

IN THE HIGH COURT OF JUDICATURE AT PATNA

Suman Kumari

vs.

The State of Bihar & Others

CWJC No. 22079 of 2013

22 June, 2023

(Hon'ble Mr. Justice Mohit Kumar Shah)

Issue for Consideration

Whether the order passed by the Collector is a speaking order and complies with principles of natural justice.

Headnotes

Order has been passed after giving due opportunity of hearing to the petitioner and considering the guidelines issued by the Integrated Child Development Scheme, Bihar, Patna. - No infirmity can be found in the said order, which, in any view of the matter, is a reasoned and a speaking order, which upon consideration of the defense put forth by the petitioner, has come to a finding that the petitioner was not running the Centre as per the prescribed guidelines and she had engaged in gross negligence, which warranted cancellation of her selection as Anganwadi Sevika. (Para 9)

Petition is dismissed. (Para 14)

Case Law Cited

Sajjan Devi v. State of Bihar, 2004 (2) PLJR 833

Babita Kumari v. State of Bihar, 2016 SCC Online Pat 9434

Neetu Kumari v. State of Bihar, 2011 (4) PLJR 20

Mehin Nigar Begum v. State of Bihar, 2023 (1) PLJR 323

List of Acts

Constitution of India – Article 311

Integrated Child Development Scheme (ICDS) Guidelines

List of Keywords

Anganwadi Sevika, Termination, Natural Justice, Non-Speaking Order, ICDS, Inspection Report,

Contractual Engagement, Article 311, Honourarium, Appeal Dismissal

Case Arising From

Cancellation of petitioner's selection as Anganwadi Sevika and subsequent rejection of appeal by the Collector, Supaul.

Appearances for Parties

For the Petitioner: Mr. Uma Shankar Singh, Advocate

For the Respondents: Mr. Anuj Kumar, AC to GP 24

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.22079 of 2013

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Suman Kumari Wife Of Sri Vijay Kumar Chaudhary, Resident Of Vill-
Thumha, P.S- Pipara, Distt- Supaul.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Social Welfare, Government of Bihar, Patna.
2. The Principal Secretary, Department Of Social Welfare, Govt. Of Bihar, Patna.
3. The Director, Integrated Child Development Scheme (I. C. D. S.) Bihar, Patna.
4. The Commissioner, Koshi Division, Saharsa.
5. The Collector, Supaul.
6. The District Programme Officer, Supaul.
7. The Child Development Project Officer, Pipra. District - Supaul.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Uma Shankar Singh, Advocate
 For the Respondent/s : Mr.Anuj Kumar, AC to GP 24

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 22-06-2023

1. The present writ petition has been filed for quashing the order dated 27.08.2012, passed by the District Programme Officer, Supaul i.e. the respondent no. 6, whereby and whereunder the selection of the petitioner as *Anganwadi Sewika* at Centre no. 09, Musahari Tola, Thumha, Block-Pipra, District-Supaul has been cancelled. The petitioner has also prayed for quashing of the order dated 14.08.2013, passed by the Collector, Supaul in Appeal Case no. 25 of 2013, whereby and whereunder the appeal filed by the petitioner has stood



dismissed.

2. The brief facts of the case, according to the petitioner, are that while the petitioner was working as *Anganwadi Sewika* at Centre no. 09, Musahari Tola, Thumha, Block-Pipra, District-Supaul, she was served with a letter dated 24.07.2012 containing an allegation levelled against her regarding the irregularities, found during the inspection conducted by the respondent no. 6 on 06.07.2012, whereafter the petitioner had appeared before the authorities and submit her explanation, however, the District Programme Officer, Supaul, by his order dated 27.08.2012, has cancelled the selection of the petitioner as *Anganwadi Sewika*, whereafter the petitioner had challenged the same by filing an appeal which was numbered as Appeal no. 44 of 2012, however, the same has also stood dismissed by the learned Collector, Supaul by an order dated 16.10.2012.

