

(2016) 02 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12790 of 2013

Rambha Devi

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 BLJud 117

Hon'ble Judges : Smt. Anjana Mishra, J.

Bench : Single Bench

Advocate : Mr. Manoj Kumar Singh and Mr. Shashi Bhushan Pandey, Advocates, for the Petitioners; Mr. Ravi Bharadwaj, AC to GA-5, for the Respondents

Final Decision : Allowed

Judgement

Smt. Anjana Mishra, J.(Oral)—Heard learned counsel for the petitioners and learned counsel appearing on behalf of the State.

2. The petitioners being Anganwari Sevika in centre no. 107, 115, 118 and 180 respectively of Motihari Gramin Pariyojna in the District of East Champaran seek to set aside the orders dated 01.06.2013, 10.06.2013, 22.05.2013 and 25.05.2013 issued by District Programme Officer, East Champaran, whereby and where under the appointment of the petitioners 1,2,3, and 4 respectively has been cancelled on the basis of the report made by the Assistant Director I.C.D.S., Social Welfare Department.

3. Learned counsel for the petitioners submits that the aforementioned recommendation by the Assistant Director I.C.D.S. came to be the basis of passing of the impugned order in the case of the petitioners without giving proper opportunity of being heard to the petitioners and, therefore, there is a gross violation of principle of natural justice. It is submitted that the copy of the report which was prepared regarding functioning of the centre was not supplied to these petitioners and in altogether mechanical manner, the petitioners were

terminated from service under instruction received from the Director, I.C.D.S. contained in Annexure -2 to the present application. It has further been submitted that these petitioners have been seriously prejudiced on account of gross violation of principle of natural justice and their valued rights of functioning/ working in the said post have been defeated by the very impugned orders and, therefore, the same are fit to be set aside.

4. Learned counsel for the petitioners has also brought before this Court certain directions issued in the case of one Manjula Kumari v. The State of Bihar, reported in 2013 (1) PLJR 901, wherein the case of the Anganwari Sevika was considered at length and after referring to the relevant Rules this Court has held that the purpose behind the appointment of Anganwari workers as agents of the State Government are to make available foodgrains to the poor and needy children and also to the pregnant women. Though, the appointments are not in Government service, the procedure for appointment and removal are governed by administrative guidelines issued from time to time. In the said Judgment it has been categorically stated that the issuance of show-cause notice is not a mere formality, while referring to the different provisions of the guidelines, this Court has held that:-

"Rules of natural justice are not like statutory rules embodied in any prescribed form. What shall be its meaning and connotation will depend on the facts of each case. The rights to a hearing, that no man shall be a Judge in his own cause, the passing of a reasoned order are not the only facets of natural justice. It is an old adage that justice must not only be done but that it must appear to be done. Procedural fairness and reasonableness of the process for decision making is a part of the principle of natural justice. If there is any prescription which fetters the jurisdiction, power and authority of the person deciding, it vitiates the exercise of the power. In 1994(5) SCC 267 (Rash Lal Yadav (Dr) v. State of Bihar) explaining the expanding concept of natural justice it was held as follows:-

"6. The concept of natural justice is not a static one but is an ever expanding concept. In the initial stages it was thought that it had only two elements, namely, (i) no one shall be a judge in his own cause and (ii) no one shall be condemned unheard. With the passage of time a third element was introduced, namely, of procedural reasonableness because the main objective of the requirement of rule of natural justice is to promote justice and prevent its miscarriage. Therefore, when the legislature confers power in the State Government to be exercised in certain circumstances or eventualities, it would be right to presume that the legislature intends that the said power be exercised in the manner envisaged by the statute. If the statute confers drastic powers it goes without saying that such powers must be exercised in a proper and fair manner. Drastic substantive laws can be suffered only if they are fairly and reasonably applied. In order to ensure fair and reasonable application of such laws courts have, over a period of time, devised rules of fair procedure to avoid arbitrary exercise of such powers. True it is, the rules of natural justice operate

as checks on the freedom of administrative action and often prove time-consuming but that is the price one has to pay to ensure fairness in administrative action. And this fairness can be ensured by adherence to the expanded notion of rule of natural justice. Therefore, where a statute confers wide powers on an administrative authority coupled with wide discretion, the possibility of its arbitrary use can be controlled or checked by insisting on their being exercised in a manner which can be said to be procedurally fair. Rules of natural justice are, therefore, devised for ensuring fairness and promoting satisfactory decision-making. Where the statute is silent and a contrary intention cannot be implied the requirement of the applicability of the rule of natural justice is read into it to ensure fairness and to protect the action from the charge of arbitrariness. Natural justice has thus secured a foothold to supplement enacted law by operating as an implied mandatory requirement thereby protecting it from the vice of arbitrariness. Courts presume this requirement in all its width as implied unless the enactment supplies indications to the contrary as in the present case?.."

5. It, thus, means that this Court has categorically held that non service of the enquiry report on the concerned persons, who are sought to be removed from functioning as the Anganwari Sevika, would amount to condemning the persons unheard. It is further evident from the perusal of the said Judgment that the District Programme Officer has to act as an ordinary and reasonable person and should not get forced to accept the dictat of the higher authorities. In the instant case, it appears the inspection report alone has been made the basis for order of termination.

6. Similar issues have been raised time and again in different writ applications. Learned counsel for the petitioners has also brought before me a Judgment in LPA No. 419 of 2014 arising out of C.W.J.C. No. 1148 of 2014, in the said case also, which came up before the Division Bench in appeal, the gross violation of principle of natural justice have been repudiated and relying upon the Judgment passed in the case of Manjula Kumari (supra) and also the case of one Suman Kumari v. State of Bihar & Ors. in C.W.J.C. 15516 of 2011, disposed of on 23.09.2013, the court ultimately came to the conclusion that the cancellation of the appointment of the petitioner and their termination was in gross violation of principle of natural justice.

7. In the result, this petition is allowed. The impugned orders contained in Annexure -1 series passed by District Programme Officer, cancelling the engagement/appointment of the petitioners as Anganwari Sevika are set aside and, thus, the petitioners would be reinstated accordingly.

8. However there shall be no order as to costs.