inspection, the aforesaid irregularities were detected and no satisfactory answer has been forthcoming from the petitioner regarding the same, thus has rejected the appeal of the petitioner, by a well reasoned and a speaking order, being devoid of any merit.

13. From perusal of the judgments referred to hereinabove, this Court finds that the post of Anganbari Sevika is not a civil post and therefore the same does not have any protection under Article 311 of the Constitution of India. This Court also finds that the Ld. Division Bench of this Court in the case of **Babita Kumari** (supra) has held that the spirit and object of running Anganbari Centers cannot be overemphasized and the purpose is to ensure the welfare of children of the lowermost and deprived strata of society, hence any lapse in execution of the said scheme has to be taken very seriously and even a solitary instance of default entails deprivation of the beneficiaries, which cannot be overlooked and requires severe punishment.

14. This Court also finds that there is no requirement of resorting to a regular departmental proceeding prior to taking appropriate action against Anganbari Sevika, inasmuch as the



said post does not have the protection under Article 311 of the Constitution of India, as has been succinctly held by the learned Division Bench of this Court and the Hon'ble Apex Court in a catena of decisions, referred to hereinabove in the preceding paragraphs. In fact, the said aspect of the matter has also been considered by a Coordinate Bench of this Court in the case of ***Smt. Kumari Rani*** (supra), referred to by the learned counsel for the petitioner wherein also it has been held that the relationship of the Anganbari Sevikas and the Government is that of Principal and agent only, hence the standard of scrutiny which shall apply in a Court of law to a relationship between a master and servant shall not be the same as that between a principal and agent. Thus, merely complying with the principle of natural justice is sufficient in cases of termination of Anganbari Sevikas. Nonetheless, it is not in dispute that the orders passed by the appellate authority, in terms of punishment, are required to be reasoned and well discussed. As far as the judgment rendered by the learned Division Bench of this Court in the case of ***Mehin Nigar Begum*** (supra) is concerned, this Court finds that the scheme of appointment of Anganbari Sevika/Sahaika has not been taken into consideration and it has not been considered that the post of



Anganbari Sevika is not a civil post and moreover, Anganbari Sevikas are neither engaged in Government service nor are holding any post in Government service, hence the protection under Article 311 of the Constitution of India shall not be available, probably since learned Division Bench of this Court had not been apprised about the aforesaid aspect of the matter as also was not acquainted with the host of earlier Judgments, rendered by the Ld. Division Bench of this Court on the subject matter, as aforesaid. Reference in this connection be had to the law laid down by the Hon'ble Apex Court in the case of ***Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court***, reported in (1990) 3 SCC 682, in the case of ***Sundeep Kumar Bafna v. State of Maharashtra***, reported in (2014) 16 SCC 623 and in the case of ***Mamleshwar Prasad v. Kanhaiya Lal***, reported in (1975) 2 SCC 232.

15. Therefore, taking into account the Law laid down by the various Ld. Division Bench of this Court, on earlier occasions, in the case of ***Sajjan Devi*** (supra), ***Babita Kumari*** (supra), ***Seema Kumari*** (supra) and ***Neetu Kumari*** (supra), this Court is of the view that it would be enough, in case the authorities, in compliance of the principles of natural justice, issues a show cause notice & after giving opportunity to the delinquent to put



forth her defense, passes appropriate orders thereon. Thus, there is no requirement of resorting to a regular departmental proceeding, prior to taking appropriate action against Anganbari Sevika/ Sahika, inasmuch as the said post being not a civil post, does not have the protection under Article 311 of Constitution of India. This aspect of the matter also stands covered by a judgment rendered by the Hon'ble Apex Court in the case of *Ameerbi & Others* (supra).

16. Now adverting to the merits of the present case, this Court finds that since the petitioner had not filed any reply to the show-cause notice, the District Programme Officer had passed the impugned order dated 26.11.2011, indicating therein the gross irregularities committed by the petitioner, resulting in the selection of the petitioner as Anganbari Sevika being cancelled. As far as the appellate order dated 05.03.2013 is concerned, this Court finds that the ground raised in the appeal filed by her are in fact not at all convincing and if those reasons are not convincing, the appellant authority was within its power to pass the impugned order dated 05.03.2013, rejecting the appeal of the petitioner, which is a just, legal, reasoned and a speaking order, hence, the same does not warrant any interference by this Court. A bare perusal of the appeal would



show that there is no rebuttal of the irregularities committed by her and it has been merely stated that the irregularities committed by her were excusable and does not warrant extreme punishment of cancellation of her selection.

17. In such view of the matter, this Court finds that if the petitioner has not acted in terms of the guidelines and several irregularities have been found at the time of inspection, as aforesaid, no interference is required with the impugned orders. The spirit and object of running Anganbadi Centers cannot be overemphasized and the purpose is to ensure the welfare of children from the lowermost and deprived strata of society. Any lapse in execution of the said scheme has to be viewed very seriously. Having considered the said aspect of the matter, this Court is satisfied that the reasons furnished/grounds raised in the Appeal by the petitioner are in fact, not convincing and she has miserably failed to provide help to the children of poor and downtrodden persons as per the Scheme. Thus, there is no infirmity/illegality in the impugned order dated 26.11.2011, passed by the District Programme Officer, or for that matter in the Appellate order dated 05.03.2013, passed by the District Magistrate, Gaya, in Aaganbari Appeal Case No. 30 of 2012.



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

(Mohit Kumar Shah, J)

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CAV DATE	NA
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