

**(2013) 04 JH CK 0068**

**In the Jharkhand High Court**

**Case No : LPA No. 443 of 2012; I.A. NO. 746 of 2013**

Chameli Devi

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

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**Date of Decision : 02-04-2013**

**Acts Referred:**

Constitution of India, 1950 — Article 14

**Citation :** (2013) 3 AJR 676 : (2013) 2 JLJR 553

**Hon'ble Judges :** S. Chandrashekhar, J; D.N. Patel, J

**Bench :** Division Bench

**Advocate :** Arbind Kr. Choudhary, for the Appellant; R.R. Mishra, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

D.N. Patel, J.—This Letters Patent Appeal has been preferred against the judgment and order dated 31.8.2012 passed by learned Single Judge in WP(S) No. 4802 of 2009, whereby the writ petition preferred by the present appellant has been dismissed. Learned counsel for the appellant submitted that the appellant (original petitioner) preferred the writ petition bearing WP(S) No. 4802 of 2009 for quashing the order of termination of the services of the present appellant passed by Deputy Development Commissioner, Deoghar on 24th September, 2009 (Annexure-6 to this L.P.A.).

2. It is submitted by the counsel for the appellant that the present appellant is Anganbari Sevika at Village-Gidhapather District-Deoghar. She was selected as Anganbari Sevika with effect from 21.2.2004. The appointment letter is at Annexure-1 to this L.P.A. and as per Condition No. 3 of this appointment letter, if she remains absent for more than 15 days, her selection as Anganbari Sevika was liable to be cancelled. It is submitted by the learned counsel for the appellant that on 29th August, 2009, her son aged about 8 years was sick and, therefore, she had to take him to Deoghar, for his treatment and she has also stated in reply to the show-cause notice that her son was taken for medical

treatment to Dr. Shri Anand Jain at District-Deoghar. She was absent only for a day on 29th August, 2009 and therefore, her services should not have been terminated or her selection may not be cancelled. This explanation was accepted by the Child Development Project Officer, Deoghar (Rural) and he has recommended vide his letter dated 11th September, 2009 to the District Social Welfare Officer, Deoghar that absence for a day of this appellant may be sympathetically considered. It is submitted by counsel for the appellant that her selection was cancelled without taking into consideration her explanation and without considering the report of Child Development Project Officer. Moreover, it is submitted by the counsel for the appellant that there is a Government of Jharkhand Circular No. 03/Sa.Ka.-134/2002-Ka-585 dated 2.6.2006 issued by the Secretary, Social Welfare, Women and Child Development Department; Government of Jharkhand (Annexure-10 to the supplementary affidavit filed by the appellant in L.P.A.) and as per Clause-16 thereof, if Anganbari Sevika remains absent for more than 15 days, after getting, her explanation, her selection can be cancelled. Similar is the Clause in the appointment letter at Annexure-1. The appellant has remained absent only for a day and that too because of sickness of her son and therefore, her termination/cancellation of selection order passed by the Deputy Development Commissioner, dated 24th September, 2009 (Annexure-6) deserves to be quashed. This aspect of the matter has not been properly appreciated by the learned Single Judge and hence, the judgment and order passed by learned Single Judge deserves to be quashed and set aside. It is also submitted by the counsel for the appellant that the Deputy Development Commissioner has not given any reason of his own for the termination of the selection of the appellant. On the contrary, the appellate authority, who is, the Deputy Commissioner has already taken decision prior to the decision to be taken by the Deputy Development Commissioner. The decision taken by the Deputy Commissioner, Deoghar is dated 20th September, 2009 (Annexure-5). The appellate authority has first taken decision and thereafter, it was followed by the Deputy Development Commissioner. Thus, the Deputy Development Commissioner has not taken any decision on the merit of the case at all and this aspect of the matter has not been properly appreciated by the learned Single Judge and hence, the order passed by the learned Single Judge deserves to be quashed and set aside. It is also submitted by the counsel for the appellant that not only the selection of the appellant (original petitioner) has been cancelled, she has also been debarred from to be appointed as Anganbari Sevika in future. The learned counsel for the appellant has, relied upon the following decisions, (a) Hind Construction and Engineering Co. Ltd. Vs. Their Workmen, , (paragraph-7), (b) Sachchi Devi vs. The State of Jharkhand & Ors., reported in 2011(3) JLR 328 (paragraph-6), and (c) Smt Rita Devi @ Rita Kumari Vs. The State of Jharkhand and Others, (paragraphs-4 and 5) and it is submitted on the basis of the aforesaid decisions that for a day's absenteeism, the termination of the present appellant (original petitioner) is a shockingly disproportionate punishment. This aspect of the matter has not been properly appreciated by the learned Single Judge.

