

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.815 of 2024

In

Civil Writ Jurisdiction Case No.13419 of 2011

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Prem Lata Devi Daughter of Shri Dayanand Yadav and Wife of Shri Ranjan Yadav Resident of Village and Post Office- Khaira Chanda, Police Station Narpatganj, District- Araria

... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. The Director, I.C.D.S., Directorate, Social Welfare Department, Government of Bihar, Patna.
3. The Commissioner, Purnea Division, Purnea.
4. The Collector, Araria.
5. The District Programme Officer-Cum-District Welfare Officer, Araria.
6. The Child Development Project Officer, Narpatganj, Araria.
7. The Mukhiya, Gram Panchayat Raj Khaira, P.S.-Narpatganj, District-Araria.
8. Meena Devi Wife of Brahm Narayan Yadav Resident of Village-Khaira, P.S.-Narpatganj, District-Araria.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. D.K. Sinha, Sr. Advocate

Mr. Om Prakash Upadhyay, Advocate

For the Respondent/s : Mr. Gyan Prakash Ojha, Government Advocate 7

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 19-12-2024

The appeal is against the impugned judgment, which interfered with the termination of the writ petitioner, who was working as Anganbari Sevika at Centre-12104 of



Khaira Panchayat in the district of Araria. The interference was also on account of allegation; of the petitioner not having discharged her duties properly, in the Anganbari Centre, to the satisfaction of the authorities, insofar as distribution of food to the children.

2. The learned Single Judge held that when an allegation is made; necessarily there should be a disciplinary enquiry initiated, in which the delinquent employee should also be given an opportunity to put forth his or her defense. The termination having been effected peremptorily without a disciplinary enquiry, was found to be a stigmatic one relying on a Division Bench decision of this Court in ***LPA No. 1106 of 2018 (Meera Devi vs. The State of Bihar and Others)***.

3. Learned Senior Counsel, D.K. Sinha, appearing for the appellant, who was the 8th respondent, argued that though the 8th respondent was impleaded and she had entrusted the matter to a Counsel; he had died and hence there was no effective appearance. On the merits, it was submitted that Anganbari Sevika is not included in the civil services as has been held by a Division Bench of this Court in ***Neetu Kumari v. State of Bihar and Others; 2011 (4) PLJR 20***. Reliance was placed on the decision of the Hon'ble Supreme



Court in *State of Karnataka v. Ameerbi and Others*; (2007)

11 SCC 681 to also contend that Anganbari workers do not hold a civil post and their application under Article 226 of the Constitution of India cannot be entertained.

4. We have looked at the judgment of the Hon'ble Supreme Court which was in the context of a larger Bench of the Karnataka State Administrative Tribunal having held that the application filed by the Anganbari Sevikas before the Administrative Tribunal, was maintainable since they were paid honorarium and they hold a civil post. It was held so in Paragraph Nos. 13 and 14 in *Ameerbi* (*supra*) which are extracted hereunder:

'13. The posts of anganwadi workers are not statutory posts. They have been created in terms of the scheme. It is one thing to say that there exists a relationship of employer and employee by and between the State and anganwadi workers but it is another thing to say that they are holders of civil post.

14. We are not oblivious to the fact that their presence in their respective villages is extremely important. They are supposed to make significant contribution to the society. They, we understand, are required to carry out a large number of activities, primary amongst them being the welfare of the children.'



We cannot, but observe that this was only in the context of the petitioners having invoked the jurisdiction of the Tribunal constituted under the Administrative Tribunals Act, 1985. We also extract Paragraph No. 33 from the aforesaid decision:

‘33.The decision, therefore, is an authority for the proposition that those employees who come within the meaning of Article 12 of the Constitution of India are not necessarily government servants. A fortiori the State in terms of a scheme may exercise control over a section of the persons working but thereby only, they do not become entitled to protection under Article 311 of the Constitution of India.’

5. We cannot but notice that, here too, the Government has employed Anganwadi Sevikas, on an honorarium and in the instant case the incumbent was terminated on clear allegations raised against her. It cannot be disputed that the authority, which terminated the writ petitioner, is amenable to the jurisdiction under Article 226 of the Constitution of India; coming under the definition of State under Article 12 of the Constitution of India.

6. There is also an employer-employee relationship between the Anganbari Sevika and the Government. Article 311, as has been held may not be strictly applicable, however,



the fundamental principles of service jurisprudence apply squarely in the case of persons appointed on honorarium also, since they have a legitimate expectation to be continued in the post as long as they are discharging their functions dutifully. There is also no period stipulated for their continued engagement and the post itself is continued after termination of the incumbent by appointing another person of similar qualification on identical terms, as available to the incumbent.

7. Fundamental principles of service jurisprudence require a notice regarding the allegations raised; which could lead to a termination and also a reasonable opportunity to proffer an explanation to refute the allegations. In the present case it is not a termination simplicitor and since the termination is on definite allegations of misconduct, it ought to have been established in a properly constituted enquiry, especially while imposing a penalty of termination.

8. Having gone through the decision in *Neetu Kumari (supra)* of a Coordinate Bench of this Court, we are unable to discern any facts regarding the reason for disengagement, which was challenged before the statutory authorities and then the writ Court. The Division Bench only relegated the appellant to the Civil Court to apply for



damages, if so desired, declining discretion in exercise of the extraordinary remedy.

9. In the present case the petitioner had approached the statutory authorities and then approached this Court, under Article 226, against the orders of the statutory authorities. The learned Single Judge rightly exercised jurisdiction and we find no reason to upset the judgment in appeal since the exercise of discretion was not at all unreasonable and the interference to the termination was on well heeled principles of service jurisprudence; which the statutory authorities failed to reckon.

10. The learned Single Judge also relied on a decision of another Coordinate Bench of this Court in ***Meera Devi (supra)*** which was on identical facts of a stigmatic termination, on allegations levelled, without constituting a departmental enquiry where the charges have to be established on evidence and an opportunity of setting up a defence afforded to the delinquent employee.

11. The learned Single Judge having exercised discretion to interfere with the termination, especially for reason of no disciplinary enquiry having been initiated; when allegations were levelled against the employee, we are of the



opinion that it cannot be disturbed in appeal.

12. We refuse to interfere and reject the appeal. The appointment of the appellant was a consequence of the termination and on reinstatement of the writ petitioner, necessarily the appellant would have to forsake her appointment.

13. The appeal stands rejected.

(K. Vinod Chandran, CJ)

Partha Sarthy, J I agree

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	
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