
(2012) 06 JH CK 0036

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4112 of 2009

Nandki Kumari

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-06-2012

Acts Referred:

Citation : (2013) 1 AJR 287 : (2012) 4 JCR 382

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : Anjani Kumar Verma, for the Appellant;

Final Decision : Allowed

Judgement

D.N. Patel

1. The present writ petition has been preferred against the order passed by the Child Development Project Officer, Mohanpur, District- Deoghar dated 11th June, 2009 which is at Annexure-8 to the memo of the petition, whereby, long tenure of the services of the petitioner as Anganbari Sevika have been brought to an end that too within giving any show cause notice and without any inquiry and without giving any opportunity of being heard to the petitioner and that too by thoroughly a non-speaking order and," hence, the petitioner is seeking quashing of the impugned order. Learned counsel for the petitioner submitted that the reasons cannot be given in the counter affidavit. The reasons must be given in the impugned order, itself. The impugned order is not giving any reason, whatsoever, against the petitioner and, therefore, subsequently filed counter affidavit is of no help to the respondents. Learned counsel for the petitioner has relied upon the decision rendered by the Hon'ble Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, .

2. Learned counsel for the respondents submitted that there are several reasons for termination of the services of the present petitioner firstly that the present

petitioner is not belonging to the particular village at which Anganbari Centre is situated, secondly for the reason that she is not properly distributing Mid Day Meal and thirdly that there are several complaints against the petitioner, which have been received by the respondent-State. All these reasons have been given in the counter affidavit and, therefore, impugned order as Annexure-8 has been passed by the respondents and, hence, the present petition deserves to be dismissed.

3. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, I hereby quash and set aside the order passed by the Child Development Project Officer, Mohanpur, District- Deoghar dated 11th June, 2009 at Annexure-8, mainly for the following facts and reasons:

(i) The petitioner was appointed as Anganbari Sevika at Chakrama village, Mohanpur, District-Deoghar in the month of November 1985 Thereafter, the petitioner had served honestly, sincerely, diligently and to the satisfaction of the respondents.

(ii) It appears that abruptly on 11th June, 2009 termination order has been passed by the Child Development Project Officer, Mohanpur, District Deoghar, which is at Annexure-8 to the memo of the petition. Looking to this order, it appears that no reasons have been assigned for termination of the services of the present petitioner. Thus, impugned order is thoroughly a non-speaking order and, hence, deserves to be quashed and set aside.

(iii) It further appears that no show cause notice has ever been given to the petitioner nor any inquiry has been conducted for any of the misconduct, which have been referred in the counter affidavit. Thus, the impugned order at Annexure-8 is also violative of principles of natural justice.

(iv) Learned counsel for the respondents has heavily relied upon the counter affidavit and the reasons given in the counter affidavit for termination of the services of the petitioner, but, all these reasons cannot be appreciated by this Court because not a single reason has been given in the impugned order at Annexure-8. A non-speaking order cannot be converted into a reasoned order by way of counter affidavit. It ought to be kept in mind by the respondent-State that the order especially for termination of services of the Government employee, who is serving since long, there must be a reasoned order. If the reasons are not given in the impugned order, it cannot be supplied in the counter affidavit, otherwise, all void, illegal and non-speaking orders will be converted into valid and speaking orders.

(v) It has been held by the Hon'ble Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, in paragraph 8 as under:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the

reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting's and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.

In view of the aforesaid decision also, a non-speaking order remains a non-speaking order, even reason has been given in the counter affidavit. If there is no show cause notice and no inquiry has been conducted and no opportunity of heard has been given to the petitioner, what are the complaints and what are the allegations was even not known to the petitioner, otherwise, the petitioner would have given reply of all these allegations. As a cumulative effect of aforesaid facts, reasons and judicial pronouncement, I hereby quash and set aside the order passed by the Child Development Project Officer, Mohanpur, District- Deoghar dated 11th June, 2009 which is at Annexure-8 to the memo of the petition. The writ petition is allowed with a cost of Rs. 5,000/- (Rupees five thousand only), which will be paid by the respondents to the petitioner within a period of four weeks from the date of receipt of a copy of this order.