3. The appellant was serving as Anganbari Sevika since 21st February, 2004 and there is no allegation against the appellant that she has ever remained absent in past. For the first time, this incidence of absence for a day has occurred and therefore also, the order passed by the Deputy Development Commissioner, Deoghar dated 24th September, 2009 deserves to be quashed and set aside. It is also submitted by the counsel for the appellant (original petitioner) that declaring the appellant permanently debarred from future selection is an added punishment. This is also not permissible in the eyes of law.

4. We have heard counsel for the State, who has submitted that the post of Anganbari Sevika is not a civil post at all and this appellant is not an employee of the State Government and the project which is known as Integrated Child Development Scheme (I.C.D.S.) is run by the Central Government and therefore, if any Anganbari Sevika remained absent even for a day, her services can be terminated, as the children will not get the food and looking to this gravity, her selection has been cancelled and this aspect of the matter has been properly appreciated by the learned Single Judge and therefore, this L.P.A. may not be entertained by this Court. Counsel for the State has also relied upon the decision rendered by the Hon"ble Gujarat High Court in the matter between "N.L. Joshi & 14 Ors. vs. Union of India & 4 Ors." dated 25th January, 2007.

5. Having heard counsel for both the sides and looking to the facts and circumstances of the case, we hereby quash and set aside the judgment and order passed by learned Single Judge in W.P.(S) No. 4802 of 2009 dated 31st August, 2012, for the following facts and reasons:--

(I) The present appellant (original petitioner) has preferred W.P.(S) No. 4802 of 2009 challenging the order of termination of her selection as Anganbari Sevika at Village-Gidhapather, District-Deoghar which is the order of Deputy Development Commissioner dated 24th September, 2009 (Annexure-6 to this L.P.A.).

(II) The appellant was appointed with effect from 21st February, 2004 and as per Clause-3 of her appointment letter (Annexure-1 to this compilation), if a person remains absent for more than 15 days or if the services are not up to the mark of satisfaction or if, one is negligent, in performing duties, for any of these reasons, selection can be cancelled.

(III) It appears from the facts of the case that this Anganbari Centre in question was visited by high ranking officer on 29th August, 2009 at about 12.30 hours and this appellant was found absent and, therefore, she was given a show-cause notice which is at Annexure-2 to this compilation dated 9.9.2009. The reply given by this appellant is at Annexure-3 dated 10.9.2009 and she has clearly stated the reasons for her absence from duty. In the reply to the show-cause notice, the appellant has stated that her son, aged about 8 years, fell sick and therefore, he was taken at district centre Deoghar for his treatment before Dr. Shri Anand Jain and the Child Development Project Officer has recommended that looking to her explanation, her case of a day's absenteeism may be considered

sympathetically. The officer who has given the show-cause notice has accepted the reason given by this appellant for her absence from duty. This report of Child Development Project Officer, Deoghar (Rural) is at Annexure-4. This report was given to the District Social Welfare Officer, Deoghar.

