

IN THE HIGH COURT OF JUDICATURE AT PATNA

Smt. Rambarti Kumari

vs.

The State of Bihar And Ors

Civil Writ Jurisdiction Case No. 22355 of 2014

16 August 2023

(Hon’ble Mr. Justice Mohit Kumar Shah)

Issue for Consideration

Whether the principles of natural justice were complied with before passing the impugned orders?

Headnotes

Anganwari Sevika post does not attract protections under Article 311 of the Constitution (Para - 8).

Requirement of principles of natural justice has been complied with and the impugned orders have been passed, after granting due opportunity to the petitioner to present her case, hence, no infirmity can be found in the impugned orders. (Para - 10).

Petition dismissed. (Para - 11).

Case Law Cited

Sajjan Devi v. State of Bihar, **2004 (2) PLJR 833**; State of Karnataka and Others v. Ameerbi and Others, **(2007) 11 SCC 681**; Babita Kumari v. State of Bihar and Others, **2016 SCC Online Pat 9434**; Neetu Kumari v. State of Bihar and Others, **2011 (4) PLJR 20**

List of Acts

Constitution of India: Article 311

List of Keywords

Anganwari Sevika; ICDS Scheme; Natural Justice; Article 311; Disengagement; Government Post; Show Cause; Honorarium; Welfare of Children

Case Arising From

Order dated 27.12.2013 by District Programme Officer, Nawada; Appellate Order dated 06.11.2014 by Deputy Director, Welfare, Magadh Division, Gaya

Appearances for Parties

For the Petitioner: Mr. Arjun Prasad, Advocate

For the Respondents: Mr. Raj Nandan Prasad, SC-9

Headnotes Prepared by Reporter:Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 22355 of 2014

Smt. Rambarti Kumari Wife of Sri Nandlal Manjhi Resident of Village - Rohua, P.S- Pakri Barawan, District - Nawada.

... .. Petitioner/s

Versus

- 1. The State of Bihar
- 2. Deputy Director, Welfare, Magadh Division, Gaya.
- 3. District Programme Officer, Nawada, District - Nawada.
- 4. Child Development Project Officer, Nawada.

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Arjun Prasad, Advocate
For the Respondent/s : Mr. Raj Nandan Prasad, SC-9

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 16-08-2023

1. The present writ petition has been filed for quashing the order dt. 27.12.2013 passed by the District Programme Officer, Nawada i.e. the respondent no. 3, whereby and whereunder the selection of the petitioner on the post of Anganwari Sevika has been cancelled. The petitioner has also sought quashing of the appellate order dated 06.11.2014, passed by the Deputy Director, Welfare, Magadh Division, Gaya i.e. the respondent no. 2 in Anganwari Appeal No. 18(क) of 2014.



2. The brief facts of the case, according to the petitioner, are that she was appointed as Anganwari Sevika on 03.02.1999 at Centre bearing Centre Code No. 29, village- Rohua under Dumrawan Gram Panchayat, Prakhanda- Pakri Barawan, District-Nawada and since then she had been discharging her duties as Anganwari Sevika to the satisfaction of all concerned. It is submitted that on 16.09.2013 a State Level Inspecting Committee had arrived at the Centre and found the same closed, whereupon a show cause was issued to the petitioner and upon the petitioner having filed her reply, the District Programme Officer, Nawada by the impugned order dated 27.12.2013 had cancelled the selection of the petitioner on the post of Anganwari Sevika, whereafter the petitioner had filed an appeal, however, the same has also stood dismissed by the impugned order dated 06.11.2014.

3. The learned counsel for the petitioner has submitted that the punishment of dismissal from service inflicted upon the petitioner is harsh, hence



a sympathetic view be taken.

4. *Per contra*, the learned counsel for the respondents has submitted, by referring to the counter affidavit filed in the present case, that upon an inspection having been held at the Centre in question on 16.09.2013, the said Centre was found closed and the petitioner was missing, whereafter a show cause notice dated 02.11.2013 was issued to the petitioner, to which the petitioner had replied, inter-alia stating therein that since she had gone to toilet on account of some indigestion problem, the Centre in question was closed. It is submitted that since the petitioner has admitted her guilt, the impugned order dated 27.12.2013 was passed by the respondent no. 3 cancelling the selection of the petitioner as Anganwari Sevika, hence the same does not suffer from any lacuna.