3. The petitioner had then filed a writ petition bearing C.W.J.C. no. 2777 of 2013 challenging the aforesaid order dated 27.08.2012, passed by the District Programme Officer, Supaul as also the appellate order dated 16.10.2012 and a co-ordinate Bench of this Court by an order dated 08.02.2013, had though not interfered with the original order dated 27.08.2012, passed by the respondent no. 6 but had held the appellate order dated



16.10.2012 to be a cryptic and a non-speaking order, hence, had quashed the same and remanded the matter back to the Collector, Supaul for passing a fresh order. Thereafter, the petitioner was given an opportunity of hearing by the learned Collector, Supaul and then the impugned order dated 14.08.2013 has been passed by the learned Collector, Supaul, rejecting the appeal of the petitioner herein and this is how the petitioner is before this Court.

4. The learned counsel for the petitioner has submitted that the learned Collector, Supaul has again passed a cryptic and a non-speaking order, hence the same is bad in law. The learned counsel for the petitioner has also relied on a judgment rendered by the learned Division Bench of this Court, reported in **2023 (1) PLJR 323 (Mehin Nigar Begum v. State of Bihar)** to contend that a formal inquiry is required to be held before passing of the order of removal from service and on this ground as well, the orders impugned are bad in the eyes of law.

5. *Per contra*, the learned counsel for the respondent- State has submitted, by referring to the original order dated 27.08.2012, passed by the respondent no. 6, that serious irregularities were detected by the respondent no. 6 at the time of inspection which can be culled out from the said



order dated 27.08.2012, relevant paragraph whereof, is reproduced hereinbelow :-

“ पिपरा परियोजना के केन्द्र कोड-09 मुसहरी टोला, थुमहा पर केन्द्र संचालन में अनियमितता के संबंध में दिनांक 04.08.2012 को अधोहस्ताक्षरी के कार्यालय में सुनवाई की गयी। उक्त केन्द्र पर जिला प्रोग्राम पदाधिकारी, सुपौल द्वारा स्वयं दिनांक 06.07.2012 को निरीक्षण किया गया, आं० केन्द्र पर चौकी, मवेशी एवं चारा रखा हुआ था। केन्द्र पर बोर्ड नहीं लगा हुआ था के आलोक में इस कार्यालय के पत्रांक 1064/प्र०, दिनांक 24.07.2011 द्वारा सेविका सुमन कुमारी से स्पष्टीकरण की मांग की गयी। दिनांक 28.07.2012 को उपस्थित रहकर अपना पक्ष रखने का अवसर दिया गया। लेकिन उक्त तिथि को सुनवाई में उपस्थित न होकर दिनांक 04.08.2012 को सुनवाई में श्रीमती सुमन कुमारी उपस्थित हुई।

दिनांक 06.07.2012 को 11.30 बजे प्रश्नगत केन्द्र का अधोहस्ताक्षरी द्वारा निरीक्षण किया गया। निरीक्षण के समय केन्द्र पर मात्र 04 बच्चे उपस्थित पाये गये जिनमें एक बच्चा गैर नामांकित था, केन्द्र एक बड़ा बरामदा में था, जिसमें केन्द्र के पलैक्सी, मीनू आदि के साथ चौकी, मवेशी एवं चारा रखा हुआ था, जिससे लग रहा था कि केन्द्र स्थल बरामदे के मालिक द्वारा उपयोग में लाया जा रहा है। 04 बच्चे बाहर खुले मैदान में बैठे थे। सहायिका द्वारा पोषाहार बनाने की तैयारी की जा रही थी। यह केन्द्र मुसहरी टोला के नाम पर है और केन्द्र स्थल से थोड़ी दूरी पर मुसहरी टोला स्थित है, लेकिन केन्द्र