(IV) It further appears from the facts of the case that the circular issued by the Secretary, Social Welfare, Women and Child Development Department, Government of Jharkhand dated 2.6.2006 bearing Circular No. 03/Sa.Ka.-134/2002-Ka-585, specially. Clause 16 thereof provides that if any Anganbari Sevika or Sahayika remained absent for more than 15 days, her services can be terminated or her selection can be cancelled and such Sevika or Sahayika can prefer an appeal before the Deputy Commissioner of the concerned district. Similar is the Clause No. 3 in the appointment letter of this present appellant, but, it appears that before the Deputy Development Commissioner, Deoghar takes a decision on 24th September, 2009, already a decision was taken by the appellate authority, namely the Deputy Commissioner, Deoghar vide his letter dated 20th September, 2009. This letter is at Annexure-5 to the memo of this compilation. Looking to the decision of this appellate authority, we find that in one line it has been stated that the explanation of the appellant was not satisfactory and hence, the process of cancellation of her selection should be started. Thus, before the Deputy Development Commissioner, Deoghar takes a decision on 24th September, 2009, already a decision was taken by the Deputy Commissioner, Deoghar. This is not permissible in the eyes of law. The appellate authority cannot dictate, in a decision making process, to the subordinate officer.

(V) From the impugned order dated 24th September, 2009 which is at Annexure-6 of the memo of this L.P.A., it appears that the Deputy Development Commissioner has not taken any decision on his own. The Deputy Development Commissioner has merely followed the orders given by the appellate authority, namely the Deputy Commissioner, Deoghar. This is also not permissible in law. The authority which has to take decision on the basis of the explanation given by the appellant was required to take an independent decision, whereas in the present case, the Deputy Development Commissioner, Deoghar has not taken any independent decision. This aspect of the matter has not been properly appreciated by the learned Single Judge and, hence, the judgment and order passed by the learned Single Judge deserves to be set aside.

(VI) Looking to the order passed by the Deputy Development Commissioner, it further appears that it is a non-speaking order. The explanation given by this appellant (original petitioner) has not been considered at all. In one word it has been stated that the explanation is not satisfactory. This is no reason in the eye of law. It appears that the appellant has clearly stated the fact that her son aged about 8 years was sick and he was taken at District Centre, Deoghar before Dr. Anand Jain for his treatment. It appears that the Deputy Development Commissioner has mechanically followed the reasons given by the appellate authority, namely the Deputy Commissioner, Deoghar in his letter dated 20th

September, 2009 that explanation given by this appellant was unsatisfactorily given. There is no reason given by the Deputy Commissioner and mechanically the reason given by the Development Commissioner has been followed by the Deputy Development Commissioner, without any independent application of mind. This aspect of the matter has not been properly appreciated by the learned Single Judge and hence, the judgment and order passed by the learned Single Judge deserves to be set aside.

(VII) It further appears from the impugned order dated 24th September, 2009 passed by the Deputy Development Commissioner that the report given by the Child Development Project Officer, which is at Annexure-4 dated 11th September, 2009 has not been appreciated at all. The officer who has given a show-cause notice (Annexure-2) has appreciated the reply given by this appellant and has stated in his report that looking to the explanation given by this appellant, the case requires to be considered sympathetically. Nothing has been appreciated by the Deputy Development Commissioner, Deoghar nor by the Development Commissioner, Deoghar. How the reply given by this appellant was not up to the mark of satisfaction, is not stated in the impugned order at all. What is the reason not to accept the explanation of the appellant is not referred at all in the impugned order passed by the Deputy Development Commissioner. It has been merely stated in the impugned order passed by the Deputy Development Commissioner that the reply given by this appellant is not up to the mark of satisfaction. This arbitrariness in not giving reason, is violative of Right to Equality under Article 14 of the Constitution. Whenever arbitrariness is present the equality is absent and when equality is present, arbitrariness is absent. Arbitrariness and equality are sworn enemies of each other. If this reason is allowed that the explanation of the delinquent is not up to the mark of satisfaction, then in a one case similar reasoning will be accepted and in another case similar reasoning will not be accepted. In fact, the reason given by the Deputy Development Commissioner that explanation of this appellant was not up to the mark of satisfaction is "no reason" in the eyes of law at all. This aspect of the matter has also not been properly appreciated by the teamed Single Judge and, therefore, the judgment and order passed by the learned Single Judge deserves to be quashed and set aside.

