

(2023) 11 PAT CK 0052

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12786 Of 2021

Nitu Kumari @ Nitu Devi

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 30-11-2023

Acts Referred:

Constitution Of India, 1950 — Article 311, 311(2)

Citation : (2023) 11 PAT CK 0052

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Ajay Kumar, Gyan Prakash Ojha, Abhishek Singh

Final Decision : Dismissed

Judgement

1. The present writ petition has been filed seeking the following relief:-

"1. That this is an application for issuance of writ in nature of Certiorari to quash the order dated 02.02.2021 passed in Aganwadi Appeal No. 59 / 2017 by the Collector, Samastipur whereby allowed the appeal filed by the Respondent No. 9 and set aside the order dated 07.03.2017 passed by the District program officer, Samastipur in Aganwadi Case No-73 / 2016-17 whereby he uphold the selection of the petitioner as Aganwari Sahayika of Aganwadi Centre No- 53, Dinmanpur Gram Panchayat (North) of Khanpur Block, District- Samastipur and also the consequential letter No. 167 dated 13.03.2021 issued by the C.D.P.O. Khanpur, District- Samastipur terminating the petitioner from service in the light of the order passed in Appeal No. 59/2017.

And further for issuance of a writ in the nature of Mandamus and/or any other appropriate writ order or direction commanding upon the respondents to reinstate the petitioner on the post of Aganwadi Sahayika and pay her all consequential benefits."

2. At this juncture, this Court would refer to a judgment rendered by a co-ordinate Bench of this Court in the case of Seema Kumari vs. The State of Bihar

and others, reported in (2015) SCC Online Pat 7267, paragraphs no. 9 to 11 whereof, are reproduced herein below:-

"9. As noted above, the Anganbari Sevika is not a government servant and has no protection under Article 311(2) of the Constitution of India so as to envisage the concept of regular departmental proceeding. The petitioner was given a notice. She was informed about the allegation against her. She had filed her show-cause reply which was considered by the District Programme officer and when the order went against her, she had also been given adequate opportunity by the appellate authority who, in fact, had himself got the matter verified by referring the matter to the Bihar Sanskrit Board.

10. In that view of the matter, this Court would not find any error in the impugned order of termination of the services of the petitioner when it is found that the petitioner had got appointment by producing a document in support of qualification which was found to be incorrect/forged.

11. Thus for the reasons indicated above, this application must fail and is, accordingly, dismissed."

3. It would be apt to refer to yet another judgment rendered by the learned Division Bench of this Court in the case of Neetu Kumari v. The State of Bihar and others, reported in 2011 (4) PLJR 20, paragraphs no. 4 and 5 whereof are reproduced herein below:-

"4. In our considered view, the post of Anganbari Sevika is not a post having security of tenure or protection under Article 311 of Constitution of India. Considering the very nature of engagement which provides of honorarium, we are of the view that in case the appellant still feels aggrieved, she may approach the Civil Court for damages. There is nothing at stake in such a scheme other than honorarium. For such contractual engagements the relief of reinstatement is not appropriate and even if there is breach of the scheme or any other principle of law, the claim should ordinarily be permitted, if found good on merits, only for damages.

5. The appeal is dismissed."

4. Considering the aforesaid aspect of the matter, the learned counsel for the petitioner seeks not to press the present writ petition, however, seeks liberty on behalf of the petitioner to avail such other alternative remedies as are otherwise available under the law. Liberty, so sought, is granted.

5. The writ petition stands dismissed.