

(2018) 05 PAT CK 0115

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3758 Of 2017

Prabha Devi

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 18-05-2018

Acts Referred:

Constitution Of India, 1950 — Article 14, 21

Citation : (2018) 3 PLJR 800

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Radha Mohan Pandey, S.K. Mandal

Final Decision : Allowed

Judgement

The present writ petition has been filed for setting aside the order dated 13.02.2013 passed by the District Magistrate, Kamur at Bhabua by which the appeal of the petitioner herein, against the order of termination dated 29.04.2012, has been dismissed as well as the order dated 30.12.2014 passed by the Deputy Director, Welfare, Patna Division, Patna whereby and whereunder the order dated 13.02.2013 passed by the Collector has been upheld.

Brief facts of the case are that the petitioner had applied for being appointed as Anganwari Sewika at Anganwari Centre, Panjraon and after

interview and counselling, she was appointed by a letter dated 06.09.1991 issued by the Child Development Project Officer (hereinafter referred to as

the C.D.P.O.), Kaimur at Bhabua. The petitioner had rendered her services satisfactorily without any complain and had also obtained training

from the Bihar State Aids Control Samiti. It is the further case of the petitioner that one Anganwari Sahakiya, namely, Smt. Dharmsheela Devi, who

was posted at Anganwari Centre, Panjraon-III, was engaging in malpractices,

pursuant whereof the petitioner had complained before the C.D.P.O., Nuaon, Kaimur. Subsequently, the petitioner fell ill and gave a leave application to the C.D.P.O. on 09.02.2012 for grant of leave from 09.02.2012 to 21.02.2012 and the same was duly received in the office of the C.D.P.O. whereafter the petitioner was treated at Shekhar Shalya Chikitsalaya, Patna from 10.02.2012 to 21.02.2012. In the absence of the petitioner, inspection is said to have been made on 21.02.2012 and the petitioner was found absent, though she was on medical leave. Thereafter, the petitioner had again fallen ill and had come to Patna for being treated on 04.04.2012 and was under treatment with effect from 10.04.2012 to 08.05.2012. The authorities had asked explanation from the petitioner with regard to her absence on 21.02.2012 and thereafter they had terminated the services of the petitioner herein, by an order dated 29.04.2012. It is further case of the petitioner that the aforesaid order dated 29.04.2012 was appealed against before the learned Collector, Kaimur at Bhabua in Anganwari Appeal Case No. 6 of 2012-13, however, the learned Collector, Kaimur at Bhabua, by an order dated 13.02.2013 has been pleased to dismiss the appeal on the ground that the petitioner was found absent on 21.02.2012 during the course of inspection and moreover it has been informed by the Sahiyaka that the petitioner herein stays at Bhabua, visits the centre only on two days in a week and is always engaging in abusing and beating people. The said order dated 13.02.2013 was challenged in Anganwari Appeal Case No. 249 of 2013, before the Deputy Director, Welfare, Patna Division, Patna, however, the same has been dismissed by an order dated 30.12.2014.

The learned counsel for the petitioner has submitted that the punishment inflicted upon the petitioner herein is too harsh and is not commensurate to the charges levelled against her i.e. one day's absence from duty.

Learned counsel for the respondents, referring to the counter affidavit filed on behalf of the respondents has submitted that the impugned orders dated 13.02.2013 and 30.12.2014 have been passed after giving an adequate opportunity of hearing to the writ petitioner. It is further submitted that upon an enquiry made by the respondent no. 7 by visiting the centre where the petitioner was posted, he found only two children at the centre and the petitioner was also absent. However, only Sahayika, namely, Smt. Dharmsheela Devi was present at the Centre on the said date i.e. 21.02.2012, who

informed that the petitioner used to stay at Bhabua and used to come only on two days in a week.

The learned counsel for the respondents has also submitted that the present writ petition suffers from delay and laches.

