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**(2011) 03 AHC CK 0269**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Wit Petition No. 11428 of 2009

Meera Dubey

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

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**Date of Decision :** 16-03-2011

**Acts Referred:**

**Citation :** (2011) 03 AHC CK 0269

**Hon'ble Judges :** V.K.Shukla, J

**Final Decision :** Allowed

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## **Judgement**

V.K. Shukla, J.

Petitioner has approached this Court requesting therein for quashing of the order dated 13.02.2009 passed by Bal Vikas Pariyojna Adhikari, Kushinagar.

Petitioner had been performing and discharging duties as Aaganwadi Karyakarti, services of the petitioner has been terminated on 13.02.2009 by passing following order:

At this juncture present writ petition has been filed.

Counter affidavit has been filed and therein much emphasis has been laid on the conduct of the petitioner and the fact that show cause notice has been issued to the petitioner before passing order impugned.

To the said counter affidavit, rejoinder affidavit has been filed mentioning therein that large scale manipulation has been made specially in respect of show cause notice.

Pleadings mentioned above have been exchanged thereafter present writ petition has been taken up for final hearing and disposal with the consent of the parties.

Learned counsel for the petitioner contended that in the present case stigmatic order has been passed without providing opportunity of hearing to the petitioner and large scale manipulation and manoeuvring has been done qua giving of show

cause notice to petitioner as such order in question deserves to be quashed.

Countering the said submission, learned Standing counsel on the other hand contended that rightful view has been taken in the matter, as such no interference should be made and notice had been issued to the petitioner but she did not avail the opportunity provided for.

After respective arguments have been advanced factual situation which is emerging in the present case is that order of dispensation of service has been passed on 13.02.2009 and therein it has been mentioned that petitioner has been harassing Aaganwadi Assistant for extracting money and this conduct of her was highly inappropriate and against the model code of conduct and for that petitioner has been warned. Second charge has been mentioned that on inspection being made petitioner has been found absent and during her absence period by making fictitious entry disbursement has been shown to beneficiaries. Further mention has been made that all these act have tarnished the image of department, as such her service has been terminated.

Most surprising feature of the order impugned is that it does not talk of having issued show notice to the petitioner. Most surprisingly when in the body of the writ petition such issue has been raised that stigmatic order has been passed without providing any opportunity to her then in the counter affidavit show cause notice dated 10.02.2009 as CA2 has been appended.

This is not at all case of the respondents that said show cause notice has been duly served on the petitioner and in spite of the same reply was not submitted by the petitioner.

Totality of the circumstance clearly reflects that in the present without providing any opportunity of hearing to the petitioner action has been taken and then in order to cover up the said issue of providing opportunity such show cause notice dated 10.02.2009 has been manipulated. Had said show cause notice being in existence, and proposed action was based on the same certainly same would have been referred to in the order impugned and specially charge no. 3, wherein it has been mentioned therein that without taking any departmental permission petitioner had participated in demonstration. Circumstances are speaking for itself that no show cause notice has been given to the petitioner and in hot haste without providing opportunity services have been dispensed with casting stigma on the functioning of petitioner and on issue being raised in order to cover up the situation theory of show cause notice has been set up. Such action of District Programm Officer cannot be approved of, in such a situation and in this background order dated 13.02.2009 is hereby quashed and set aside. However passing of this order will not prevent the authorities concern from undertaking proceedings in accordance with law but it is made clear that Smt. Gayatri Singh, District Programm Officer should not take departmental proceedings, if any and if any action is to be taken same should be taken by some other independent officer and therein full opportunity should be provided to the petitioner.

With the above direction present writ petition is allowed.