
(2010) 06 PAT CK 0005
In the Patna High Court
Case No : CWJC No. 1285 of 2010

Punam Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-06-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 3 PLJR 140

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Judgement

Ajay Kr. Tripathi, J.—Heard Learned Counsel for the parties.

2. Petitioner was working as an Anganwari Sewika located at Anganwari Centre No. 1, Paswan Tola, Biyawani under Biharsharif (Rural), in the district of Nalanda. Appointment was made on 25.6.2009. It is the stand of the Petitioner that she has been serving or shouldering her responsibility with due diligence and there were no complaints of any kind made against the Petitioner. Her case is that she was carrying a pregnancy and needed medical advice and for which she made an application to Mukhiya for leave on 14.8.2009. The application was accepted by the Mukhiya and forwarded to the office of CDPO, Biharsharif (Rural). It so happened that an inspection was carried out on 14.8.2009 itself and a report was made that the centre in question was closed and the take home ration was not distributed to the beneficiary.

3. Based on the so-called report and findings the Petitioner was dismissed from service. An appeal came to be filed before the District Magistrate which was registered as Appeal No. 29 of 2009. The appeal however was dismissed by learned Collector upholding the decision of termination. The Petitioner therefore has filed the present writ application challenging the decision of termination.

4. Submission of Learned Counsel for the Petitioner is that it is a case of non-application of mind to the facts. It is the accepted position that on the day of

inspection the Petitioner had obtained leave and informed the Mukhiya concerned. No distribution of take home ration could also be made on that day since the requisite fund had not been released. This fact is borne out from reading of the order passed by learned Collector in appeal. But despite the above undisputed facts the order of termination has come to be sustained by Collector on the specious plea that as per Department Letter No. 32 dated 25.9.2001, leave has to be sanctioned by the Panchayat Secretary and since the Panchayat Secretary has not passed any order sanctioning the leave, Mukhiya was not competent enough to accept or grant leave to the Petitioner.

5. Learned Counsel for the Petitioner has drawn attention of the Court to the decision which has been rendered by a learned Single Judge in the case of Sunaina Kumari which is CWJC No. 16843 of 2009. The said order dated 27.1.2010 has been brought on record as Annexure-13. Learned Single Judge after taking into consideration the submission of the parties has categorically held that it was not the responsibility of the Petitioner to see that the application is marked to the concerned person and the necessary orders are issued at a particular level. It was the duty of the Mukhiya or the Panchayat Sachiv to ensure that once the application of the Petitioner was accepted by the Mukhiya then it ought to have marked and processed and the requisite order ought to have been passed by the Panchayat Secretary as is required. Failure of functionary will not amount to failure of the Petitioner.

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 a 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.

7. An action of termination has a consequence. It is not the case of the State that whatever was done by the Petitioner on the day of inspection was a deliberate effort on her part to shirk her responsibility. Petitioner is a lady carrying pregnancy and she required medical advice for which she had given proper application to the Mukhiya concerned. She could not be expected to move office to office or person to person for authorization of leave. Getting herself attended by the doctor was more important for her. Application accepted by Mukhiya was good enough for her to go and consult the doctor.

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 14.8.2009 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.