(VIII) It is contended by the counsel for the State that the Scheme has been floated by the Central Government and Anganbari Sevika and Sahayika are not civil servant at all. The appellant has not pleaded that she is a civil servant or regular employee of the State Government. Her tenure of service will be co-terminus with the existence of the Scheme and nothing more. Within four corners of the Scheme, arbitrariness cannot be allowed at the behest of the Government high ranking officers. Looking to the facts of the present case, for a day's absenteeism the selection of the present appellant as Anganbari Sevika cannot be brought to an end and that too by appellate authority, namely the Deputy Commissioner, Deoghar first and thereafter, by the Deputy Development Commissioner, who has mechanically followed the decision of the appellate

authority.

(IX) It has been decided by the Hon''ble Supreme Court in the case of Hind Construction and Engineering Co. Ltd. Vs. Their Workmen, , in paragraph-7 as under:--

10. In our judgment, this is one of those cases in which it can plainly be said that the punishment imposed was one which no reasonable employer would have imposed in like circumstances unless it served some other purpose. There was a practice of substituting for a holiday falling on a Sunday, the day next following. This appears to have been done in the appellant Company for a number of years. In this year also the 2nd of January would have been a holiday but for the contrary decision of the Management. From the record it does not appear that there was anything very special requiring attention on that day. But assuming there was, the absence of the eleven workmen on the 2nd was not something for which no lesser punishment could have been imposed. The absence could have been treated as leave without pay: the workmen might even have been warned and fined. It is impossible to think that any other reasonable employer would have imposed the extreme punishment of dismissal on its entire permanent staff in this manner. Assuming for a moment, that three workmen were warned and taken back, the employer knew very well that they could not join in view of the intervention of the Union. On the whole, therefore, though we emphasise again that a Tribunal should not interfere with the kind or severity of punishment except in very extraordinary circumstances, we think that interference was justified in this case because the punishment was not only severe and out of proportion to the fault, but on which, in our judgment, no reasonable employer would have imposed.

(Emphasis supplied)

(X) In view of the aforesaid decision, for a day's absenteeism services of the delinquent cannot be brought to an end. This is a shockingly disproportionate punishment and no reasonable employer will terminate the services. The State Government is a model employer. It ought to be kept in mind of the State authority that only a female candidate can be appointed as Anganbari Sevika or Sahayika and that too, those who are belonging to the same village. When this appellant being a female candidate has been given employment and when she has been selected as Anganbari Sevika and she was serving since long i.e. with effect from 21st February, 2004 honestly, sincerely, diligently and to the satisfaction of the respondent-State, for a day's absenteeism and that too, with a proper explanation (Annexure-3). her selection ought not to have been cancelled by the State authorities and that too, by the appellate authority first, in point of time and thereafter by the subordinate officer. This is not permissible in the eyes of law.

(XI) It has been held by a Division Bench of this Court in the case of Sachchi Devi vs. The State of Jharkhand & Ors. reported in 2011(3) JLR 328, in

paragraph Nos. 5, 6 and 7 as under:--

5. The reason given by the petitioner/appellant for her absence is that her mother-in-law had died on 6.6.2009 suddenly, because of which she had to rush without having the time to obtain leave. Further case of the petitioner/appellant is that the last rites of her deceased mother-in-law were completed on 18.6.2010 and immediately thereafter she returned to duty.

6. There is no finding that this defence of the petitioner/appellant was false. More importantly, there is no finding whether prior to this occasion, the petitioner/appellant had even absented herself from duty without necessary leave, that is to say whether she was a habitual defaulter.

7. In absence of the aforesaid findings and considering the reasons for absence, the punishment awarded to the petitioner/appellant namely termination of service or disengagement as Anganbari Sahayika is unduly harsh and totally disproportionate to the alleged misconduct.

(Emphasis supplied)

In view of the aforesaid decision also, for a day's absenteeism the selection of the appellant cannot be cancelled, especially, when there is no finding, that reason given by this Appellant was false or that she has also remained absent in past.

(XII) It has been held by this Court in the case of Smt Rita Devi @ Rita Kumari Vs. The State of Jharkhand and Others, , in paragraph nos. 4 and 5:--

4. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, I hereby direct to quash and set aside the order passed by the Deputy Development Commissioner, Deoghar dated 10.11.2010, at Annexure-6 to the memo of petition, as well as the order passed by the Deputy Commissioner, Deoghar dated 7.10.2011, which is at Annexure-10 to the memo of petition, mainly for the following reasons:--

(I) The present petitioner was working as Anganbari Sevika at Jhunaki Anganbari Centre situated within the district of Deoghar since 4.9.2009. Thereafter the petitioner was working honestly, diligently and promptly and never any show cause notice was given to the petitioner.