5. I have heard the learned counsel for the parties and gone through the materials on record. At this juncture, it would be relevant to refer to a judgment rendered by a learned Division Bench of



this Court, reported in **2004 (2) PLJR 833 (Sajjan Devi v. State of Bihar)**, paragraphs no. 11 to 16 whereof are reproduced herein below:-

“(11) The first question to be considered is as to whether the engagement of Anganbari Sewika is an engagement on a post in the Government service. If their engagements are on the posts in the Government service and they have been appointed following a procedure, in that case their engagements cannot be cancelled on the ground of misconduct without holding a departmental enquiry as provided under the Rules. If in case, they are not holding a post in the Government service and their engagements are on the basis of contract of a service under a Scheme, then their services can be terminated in terms of the agreement after following a procedure consistent with the requirement of principle of natural justice.

(12) The Scheme has been made to provide help to the poor and downtrodden persons covered by the Scheme as stated above. Engagement is made only by holding an interview and no payment of salary is being made nor the appointment is being made against any post in the



Government service. Honorarium is paid for performing the duties for a particular period. In case, their services are not found satisfactory, they can be removed from the post of Anganbari Sewika. Term of appointment clearly shows that they are not engaged in Government service nor are they holding any post in the Government Service, having umbrella of protection under Article 311 of the Constitution of India. In case, it is found that they are not performing duties, for which they were engaged, then in terms of the engagement letter they can be removed. They cannot claim initiation of a regular departmental enquiry prior to their disengagement.

(13) Thus, the post of Anganbari Sewika is not a post in the Government service and as such the private respondents cannot claim protection under Article 311 of the Constitution of India.

(14) It appears from the record that inspections were held several times and the private respondents were found absent from their duties. It was also found that while on duty, they did not discharge their duties, for which they were engaged and,



thereafter, show-cause notices were served upon them and they did not file any show-cause and, thereafter, their engagements were cancelled.

(15) Requirement of principle of natural justice has been complied with and as they are not in Government service, they cannot claim a regular proceeding prior to disengagement, or removal by treating the aforesaid act as misconduct. Even alternatively it is assumed that they were on temporary employment in the Government service then also it is found that the authorities after having taken into consideration their past conduct as a motive and after giving an opportunity of hearing to them have disengaged them and as such they cannot claim any infirmity in their disengagement on the ground of violation of principle of natural justice.

(16) Thus, the orders dated 13.2.1989 and 18.2.1989 passed by the authorities cancelling the engagement of the private respondents as Anganbari Sewika, who had filed C.W.J.C. No. 290 of 1991 challenging their cancellation of engagement as Anganbari Sewika are held



to be valid orders and they do not suffer from any irregularity and, accordingly, C.W.J.C. No. 290 of 1991 filed by the private respondents is dismissed.

6. 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.

7. 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 vs. 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 Anganbadi Centres 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 apt to refer to yet another judgment rendered by the learned Division Bench of this Court in the case of **Neetu Kumari vs. The State of Bihar and others**, reported in **2011 (4) PLJR 20**, paragraphs no. 4 and 5 whereof are reproduced herein below:-

“4. In our considered view, the post of Anganbari Sevika is not a post having security of tenure or protection under Article 311 of Constitution of India. Considering the very nature of engagement which provides of



honorarium, we are of the view that in case the appellant still feels aggrieved, she may approach the Civil Court for damages. There is nothing at stake in such a scheme other than honorarium. For such contractual engagements the relief of reinstatement is not appropriate and even if there is breach of the scheme or any other principle of law, the claim should ordinarily be permitted, if found good on merits, only for damages.

5. The appeal is dismissed.

9. Now, coming back to the present case, this Court finds that the charges levelled against the petitioner has been admitted by the petitioner in her show cause reply and closure of the Centre in question even for one day is a serious lapse in execution of the ICDS scheme, which has to be taken very seriously inasmuch as closure of the Centre even for one day entails the beneficiaries going without their meals, which cannot be overlooked, thus the punishment of cancellation of selection of petitioner as Anganwari Sevika cannot be faulted with. The spirit and object of running



Anganbadi Centres 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.

10. Moreover, this Court finds that the requirement of principles of natural justice has been complied with and the impugned orders have been passed, after granting due opportunity to the petitioner to present her case, hence, no infirmity can be found in the impugned orders. Having considered the aforesaid aspect of the matter, this Court is satisfied that the reasons furnished by the petitioner and the cause shown are in fact, not convincing and she has miserably failed to provide help to the children of poor and downtrodden persons as per the Scheme. Thus, there is no infirmity/illegality in the impugned order dated 27.12.2013, passed by the District Programme Officer, Nawada or in the order dated 06.11.2014, passed by the Deputy Director, Welfare, Magadh



Division, Gaya in Anganwari Appeal No. 18(क) of 2014. This aspect of the matter is fully covered by the judgments rendered by the learned Division Bench of this Court in the case of Babita Kumari (supra) and Sajjan Devi (supra).

11. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not find any merit in the present writ petition, hence the same stands dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

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