I have heard the learned counsel for the parties and perused the materials on record. The only question which is to be considered is as to whether punishment of termination of the services of the petitioner is commensurate to the alleged charges of absence of the petitioner from her duties for one day.

It is a well settled law that an action of termination has a serious consequence on the livelihood of the incumbent and would amount to violation of the rights enshrined under Article 21 of the Constitution. In any view of the matter, the order of termination dated 29.04.2012 as also the appellate order are not only harsh and excessive but also takes into consideration extraneous evidence and materials, which were never part of the record i.e. the version of the Sahayika to the effect that the petitioner was an aggressive woman, was attending duties only twice a week and used to abuse and assault other employees, hence on this score also the impugned orders dated 13.02.2013 and 30.12.2014 are vitiated and fit to be set aside.

Another aspect of the matter is that the petitioner was seriously ill as is apparent from the various certificates annexed to the writ petition, issued by the doctors/hospital, which have not been controverted by any evidence by the respondents. The law on the subject matter under consideration is quite clear, as has been laid down by this Court in a judgment reported in 2011(3) PLJR 140, paragraph no. 6, 8 & 9 whereof are reproduced hereinbelow:-

6. Learned counsel for the State has taken the stand that the factum of absence is not disputed. Non- delivery of take home ration is also not disputed and it is primary responsibility of the petitioner to take proper steps with regard to grant of leave. Authorities have only done what was required to be done on the failure of the petitioner to deliver.

8. The Court therefore opines that the respondent authorities have been insensitive as shown above and they have taken a hyper-technical view in terminating the service of the petitioner for one day. The punishment of termination therefore is not only harsh and excessive but also arbitrary per se and violative of Article-14 of the Constitution of India.

9. This writ application is allowed. The order of termination contained in Annexure-2 dated 14.8.2009 passed by the District Programme

Officer as well as the order in appeal contained in Annexure-11 passed by the District Magistrate are quashed. The petitioner would be

allowed to rejoin and carry her responsibility. Petitioner is also well advised to seriously discharge her duty and responsibility.â??

I would be relevant to further rely on a judgment passed by this Court in a case reported in 2011(3) PLJR 140 (Punam Kumari vs. State of Bihar),

paragraph nos. 8 & 9 whereof are reproduced hereinbelow:-

â??8. The Court therefore opines that the respondent authorities have been insensitive as shown above and they have taken a hyper-

technical view in terminating the service of the petitioner and that too for absence of the petitioner for one day. The punishment of

termination therefore is not only harsh and excessive but also arbitrary per se and violative of Article 14 of the Constitution of India.

9. This writ application is allowed. The order of termination contained in Annexure-2 dated 14.08.2009 passed by the District Programme

Officer as well as the order in appeal contained in Annexure-11 passed by the District Magistrate are quashed. The petitioner would be

allowed to rejoin and carry her responsibility. Petitioner is also well advised to seriously discharge her duty and responsibility.â??

For the reasons mentioned hereinabove, I find that the punishment of termination inflicted on the petitioner herein is too severe and harsh and not at all commensurate to the allegations of one day absence on the part of the petitioner herein, hence the same is not sustainable in the eyes of law.

Accordingly, the order passed by the District Programme Officer, Kaimur at Bhabua dated 29.04.2012, the order dated 13.02.2013 passed by the

Collector, Bhabua at Kaimur as also the order dated 30.12.2014 passed by the Deputy Director, Welfare, Patna Division, Patna are hereby quashed.

At this juncture, it would be relevant to deal with the issue of back wages. In this regard it is apparent from the record that though the final order in

the Second Appeal, filed by the petitioner, was passed on 30.12.2014 by the Deputy Director, Welfare, Patna Division, Patna, the petitioner has

chosen to file the present writ petition only on 09.03.2017 i.e. after a huge delay for which no explanation has been given, hence I deem it fit and

proper to hold that the petitioner shall not be entitled for any back wages.
The petition is allowed to the aforesaid extent.