

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.828 of 2019

In
Civil Writ Jurisdiction Case No.12752 of 2014

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Shubhadra Kumari @ Subhadra Devi W/o Naresh Prasad resident of Village-
Atwal Bigha, P.S.- Tharthari, District- Nalanda.

... .. Appellant/s

Versus

1. The State of Bihar through the Secretary, Social Welfare Development, Govt. of Bihar, Patna
2. The Director, ICDS, Development of Social Welfare, Govt. of Bihar, Patna
3. The Deputy Director (Welfare) Patna Division, Patna
4. The District Magistrate Nalanda
5. The District Programme Officer, Nalanda.
6. The Child Development Officer Tharthari, Nalanda
7. The Women Supervision Child Development Project Officer, Tharthari, Nalanda

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Anil Kumar Singh, Adv.
For the Respondent/s : Mr.Gyan Prakash Ojha, GA-7

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 03-07-2024

The present LPA has been filed against the order dated 17.06.2019 passed in CWJC No. 12752 of 2014 whereby the learned Single Judge has dismissed the writ petition filed by the appellant.

2. In civil writ jurisdiction, the appellant has



prayed for the following relief(s):-

1. For quashing the order dated 26.02.2014 passed by the District Programme Officer, Nalanda (hereinafter referred as DPO) communicated under Memo No. 482 dated 26.02.2014 whereby the petitioner has been terminated from the post of Anganbari Sevika and further direction was given to the Child Development Project Officer, Tharthari (hereinafter referred as CDPO) to make selection process regarding the selection of Anganbari Sevika according to law. (Annexure-16/1)

II. For quashing the order dated 03.05.2014 passed by the Deputy Director (Welfare), Patna Division, Patna in Appeal No. 42 of 2014 whereby the order dated 26.02.2014 passed by the DPO Nalanda has been affirmed. (Annexure-17)

III. To stay the operation of order dated 26.02.2014 passed by the DPO Nalanda as well as order dated 03.05.2014 passed by the Deputy Director, (Welfare) Patna Division, Patna in Appeal No. 42 of 2014.

IV. To pass any such order or orders as your Lordships may deem fit and proper under the facts and circumstance of the case.

3. Briefly stated the facts of the present case are that the appellant was selected as Anganbari Sevika at Anganbari Center No. 62 at Atwal Bigha under Gram Panchayat



Raj Asta Block, Chandi (present block Tharthari) of District Nalanda vide memo no. 152 dated 05.04.2003 issued by the C.D.P.O., Chandi. It is claimed that the appellant is said to have implicated in a criminal case i.e. Tharthari P.S. Case No. 60 of 2013 for the offences alleged under Sections 147, 148, 149, 302, 307 of the IPC and Section 27 of the Arms Act. It is further claimed that on account of said criminal proceedings, respondent no. 5 on 26.02.2014 cancelled the appellant's selection as Anganbari Sevika for Center No. 62 at Atwal Bigha in the district of Nalanda as she was continuously absent from the place of posting and the said termination order was affirmed by respondent no. 3 on 03.05.2014. The appellant challenged the aforesaid orders before the learned Single Judge but the same was dismissed. Hence, the present LPA.

4. Learned counsel for the appellant has submitted that after selection appellant got training from different institutions running under Welfare Department in the year 2004, 2006 and 2010. Learned counsel further submitted that appellant has been discharging her duty with full satisfaction of the superior authority since the year 2003 and there was not a single complaint against the appellant regarding absence of her duty. It has further submitted that prior to lodging the said criminal



case, appellant was suffering from illness due to which she was admitted in Rajeshwar Hospital, Patna for treatment on 07.10.2013 and she was advised to take complete bed rest for one month. It has been further submitted that appellant acquitted from criminal case on 28.04.2018 vide Sessions Trial No. 348 of 2015 by the learned Trial Court. Learned counsel further submitted that appellant has got the privilege of anticipatory bail after institution of the said case and copy of the same has been submitted to this court. Learned counsel further submitted that respondent no. 4 to 6 filed counter affidavit in response to the appellant's writ petition in which it has been submitted that the appellant has been terminated from service as she has involved in the criminal case and she is found absent from the place of posting. Learned counsel further submitted that no show cause was ever served upon the appellant and order passed by the respondents to terminate the service of appellant abruptly which is without any basis. Learned counsel further submitted that the appellant has been terminated from service without following proper procedure. In this way, natural justice has not been followed and the learned Single Judge passed the order without taking into consideration the material available on record.