पर इस समुदाय के एक भी बच्चे उपस्थित नहीं थे, सेविका से इस संबंध में पूछने पर कोई जवाब नहीं दिया गया। पुनः सेविका से यह पूछने पर कि केन्द्र में इस महादलित की कितनी संख्या और कितने लाभार्थी हैं, सेविका द्वारा कुछ भी नहीं बताया गया। केन्द्र पर करीब आधा घंटा रहने के बाद भी 04 बच्चों के अलावे एक भी बच्चे नहीं आये। सेविका को और बच्चों को बुलाने के लिए कहा गया लेकिन वह बच्चों को बुला न सकी।

पोषाहार का निरीक्षण करने पर 1.500 कि० ग्राम से 2.00 कि० ग्राम चावल एवं 400 ग्राम चना का पुलाव बनाया जा रहा था। इस तरह विभागीय निर्देश है कि पोषाहार पूरी मात्रा में बनाया जायेगा, का पालन नहीं किया जा रहा था साथ ही केन्द्र के बाहर प्रमुखता से नाम पट्ट नहीं टांगा गया था। ”

6. The learned counsel for the respondents has also referred to the guidelines issued by the Integrated Child Development Scheme, Bihar, Patna vide letters dated 20.06.2012 and 14.03.2012, relevant portion whereof, are reproduced hereinbelow:-

“ कंडिका (2) को निम्न प्रकार पढ़ा जाय (Letter dt. 20.06.2012) :-

केन्द्र संचालन की निर्धारित अवधि में किसी भी समय आंगनबाड़ी केन्द्र पर पंजीकृत बच्चों की संख्या बिना पर्याप्त कारण के चौदह या चौदह से कम पायी जाती है तो ऐसी स्थिति में उस केन्द्र की सेविका को



चयनमुक्त करने की कार्रवाई की जाय।

Letter dt. 14.03.2012

जाँच के क्रम में किसी केन्द्र पर नाम पट्ट तथा लाभुकों को दिये जाने वाली सामग्री की मात्रा का *Prominent Display* यदि नहीं पाया जाता है तो इसके लिए सेविका को चयनमुक्त करने की कार्रवाई की जाय।”

7. The learned counsel for the respondent- State has further submitted that the respondent no. 6 had duly considered the submissions put forth by the petitioner and only then, had passed the order dated 27.08.2012, as would be apparent from the consideration made by the respondent no. 6, which is reproduced hereinbelow :-

“ दिनांक 04.08.2012 को सुनवाई में सेविका द्वारा प्रस्तुत स्पष्टीकरण का अवलोकन किया गया। केन्द्र संचालन की स्थिति, लाभार्थी वर्ग (मुसहरी टोला का) का केन्द्र जुड़ाव नहीं होना एवं सेविका द्वारा प्रस्तुत स्पष्टीकरण एवं जन प्रतिनिधियों के आवेदन में काफी विरोधाभास पाया गया। एक तरफ केन्द्र निरीक्षण में केन्द्र संचालन की स्थिति दयनीय पायी गयी और दूसरे तरफ सेविका द्वारा अपने बचाव में मनगढ़ंत तथ्यों का सहारा लिया गया है जिस पर जनप्रतिनिधियों का भी सहमति लिया गया है तो दूसरी तरफ सेविका को भी पता नहीं है कि केन्द्र में महादलित की कितनी आबादी है और कितने लाभार्थी हैं। ये तथ्य सेविका की कार्यशैली एवं कार्य स्थिति



को स्वतः दर्शाता है।

अतः केन्द्र संचालन में अनियमितता स्वतः प्रमाणित होता है। निदेशक, आई0सी0डी0एस0 बिहार, पटना के पत्रांक 2120, दिनांक 20.06.2012 के कंडिका 1(2) संशाधित कि केन्द्र संचालन की निर्धारित अवधि में किसी भी समय आं0 केन्द्र पर पंजीकृत बच्चों की संख्या बिना पर्याप्त कारण के चौदह या चौदह से कम पाया जाता है तो ऐसी स्थिति में उस केन्द्र की सेविका का चयन रद्द किया जायेगा।

