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**(2018) 06 JH CK 0024**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (S) No. 3072 of 2010**

Hina Topno

APPELLANT

Vs

Deputy Commissioner, Giridih, PO, PS and District-Giridih

RESPONDENT

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**Date of Decision :** 18-06-2018

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226

**Citation :** (2018) 06 JH CK 0024

**Hon'ble Judges :** PRAMATH PATNAIK, J

**Bench :** Single Bench

**Advocate :** A. K. Sahani, Sunil Singh

**Final Decision :** Disposed Off

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## Judgement

1. The petitioners, by way of this writ application, have prayed for quashing the impugned letter No. 157 and 158 both dated 25.02.2009 (Annexure-2

and 2/1), whereby the petitioners have been relieved from their services by the respondent No. 2 and further for direction upon the respondents to

reinstate the petitioners in service with all arrear and current salary since January, 2008.Â

2. The facts of the case, in nutshell, are that in terms of direction as contained in letter no. 846 dated 16.07.2005 and letter no. 1046 dated 24.08.2005,

issued by the Secretary, Social Welfare, Women and Child Development Department, Jharkhand, Ranchi and also in the light of direction provided by

the Finance Department, Government of Jharkhand, Ranchi in letter No. 4569 dated 5.7.2002, a list was prepared by the respondent No. 2 vide

appointment order under Memo No. 37 dated 11.01.2008 for the purpose of appointment of Lady Supervisors for new child Development Projects for

a temporary period of one year and the name of the petitioners figures at serial

no. 16 and 42 respectively in the said list of selected Lady Supervisors.

It has been further averred that in the aforesaid Office Order dated 11.1.2008, the respondent no. 2 appointed as many as 54 Lady Supervisors

including the petitioners. However, against the name of both the petitioners, the word "provisional" has been mentioned. It has been further stated

that consequent upon such selection and by appointment vide order dated 11.01.2008, the petitioners joined in their respective posts of Lady

Supervisors and despite regular and continuous work rendered by them since January, 2008, the petitioners have not been paid any salary for the

duties rendered by them and ultimately by impugned letters both dated 25.02.2009, the respondent no. 2 purported to have removed the petitioners

from their services. It has been categorically submitted that none of the petitioners has been provided with any opportunity to explain the

circumstances nor any show cause notice was issued to them and the petitioners did not get any opportunity to see the contents of purported letters

referred to the impugned orders nor copies thereof have been provided to them. The petitioners, left with no alternative and efficacious remedy, have

been constrained to approach this Court under Article 226 of the Constitution of India for redressal of their grievances.

3. Learned counsel for the petitioners has strenuously urged that the impugned orders of relieving are hit by the doctrine of hire and fire. Learned

counsel further submits that the impugned orders also suffer on account of non-compliance of minimum requirement of law to follow the principles of

natural justice. Learned counsel further submits that although the persons who are having lesser qualification and sincerity than that of the petitioners

have been allowed to retain the posts, whereas, the petitioners have been singled out without explaining any valid and proper reason. Learned counsel

further submits that from bare perusal of last sentence of the impugned letters, it would be evident that the respondent no. 2 removed the petitioners

only on presumption and assumption without following the principle of natural justice and the impugned letters are wholly unlawful, unjust, improper

and without authority in law. Learned counsel further submits that the impugned letters are violative of Articles 14 and 16 of the Constitution of India.

Learned counsel for the petitioners further submits that the petitioners being the offspring of a tribal lady cannot be deprived from getting the benefits

of members of tribe.Â

4. Controverting the averments made in the writ application, a counter affidavit has been filed by the respondent no. 2, contending, therein, that the

instant writ application filed by the petitioner is wholly misconceived and devoid of any merit and as such, the same is liable to be dismissed in limine. It

has been further averred that the petitioners have not approached this Court with clean hands and has suppressed the material facts in distorted

manner. It has been further averred that in the light of the direction issued by the Secretary, Social Welfare and Child Development Department,

Government of Jharkhand, Ranchi vide memo No. 846 dated 16.07.2005 and letter no. 1046 dated 24.08.2005, the appointment on contractual basis on

the post of Lady Supervisor, Statistical Assistant and Clerk cum Typist for newly created 11 Child Development Projects of Giridih District

advertisement was made in the newspaper and thereafter on receipt of the application, a written examination was convened from 12.07.2006 to

15.07.2006 and after declaration of the result of written examination, interview test was also completed from 01.06.2007 to 16.06.2007 thereafter on

the basis of educational qualification marks, written examination marks as well as interview marks as per the approved roster for Giridih District, a

merit list was prepared and during the approval of merit list, this fact came into the light before the selection committee that in list of selected

candidates for the post of lady supervisor within the reservation quota of schedule tribe, both the petitioners namely Heena Toppo, Roll no. 58 and