5. Learned counsel on behalf of the respondents



has submitted that order passed by the learned Single Judge is justified and legal and hence, no interference is needed. Learned counsel has submitted that on the basis of inquiry report notice bearing memo no. 392 dated 11.02.2014 was issued by the respondent no. 5 to the appellant with a direction to appear physically with explanation and the same could not be served on account of absence of the appellant and Anganbari Centre was badly effected. Learned counsel further submitted that taking into account accusation in criminal case bearing Tharthari P.S. Case No. 60 of 2013 respondent no. 5 rightly terminated the appellant from service as Sevika vide order dated 26.02.2014 and same is rightly affirmed by the superior officer. In this way, termination order is just proper and speaking one.

6. From perusal of the record, it is crystal clear that no notice has been served upon the appellant. On that score, principle of nature justice has not been followed in letter and spirit and the order of the termination passed by the respondent no. 5 on 26.02.2014 is not justified and legal which is against the spirit of natural justice. Simply the appellant cannot be terminated only on the ground that he is facing allegation of criminal proceedings.

7. आँगनबाड़ी पर्यवेक्षिका / सेविका / सहायिका चयन मार्गदर्शिका



lays down relevant direction as mentioned in 4.12 which reads as under:-

"4.12. किसी सक्षम न्यायालय द्वारा किसी अपराध के लिये दंडित न किया गया हो अथवा दंड प्रक्रिया संहिता के अन्तर्गत बंधपत्र दाखिल करने का आदेश सक्षम न्यायालय के द्वारा नहीं दिया गया हो।"

In other words, person prior to selection for the post of Anganbari Sevika has to fulfill the said criteria that he/she should not be punished by any competent court and he/she should not be asked to execute bond. This direction will not be applicable in the present case as appellant has already appointed as Anganbari Sevika since the year 2003.

8. The Hon'ble Supreme Court in catena of judgments has held that principle of natural justice is equally applicable in quasi-judicial function as well as administrative function to arrive at just decision and it is difficult to see as to why it should be applicable only to quasi-judicial inquiry not to administrative inquiry and it has been settled law that it must logically apply to both. The Hon'ble Supreme Court in the case of *D.K. Yadav vs. J.M.A. Industries Ltd.* reported in (1993) 3 SCC 259 observed at para-12 which reads as under:-

"12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable.



The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice."

The said principle has been recently reiterated by the Hon'ble Supreme Court in the case of ***State Bank of India and Others vs. Rajesh Agarwal and Others*** reported in 2023 SCC OnLine SC 342 in which it has been observed as follows:-

The Principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities.

9. In the present case, when action of respondent authority is decided upon the touchstone of principles of natural justice as observed by the Hon'ble Supreme Court in the cases (cited supra), it is crystal clear that action of respondent authority is arbitrary as proper procedure has not been adopted. When the concerned authority passed the order without providing the opportunity to the aggrieved person, on that score



order passed by the concerned authority is against the spirit of law violating the principles of natural justice as observed by the Hon'ble Supreme Court in catena of judgments.

10. In the present case, no notice was served upon the appellant and she was also not given any opportunity to put forth her case before the competent authority. Appellant suffered the termination from the post of Anganbari Sevika abruptly only on the ground of accusation in criminal case i.e. Tharthari P.S. Case No. 60 of 2013. In the light of given facts and circumstances of the case, orders passed by the respondents authority is bereft of merit and the appellant has made out a case so as to interfere with the judgment dated 17.06.2019 passed in CWJC No. 12752 of 2014. Accordingly, judgment dated 17.06.2019 stands set aside and CWJC No. 12752 of 2014 allowed, consequently the present LPA stands allowed.

11. From perusal of the material available on record, it is evident that the appellant has been terminated from the service on 26.02.2014 and third party interest has already been created. Hence, in the aforesaid circumstance, appellant is entitled to compensation and it is quantified at Rs. 5,00,000/- (Rupees five lakhs). Compensation of Rs. 5,00,000/- (Rupees five lakhs) shall be paid to appellant within a period of three



months from the date of receipt of this order, failing which appellant is entitled to interest @ 6% p.a. from the date of filing of CWJC.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	AFR
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