पुनः निदेशक, आई0सी0डी0एस0 बिहार, पटना के पत्रांक 956, दिनांक 14.03.2012 के कंडिका 04 के अनुसार किसी केन्द्र पर नामपट्ट नहीं पाये जाने पर सेविका का चयन रद्द करने की कार्रवाई की जाय।

अतः उक्त के आलोक में सुमन कुमारी सेविका केन्द्र—मुसहरी टोला थुम्हा केन्द्र संख्या— 09 का चयन रद्द किया जाता है। पोषाहार की मात्रा जितनी खन्न नहीं किया गया है कि राशि विगत छः माह की वसूली का आदेश दिया जाता है कि बाल विकास परियोजना पदाधिकारी इसे सुनिश्चित करेंगी। साथ ही बगल के केन्द्र से Tag कर केन्द्र का संचालन बाल विकास परियोजना पदाधिकारी सुनिश्चित करायेंगे एवं केन्द्र पर सेविका चयन की कार्रवाई प्रारम्भ करेंगी। चयनमुक्त सेविका श्रीमति सुमन कुमारी पारित चयनमुक्ति आदेश के विरुद्ध जिला पदाधिकारी के न्यायालय में आदेश निर्गत की तिथि से 30 दिनों के अंदर अपील कर सकती है। “



8. The learned counsel for the respondent State has also submitted that the original order dated 27.08.2012, whereby and whereunder the selection of the petitioner as *Anganwadi Sewika* has been cancelled, was not interfered with in the earlier round of litigation i.e. in C.W.J.C. no. 2777 of 2013, hence, has stood confirmed by a co-ordinate Bench of this Court by an order dated 08.02.2013 and only the appellate order dated 16.10.2012 was interfered with, inasmuch as the same was set aside and the matter was remanded back to the learned Collector, Supaul for re-consideration, whereupon he has passed a detailed, reasoned and a speaking order dated 14.08.2013, as would be apparent from a bare perusal of the same, hence, it is submitted that there is no illegality in the orders passed by the respondent authorities. Lastly, it is submitted that there is no error in the procedure adopted by the respondents, thus this Court is not required to sit in Appeal over the decision arrived at by the respondent authorities.

9. I have heard the learned counsel for the parties and perused the materials on record. This Court finds that the respondent no. 6 has passed an order dated 27.08.2012, whereby and whereunder the selection of the petitioner as *Anganwadi Sewika* has been cancelled on the grounds mentioned therein,



which was challenged before this Court by filing a writ petition bearing C.W.J.C. no. 2777 of 2013, however, a co-ordinate Bench of this Court vide order dated 08.02.2013, had refrained from setting aside the same, hence, the same stood affirmed, thus, as far as the order dated 27.08.2012, passed by the respondent no. 6 is concerned, the same requires no interference. Now, coming to the current order dated 14.08.2013, passed by the learned Collector, Supaul, upon remand, this Court finds that the same has been passed after giving due opportunity of hearing to the petitioner and considering the guidelines issued by the Integrated Child Development Scheme, Bihar, Patna, as contained in letters dated 20.06.2012 and 14.03.2012, hence, no infirmity can be found in the said order dated 14.08.2013, which, in any view of the matter, is a reasoned and a speaking order, which upon consideration of the defense put forth by the petitioner, has come to a finding that the petitioner was not running the Centre as per the prescribed guidelines and she had engaged in gross negligence, which warranted cancellation of her selection as *Anganwadi Sevika*.

10. 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.

11. This Court would now deem 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 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.”

12. 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 v. 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.



13. Now, coming to the judgment referred to by the learned counsel for the petitioner in the case of *Mehin Nigar Begum (supra)*, apparently the same is not applicable in the facts and circumstances of the present case, inasmuch as the original order dated 27.08.2012 has already stood affirmed by a co-ordinate Bench of this Court in the earlier round of litigation.

14. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, accordingly the same stands dismissed.

(Mohit Kumar Shah, J)

rinkee/-

AFR/NAFR	AFR
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