

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.378 of 2022

In
Civil Writ Jurisdiction Case No.2161 of 2021

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Arti Kumari, W/o Surendar Kr. Rai, Resident of Village- Aura, Post -
Sahdevkhaap, P.S. - Bodhgaya, District - Gaya.

... .. Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Social Welfare Department,
Bihar, Patna.
2. The Director, I.C.D.S. Bihar, Patna.
3. The District Magistrate, Gaya.
4. The District Programme Officer, Gaya.
5. The C.D.P.O. Bodh, Gaya.
6. Kamla Devi W/o Rajendra Prasad, Resident of Village - Aura, P.S. - Magadh
University, Bodh Gaya, District - Gaya.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Baxi S.R.P. Sinha, Sr. Advocate Mr. Brajesh Prasad Gupta, Advocate
For the State	:	Mr. Gyan Prakash Ojha (GA-7)
For the Respondent no.6	:	Mr. Bhaskar Shankar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-09-2024

The appellant was appointed after the writ petitioner
was terminated for unauthorized absence.

2. The learned Senior Counsel appearing for the
appellant would submit that her appointment was not



conditional or subject to the claim raised by the terminated *Anganvadi Sahayika*. Hence, the appellant was a necessary party in the proceedings initiated by the writ petitioner against her termination.

3. The writ petitioner, who is the 6th respondent in the appeal, was aggrieved with her termination from the post of *Anganvadi Sahayika*. The termination was on account of unauthorized absence found on three occasions. The petitioner was also punished with a warning in one incident and her 15 days honorarium was deducted/withheld. With respect to the last unauthorized absence alleged against her, she had a contention that she was ill, due to which she was absent.

4. The learned Single Judge, merely directed that, in the teeth of illness asserted by the petitioner, if the authority had any suspicion about the genuineness of such contention, she should have been asked to produce a medical certificate. It was hence the writ petition was allowed directing her to be reinstated in service, however, not allowing the service benefits in the interregnum.

5. We are of the opinion that there is nothing to be interfered with, insofar as the writ petitioner's termination having been set aside. But, admittedly that was an unauthorized



absence. We are also of the opinion that the authority should have been left liberty to call for a medical certificate with respect to the absence of the writ petitioner. Unless the ground of illness is substantiated, the writ petitioner cannot claim continuance.

6. In such circumstances, we leave liberty to the authorities to show-cause the writ petitioner with respect to the unauthorized absence and call for a medical certificate. If the writ petitioner satisfies the authorities, then necessarily the writ petitioner will have to be continued. However, if the authority finds otherwise, definitely the appellant will have to be reinstated in service.

7. The appellant prays that she also be heard by the authority, while considering the matter afresh; which we are not inclined to permit. The appellant was appointed as a consequence of the termination of the writ petitioner and there are no conflicting/competing claims between the two that arise in consideration of the matter afresh. The appellant cannot have any ground in support of the termination of the writ petitioner and the subject matter is one exclusively concerning the employer and employee. We reject the claim of the appellant for a notice in the matter. However, if the writ petitioner is



eventually terminated, the appellant who was selected subsequently will be appointed.

8. The appeal stands partly allowed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Shiv/-

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