

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.605 of 2023

In

Civil Writ Jurisdiction Case No.71 of 2020

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Sunita Jaiswal, Wife of Sunil Kumar Resident of AT- Chauhatta, Ward No. 8,
P.S.-Kishanpur, Block- Kishanpur, District-Supaul.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Director, Integrated Child Development Schemes, Government of Bihar, Patna.
4. The Deputy Director, Welfare Department, Kosi Division, Saharsa.
5. The Collector-cum-District Magistrate, Supaul.
6. The Sub-Divisional Officer, Supaul.
7. The District Programme Officer, Supaul.
8. The Block Development Officer, Kishanpur, District- Supaul.
9. The Child Development Project Officer, Kishanpur, District- Supaul.
10. Lalita Kumari, Wife of Krishan Mohan Paswan Resident of At- Chauhatta, Ward no. 8, P.S.-Kishanpur, Block- Kishanpur, District-Supaul.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Uma Shankar Singh, Advocate
For the Respondent/s : Mr.Gyan Prakash Ojha, GA-7

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 10-01-2024

Heard the parties.

2. The appellant has preferred the present appeal against the order dated 4.2.2023 passed by the learned Single Judge in C.W.J.C. No. 71 of 2020 by which her petition challenging the orders of the respondents against her



removal from the post of 'Anganbari Sevika' of the Anganbari Center No. 76 (henceforth 'the Center') Dhatta Tola Mushari under the Block Kishanpur, Supaul was dismissed.

3. The facts of the case in narrow compass is/are as follows:

(i) the appellant-petitioner was serving as an 'Anganbari Sevika' at the 'Anganbari' Center when on 12.3.2022 at 1:30 PM, an inspection was made by the Child Development Project Officer, Supaul (henceforth for short 'the CDPO') and according to her inspection report, the Center was found closed and the villagers upon enquiry, informed that both the 'Sahayika' and 'Sevika' have left the Center prior to the inspection;

(ii) relying upon the said inspection report, the District Programme Officer, Supaul (henceforth for short 'the DPO') without consideration of her



explanation and/or the statements of the villagers, passed an order dated 25.8.2012 communicated vide memo no. 1278 dated 31.8.2012 by which her services were terminated.

4. Aggrieved, an appeal was filed vide Anganbari Appeal No. 48-19/2012 before the Deputy Director, Welfare, Koshi Division, Saharsa which was rejected by a cryptic order stating that for the same cause of action, C.W.J.C. No. 16151 of 2013 has been preferred which was subsequently withdrawn.

5. Aggrieved, C.W.J.C. No. 19266 of 2014 was preferred which was taken up by a bench of this Court and vide an order dated 17.12.2018, the Appeal No. 48-19/2012 was set aside, the appeal was restored to its original file directing the respondents to dispose it of after giving opportunity to the petitioner.

6. This followed the consideration of the appeal by the Collector-cum-District Magistrate, Supaul who vide a reasoned order dated 26.10.2019 rejected the same. This followed C.W.J.C. No. 71 of 2020 which came to be dismissed on 4.2.2023.



7. Still aggrieved, the present appeal.

8. Learned counsel appearing on behalf of the appellant-petitioner submits that as per the inspection report submitted by 'the CDPO', 'the Center' was found closed and the villagers informed that both the 'Sahayika'/'Sevika' have just left 'the Center'.

9. It is thus his submission that in that background, when the villagers themselves said that the 'Sahayika'/'Sevika' have just left 'the Center' before the said inspection, her show cause needed consideration as also the statements of the villagers should have been recorded on whether on that particular day, 'the Center' was open or not and whether the children as recorded by the 'Sahayika'/'Sevika' were in attendance or not before taking a decision.

10. Instead, only on the basis of a vague report of 'the CDPO', the services were terminated and the appeal thereafter rejected.

11. Learned counsel for the appellant-petitioner has relied on an order of the Division Bench of the Court in the case of LPA No. 905 of 2019 (**Mehin Nigar Begum vs. the State of Bihar & Ors.**) and it is necessary to



incorporate the relevant paragraphs 3 to 5 which read as follows:

*3. Perusal of the records, it is evident that even though allegations are serious in nature when the appellant had disputed and filed her explanation, the same has not been considered by the competent authority. At the same time, if there are disputed facts in that event a formal inquiry was warranted including examination of the author of the inspection report in the light of the Apex Court decision in the case of **Roop Singh Negi Vs. Punjab National Bank** reported in (2009) 2 SCC 570.*

*4. Recently Apex Court in the case of **Esteem Properties Pvt. Ltd. Vs Chetan Kamble** reported in 2022 SCC On Line SC 246 held that opportunity of hearing is to be*



afforded to the affected party in respect of administrative or quasi judicial proceedings. The principle laid down in the aforementioned judgment is aptly applicable to the case in hand.

5. In the present case, the appellant is working since the year 2003, even though there were no disciplinary regulation governing the post of 'Anganbari Sevika' at the same time, if there are serious allegations in such an event a formal inquiry should have been held before passing order of removal from service. The same has not been appreciated by the learned single judge while passing the impugned order on 12.07.2019 in C.W.J.C. No. 10485 of 2017. Accordingly, the present LPA is allowed while setting aside the order dated 12.07.2019 and order of



removal from service dated

03.04.2017 read with 29.12.2014.

12. A counter affidavit has been filed on behalf of the respondent nos. 5 to 9 and they have just supported the stand of the respondents stating that 'the Center' was found closed and there was false entry in the attendance register for that particular day and in that background, the decisions were taken which is/are fully justified. Further submission is that subsequently, another lady, the respondent no. 10 (Lalita Kumari) has joined the post.

13. Learned counsel for the appellant-petitioner on the said point submits that while selecting the respondent Lalita Kumari, the respondents have taken care and have incorporated in the selection letter that the selection shall be subject to the decision of the Court. He as such submits that there is no embargo in setting aside the orders in question.

14. The respondent no.10 has also appeared and supported the stand of the official respondents and it is further submission that she is working on the said post since her selection in the year 2013, which may not be disturbed.



15. This Court has gone through the submissions put forward by the parties and also have perused the records. The fact remains that the when inspection was conducted at 1:30 PM though the Center was found closed, 'the CDPO' herself has recorded that the villagers informed that both the 'Sahayika' and 'Sevika' have just left 'the Center'.

16. The allegation against the appellant-petitioner by the respondents is/are that despite 'the Center' being closed, the attendance of the students were shown and as such serious irregularities committed.

17. The appellant having filed her show cause, in that event, the respondents were duty bound to hold an enquiry before a final decision is taken. No such step/effort taken and only on the basis of the report of 'the CDPO', the decision was taken. 'The CDPO' has not thought it fit to record the name of the villagers, to whom she enquired; who could also have been examined in a properly constituted enquiry.

18. In **Mehin Nigar Begum** (supra), the Division Bench of this Court on the similar facts and circumstances chose to interfere in the matter. This Court has



no hesitation in taking the same line.

19. In that background, the order dated passed by the learned Single Judge dated 04.02.2023 in C.W.J.C. No. 71 of 2020 as also the orders passed by the respondents District Programme Officer, Supaul (vide memo no. 1278 dated 31.8.2012) and the Collector-cum-District Magistrate, Supaul (in Anganbai Appeal No. 48-19/2012-16/2019 dated 26.10.2019) are set aside.

20. The Letters Patent Appeal stands allowed. The appellant-petitioner shall be reinstated on the post she was holding forthwith.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Ravi/-

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CAV DATE	
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