Sima Smita Topno Roll No. 311 are the off springs of tribal mother by a non tribal father and in the light of the guideline issued by the Government of

Jharkhand vide letter no. 7/Chief Sec.-012/08/2004 ka-40 dated 03.01.2007 it is apparent that off springs of non tribal father from the tribal mother are

not entitled to get the benefit of the reservation as schedule tribe, considering all these facts and guidelines issued by the Government of Jharkhand in

the year 2007 it was opined that the selection process was created in the year 2005 as such the selection committee treated the basis of appointment

year 2005 accordingly, decided to appoint both the petitioners, namely, Heena Topno and Sima Smita Topno provisionally on the post of lady

Supervisor on a condition that on receipt of the guideline/direction in this connection from the department concerned, the appointment of these two

petitioners will be deemed to be valid and legal and there after salary will be paid to them accordingly both the petitioners were appointed vide

appointment letter dated 11.01.2008 in pursuance to which both the petitioners joined their duties and all these facts also find mentioned in their

appointment letters itself. Soon after the appointment of both the petitioners, the respondent no. 2, the then Deputy Commissioner, Giridih sent a letter

to the Secretary (Karmik), Personnel and Administrative Reforms, Government of Jharkhand, Ranchi, for issuance of a guideline/direction in

connection with the case of the petitioners regarding reservation policy vide Office memo no. 66 dated 22.01.2008 with a copy to the Secretary, Social

Welfare, Women and Child Development, Government of Jharkhand, Ranchi moreover the respondent no. 2 again sent reminder to the Secretary,

Government of Jharkhand, Ranchi for submitting a guideline in this connection regarding the provisional appointment of both the petitioners as stated

above vide Office memo dated 09.05.2008 and letter dated 23.10.2008 in spite of the same no any guideline to this effect was made available to the

office of the respondent no. 2 accordingly in absence of guideline of the Government of Jharkhand and also on the basis of completion of period of one

year on contractual basis and also in the light of the terms and conditions of the appointment letter both the petitioners were terminated from the post

of lady supervisor which was duly communicated to both the petitioners vide memo dated 25.02.2009.Â Â Â Â Â

5. Learned counsel for the Respondent-State has vociferously submitted that there is absolutely no illegality or impropriety on the part of the

respondents since the appointment of the petitioners was made provisionally for one year with a condition that no salary will be paid to them and, as

such in the light of the terms and conditions of the appointment letter, the petitioners are not paid any salary for the duties rendered by them. Learned

counsel further submits that it is baseless to state that no opportunity was provided to the petitioners to explain the circumstances in view of the fact

that the appointment of the petitioners was made provisionally on certain terms and condition for one year and during the period of one year, no

guideline or any direction as required by the respondent no. 2 was made available by the Chief Secretary, Government of Jharkhand in spite of the

several reminders as fully stated above so in the light of the terms and conditions mentioned in their appointment letters itself and after expiry of one

year, their appointment was terminated assigning the reasons in the removal order itself and as per the terms and conditions, there was no need of

issuance of any show cause letter to the petitioners or to provide any opportunity to them of being heard prior to the issuance of alleged impugned

order and the alleged impugned order is legal and proper and is based upon the terms and conditions of the provision of contractual appointment letter

of the petitioners so the said order cannot be said to be hit by the doctrine of hire and fire.Â Â

6. Having bestowed my anxious consideration to the rivalized submissions of the respective parties and on perusal of the records, the reliefs sought for

by the petitioners for quashing of letter dated 25.02.2009 vide Annexure-2 and 2/1 to the writ petition does not warrant interference in view of the

following facts and reasons :-

(i) Both the petitioners namely Heena Toppo, Roll no. 58 and Sima Smita Topno Roll No. 311 are the off springs of tribal mother by a non tribal father

and in the light of the guideline issued by the Government of Jharkhand vide letter no. 7/Chief Sec.-012/08/2004 ka-40 dated 03.01.2007 it is apparent

that off springs of non tribal father from the tribal mother are not entitled to get the benefit of the reservation as schedule tribe.

(ii) In absence of guideline of the Government of Jharkhand and also on the basis of completion of period of one year on contractual basis and also in

the light of the terms and conditions of the appointment letter both the petitioners were terminated from the post of lady supervisor which was duly

communicated to both the petitioners vide memo dated 25.02.2009.

7. With regard to the prayer of the petitioners for grant of arrears of salary, the same deserves to be considered by the respondents. Accordingly, the

respondents are directed to pay the admissible arrears of salary to the petitioners during the period, the petitioners have rendered their services, as

expeditiously as possible, preferably within a period of 12 weeks from the date of communication of the order.

8. With the aforesaid observation and direction, this writ petition stands disposed of.