
(2019) 07 PAT CK 0241

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 15618 Of 2018

Archana Kumari

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Citation : (2019) 07 PAT CK 0241

Hon'ble Judges : Shivaji Pandey, J

Bench : Single Bench

Advocate : Rakesh Narayansingh, Asit Kumar Jha

Final Decision : Allowed

Judgement

Heard learned counsel for the parties.

In this case, the petitioner is challenging the order dated 6.3.2018 by which the Collector, Khagaria, has rejected the appeal of the petitioner affirming the order passed by the D.P.O., Khagaria dated 30.8.2016.

This matter relates to Center No.46, Jorabarpur Gram Panchayat, Block Parbatta, Khagaria. On 2.8.2016, the S.D.O., Gogri along with D.P.O. made a sudden joint inspection of the Center No.46, Sahaika and Sevika both were found absent, total 12 children were present who were playing and they replied that both of them were in their respective home. The said center was running in a small thatched house wherein husk was kept and they recorded a finding that the center was not at a proper place and, for this misdemeanor, the D.P.O., in view of the department letter no. 3200 dated 7.8.2015, the enquiry was initiated and vide Memo No. 843 dated 10.8.2016, an explanation was called from the Anganvari Sevika, the explanation was not found satisfactory and it has been recorded that the center was not being run as per the guideline of the department vide Memo No. 3200 dated 7.8.2015. The explanation was considered and it was found that the charge no.1, 2, 3 and 5 were found to be proved and, on that account, the engagement of the petitioner was dispensed

with. The same was challenged before the Collector who has also refused to differ with the same.

Though the center is not running in a proper place, it should have been at right place in terms of the guideline of the department but, it also does not appear that the department has ever issued advisory to the petitioner to shift the center at proper place. Basically, the allegation has been made that when the inspecting team visited the center, the Sahaika and Sevika both were found absent and, there was no activity indicating that they were engaged in preparation of food for the children but, it was the first instance as they were never found indulged in any such activity.

Learned counsel for the petitioner has drawn attention of this Court towards the guideline wherein it has been mentioned in what manner the punishment is to be awarded to the Anganwari Sevika and Sahaika in the event they are found absent. As per guideline, the punishment of disengagement is the highest one and other punishment has also been prescribed but, the State has submitted that guidelines which is being relied upon by the petitioner is of the year 2015 and the inspection was made in the year 2016. So, the guideline of the year 2016 would apply and the State has brought for the purpose of assistance of this Court the guideline issued in the year 2015 (Annexure-B). As the incident has taken place in the year 2016 and the petitioners were found absent and, as such, rightly pointed out by the State that 2015 guideline will apply not the 2018 guideline.

In the 2015 guideline, the punishment has been provided, in the event of absence of Anganwari Sevika and Sahaika, the competent authority concerned will award punishment from censure to removal from service. In the present case, for the first time, the petitioner has been found to be absent from center. In such circumstances, while applying the principle of awarding punishment, gravity as well as the past service record should also have been taken into consideration but, in the present case, admittedly it is the singular incident when the petitioner was found absent from duty.

In that view of the matter, instead of awarding highest punishment of dispensing with the engagement, the District Programme Officer as well as the Collector could have applied his wisdom in awarding punishment of lower degree and, instead of passing the highest punishment, it would have met the end of justice by passing punishment other than dispensing with the services of the petitioner. The exercise of power should be reasonable and legal, is hallmark of administration of justice. It is necessary that the authority would consider the entire fact and circumstances and would pass an order in accordance with law.

Accordingly, the order passed by the D.P.O., Khagaria as well as the District Magistrate, Khagaria are set aside and the matter is remanded back to the District Programme Officer, Khagaria who will pass fresh orders in accordance with law.

In the result, this writ application stands allowed.