

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2156 of 2019

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Neelam Devi, W/o Surya Narayan, R/o Village Bela, Tola Tehar Mandal,
Ward No. 5 Block and Police Station Beldaur, District Khagaria

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary Department of Social and Welfare,
Government of Bihar, Patna
2. The Director (ICDS), Social Welfare Department Government of Bihar,
Patna
3. The Divisional Commissioner, Munger cum Deputy Director Child
Development Project Officer, Munger
4. The District Magistrate cum Collector Khagaria
5. The District Programme Officer, Khagaria
6. The Child Development Officer, Beldaur, Khagaria
7. The Mukhiya of Under Gram Panchayat Raj, Bela, Block and Police station
Beldaur, District-Khagaria

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shekhar Kumar Singh, Advocate
For the Respondent/s : Mr. Ajit Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 25-11-2024

Heard Mr. Shekhar Kumar Singh, learned counsel for
the petitioner and Mr. Ajit Kumar, learned counsel for the State.

2. The petitioner prays for issuance of a writ in the
nature of mandamus commanding upon the respondents to
extend the arrears of payment of salary w.e.f. 24.01.2012 to
01.03.2016. The relief sought for in the present writ petition is
based upon the fact that the petitioner was earlier appointed on
the post of Anganwadi Sevika under Gram Panchayat Bela at



Anganwadi Centre No.11 under Block-Beldaur, District-Khagaria on 26.01.1994 and after appointment she had been discharging her duty on the post of Anganwadi Sevika, in the meantime, the District Programme Officer, Khagaria had issued the order of termination vide Memo No. 55 dated 24.01.2012, on the basis of an inquiry report submitted by the Deputy Collector, Khagaria, wherein it has been alleged that during the inspection at Anganwari Centre on 03.01.2011, the petitioner was found absent from the duty. The order of termination was challenged before the Deputy Director, (Welfare) Munger by way of Service Appeal No. 64 of 2013 and the termination order came to be set aside on 22.01.2015. Consequent thereupon, the petitioner was taken into service and allowed to join on 01.03.2016; and has been discharging her duty till today without there being any complaint.

3. Learned counsel for the petitioner contended that the impugned order passed by the Deputy Director (Welfare), Munger in Service Appeal No. 64 of 2013 to the extent whereby it has been held that the petitioner is not entitled to get remuneration for the period in which she remained out of the service, is wholly bad and illegal as the petitioner has been deprived from discharging her duty on account of illegal order,



which came to be set aside. Since there was no laches on the part of the petitioner, which also stood affirmed after setting aside of the order of termination, there is no reason or occasion to withhold salary/remuneration of the petitioner as Anganwadi Sevika. Reliance has also been placed on a judgment rendered by this Court in **Smt. Dipali Kundu v. The State of Bihar and Others [1991(1)BLJR 549]**.

4. On the strength of the aforesaid judgment, learned counsel for the petitioner contended that since the Disciplinary Authority has not taken a decision while passing the final order in terms of Rule 97 of the Bihar Service Code, the order of not granting the salary for such period has been held to be unsustainable in law.

5. On the other hand, learned counsel for the State, countering the afore-noted submissions of learned counsel for the petitioner submitted that it is the admitted position that on account of the unauthorized absence of the petitioner, her services came to be terminated, which was though later on set aside by the Appellate Authority. However, this is the admitted position that the petitioner has not discharged the duty of Anganwadi Sevika during the period from the date of termination till the date of her reinstatement. It is further



contended that so far the post of Anganwadi Workers are concerned, they do not hold civil post under the Government, hence, they cannot be treated at par with the Government servant and, as such, in no circumstances, they can claim the benefit of any of the provisions prescribed either under the Bihar Service Code or Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

6. Having heard the learned counsel for the respective parties and taking note of the materials available on record, before parting with the final outcome, it would be apt and proper to observe that the Hon'ble Supreme Court in the case of **State of Karnataka and Others v. Ameerbi and Others [(2007) 11 SCC 681]** while considering the case of the Anganbari Workers has ruled that the persons working as Anganbari Sevika do not hold civil post and their applications are not maintainable. The post of Anganbari Workers are not the statutory post and they are created under the scheme and, as such, they do not have any protection under Article 311 of the Constitution of the India.

7. The similar proposition has also been enunciated by the judgment of this Court in the case of **Parvati Devi @ Parvati Singh vs. the State of Bihar and Ors. [2024(1) BLJ**



178], wherein the learned Court highlighting the decision of the Hon'ble Supreme Court in the case of **Ameerbi** (supra) held as follows:

“5. This Court would also refer to a judgment rendered by the Hon'ble Apex Court, reported in (2007) 11 SCC 681 (State of Karnataka and 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.

6. This Court also 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 Anganbari 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.”



8. It would be worth noting that the Anganwadi Sevika(s) have been allowed only fixed remuneration against their services and they do not get any salary for the said post.

9. Considering the settled legal position as also the fact that the petitioner has not discharged any duty during the interregnum period of termination to her reinstatement, this Court does not find any error in the order passed by the Deputy Director (Welfare), Munger in Service Appeal No. 64 of 2013.

10. Accordingly, the writ petition sans any merit, is dismissed.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
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