(II) It further appears that on 12.10.2010 petitioner was absent from the said Anganbari Centre. On the said date, a team of high ranking officers of the State visited Anganbari Centre of the petitioner and as it was found closed, a show cause notice was given on 21st October, 2010 which is at Annexure-4 to the memo of petition. The allegation levelled against the petitioner was about absenteeism for one day. Moreover, it has been stated in the show cause notice that the villagers have confirmed that the Anganbari Centre is closed repeatedly and petitioner is misappropriating the food grains which is meant for children. The show cause notice was replied by the petitioner wherein the allegations were

denied by the petitioner. It appears that the explanation given by the petitioner is that Anganbari Centre was closed by the petitioner at 1.00 p.m. and she had gone to home. Otherwise, it was open in the morning. The team of high ranking officers came at 2.30 p.m. at the Anganwari Centre and, therefore, it was found closed. Be that as it may, looking to the termination order at Annexure-6 to the memo of petition passed by the Deputy Development Commissioner, Deoghar dated 10.11.2010, it appears that thereafter additional allegations were levelled in its termination order, like the petitioner is beating the children. Moreover, in a project, namely I.C.B.C., the petitioner is not properly working for these important project. Nobody knows what is this allegation. Nothing has been mentioned about these allegations. All these allegations are not justified as to who has supported the allegations of the respondents and who has given what evidence. Nothing is reflected in the show cause notice. The termination order is traveling beyond the show cause notice, which is not permissible in the eyes of law.

5. From all these facts, there is grave violation of principles of natural justice. Moreover, it appears that for a day's absenteeism, the services of the petitioner cannot be terminated looking to the explanation given by the petitioner. Moreover, several allegations have been levelled against the petitioner and it appears that some villagers have given some statements. Though the respondents have relied upon the statements given by the villagers, copy of the statements or summary of the statements have not been supplied to the petitioner. Thus, the documents relied upon by the respondents have not been supplied to the petitioner. Therefore, this is a grave violation of principle of natural justice. In view of all these facts, the order passed by the Deputy Development Commissioner, Deoghar dated 10.11.2010, which is annexed at Annexure-6 to the memo of petition, deserves to be quashed and set aside. The order an Annexure-10 to the memo of petition dated 7.10.2011 is a consequential order passed by the appellate authority, namely the Deputy Commissioner, Deoghar dismissing the appeal filed by the petitioner. Consequently both these orders i.e. order at Annexure-6 to the memo of petition dated 10.11.2010 passed by the Deputy Development Commissioner, Deoghar as well as the order dated 7.10.2011 annexed as Annexure-10 to the memo of petition, deserve to be quashed and set aside.

(XIII) The decision of the Gujarat High Court cited by the counsel for the respondent-State is not applicable to the facts of the present case, specially looking to the fact that only for a day's absenteeism, the services of this appellant or the selection of this appellant has been brought to an end. Moreover, there is no finding in termination letter of the Appellant that her explanation for absenteeism, was false. This aspect of the present case, makes the case different from the judgment cited by the counsel for the State.

(XIV) Thus, looking to the aforesaid decisions and also looking to the facts of the present case, the selection of the present appellant (original petitioner) cannot



be cancelled for a day's absenteeism. The impugned order dated 24th September, 2009 is a non-speaking order. Moreover, there is no independent application of mind by the Deputy Development Commissioner, because he has mechanically followed the direction given by the appellate authority i.e., the Deputy Commissioner, Deoghar.

6. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, we hereby quash and set aside the order passed by the Deputy Development Commissioner dated 24.9.2009 and the order passed by the learned Single Judge in W.P.(S) No. 4802 of 2009 dated 31st August, 2012. Accordingly, this L.P.A. is allowed. As the L.P.A. is hereby allowed, no order is required to be passed in I.A. No. 746 of 2013.