

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11547 of 2018

=====

Shila Devi W/o Dilip Kumar Gupta @ Dilip Kumar, Resident of Mohalla-
Nayatola, Ward No.23, P.S.- Naugachhia, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Integrated Child Development Services, Bihar, Patna.
3. The Divisional Commissioner, Bhagalpur Division, Bhagalpur.
4. The District Magistrate, Bhagalpur.
5. The District Programme Officer, Bhagalpur.
6. The Sub-Divisional Officer, Naugachhia, Bhagalpur.
7. The Child Development Project Officer, Naugachhia, Bhagalpur.
8. Baby Devi, W/o Chandra Shekhar Paswan, Resident of Ward No.23,
Nayatola, P.O. and P.S.- Naugachhia, District- Bhagalpur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Yadav, Advocate
For the Private Resp No. 8 : Mr. Diwakar Yadav, Advocate
For the Respondent/s : Mr. Smt. Kumari Amrita- GP 3

=====

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 27-08-2024

Re. Interlocutory Application No. 5623 of 2018

1. Learned counsel for the petitioner, learned counsel for the private respondent No. 8 and learned counsel for the State are present.

2. Learned counsel for the petitioner submits that I.A. no. 5623 of 2018 has become infructuous, as such, he is not interested to press this interlocutory application.



3. Learned counsel for the private respondent No. 8 has no objection for the same.

4. I.A. no. 5623 of 2018 is dismissed as not pressed.

Re. Civil Writ Jurisdiction Case No.11547 of 2018

5. Learned counsel for the petitioner, learned counsel for the private respondent No. 8 and learned counsel for the State are present.

6. Learned counsel for the petitioner submits that the present petition has been filed for quashing the order dated 20.04.2018 passed by the District Magistrate, Bhagalpur in Misc (Anganbari) Appeal Case No. 80/15-16 by which the order dated 30.06.2009 passed by the District Magistrate, Bhagalpur itself has been set aside without considering the fact that earlier the Divisional Commissioner has rejected the appeal and the writ petition was also dismissed against the said order dated 30.06.2009. Further prayer has been made to quash the consequential order dated 23.05.2018 issued by the C.D.P.O, Naugachia directing the petitioner to hand over the charge to respondent no. 8.

7. Learned counsel for the petitioner submits that respondent no. 8 was appointed on the post of Anganbari Sevika at Centre No. 121 of ward No. 23, Nagar Panchayat No. 1



Naugachhia. He submits that on the complain of ward counselor regarding irregularity in the distribution of Take Home Ration and Poshahar by Respondent No. 7, a detailed enquiry was entrusted to the Executive Magistrate, Naugachhia which resulted into removal of the respondent no. 8 from her post. Learned counsel further submits that the District Magistrate by his order dated 30.06.2009 removed the respondent No. 8 from her post and fresh selection has been made by which the petitioner was selected on the sanctioned vacant post of Anganbari Sevika at Centre No. 121 of ward No. 23, Nagar Panchayat No. 1 Naugachhia and there is absolutely no dispute.

8. Learned counsel further submits that private respondent No. 8 challenged the said order dated 30.06.2009 before this Hon'ble Court in C.W.J.C No. 9028 of 2009 which was disposed of by order dated 31.07.2009 directing the respondent No. 8 to avail remedy of appeal before the District Magistrate, Bhagalpur. He further submits that respondent No. 8 thereafter, preferred appeal bearing Case No. 12/09-10 but the said appeal which was availed by respondent No. 8 by virtue of the liberty granted by this Hon'ble Court in C.W.J.C No. 9028 of 2009 was dismissed *vide* order dated 10.09.2009 passed by the Divisional Commissioner. Learned counsel submits that the



private respondent has further challenged the said order passed by the Divisional Commissioner in C.W.J.C No. 14243 of 2009 which was dismissed vide order dated 10.11.2009. Learned counsel further submits that the private respondent was remained silent with regard to engagement of the petitioner on the said post and after passing order by the Divisional Commissioner, Bhagalpur challenging her removal dated 30.06.2009, private respondent preferred another appeal bearing No. 153/12-15 in which the District Magistrate, Bhagalpur has passed order and set aside his earlier order dated 30.06.2009. Learned counsel further submits that the order which is impugned here dated 23.05.2018 is basically a non-jurisdictional order as once the order for removal of private respondent No. 8 has become approved up to this Hon'ble Court then in that case no order can be passed with regard to private respondent No. 8 by the District Magistrate. As such, he submits that the order dated 20.04.2018 as well as the subsequent order dated 23.05.2018 issued by C.D.P.O may be quashed.

9. Learned counsel for the State is present. He submits that the counter affidavit has been filed but the State is not in a position to defend that under what circumstances an order which



has been passed by the District Magistrate approved by the Commissioner and subsequently approved by this Hon'ble Court can be reviewed by the District Magistrate.

10. Learned counsel for the private respondent No. 8, on the other hand, submits that the appointment of petitioner is bad in law and therefore, he has filed this writ petition.

11. Upon going through the records it transpires to this Court that the appointment on the post of Anganbari Sevika for Centre No. 121, Ward No. 23, Nagar Panchayat No. 1, Naugachhia has been taken twice. Earlier respondent No. 8 was appointed and her removal was approved up to this Hon'ble Court whereas the petitioner was appointed subsequently and it is not clear that whether the respondent No. 8 has participated in the second appointment process or not but has started challenging the appointment of present petitioner by way of filing appeal and subsequent challenge which is not permissible in law particularly when the petitioner's appointment has already been tested up to the Hon'ble High Court and it was found that her appointment was illegal.

12. In this view of the matter, this writ petition is allowed.

13. The order dated 20.04.2018 passed by the District Magistrate, Bhagalpur in Misc (Anganbari) Appeal Case No.



80/15-16 and the consequential order dated 23.05.2018 issued
by the C.D.P.O, Naugachia, are hereby quashed.

(Dr. Anshuman, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

