

(2021) 03 PAT CK 0162

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 25067 Of 2013

Rani Devi

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 19-03-2021

Acts Referred:

Citation : (2021) 03 PAT CK 0162

Hon'ble Judges : Shivaji Pandey, J

Bench : Single Bench

Advocate : Rajeev Kumar Labh, Birju Prasad, Akshay Lal Prasad, Ashok Kumar

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. The order dated 06.10.2020 is modified to the extent that in the third line of second paragraph the words "wrongly accepted" will be read as "wrongly not accepted".
3. In the present case, the petitioner is challenging the order no.277 dated 08.12.2012 (Annexure-4) passed by the District Programme Officer, Darbhanga, whereby the petitioner has been removed from the post of Anganbari Sevika. Against the said order, the petitioner filed an appeal and the appellate authority rejected the said appeal vide order dated 06.09.2013 (Annexure-6) giving two reasons; first, at the time of inspection only 3 children were present at the centre whereas, the names of 40 children have been mentioned in the attendance register and secondly, only 3 children were there and minimum 14 children is required for running Anganbari centre, and as such, she has no right to run the centre and rightly she has been removed from the post of Anganbari Sevika.
4. In the present case, the Assistant Director, Social Security, Bihar, Patna, made an inspection to the centre at 11:15 A.M. and found that only 3 children were

there in the centre, which was found to be unsatisfactory for running the centre. Accordingly, show-cause was issued to the petitioner, wherein it has specifically been mentioned that only 3 children were present at the time of inspection. After receipt of the show-cause, the petitioner filed her explanation stating therein that when inspection was made there was heavy rain and on that account, only 3 children were present but, after 11:30 A.M. sufficient number of children assembled, which was verified by the Child Development Project Officer, Singhwara, Darbhanga, and found that 28 children were present. It has also been stated that she has been running the centre in accordance with law. However, the District Programme Officer, Darbhanga, was not satisfied with the explanation of the petitioner, led to termination of the petitioner from the post of Anganbari Sevika, which has been affirmed by the appellant authority.

5. In the order of the District Programme Officer, it has been mentioned that only 3 children were present in the centre and after calling, only 12 children were presented themselves and as such, the petitioner was not careful to run the centre properly. The appellate authority has enlarged the scope of inquiry and recorded that in the attendance register the names of 40 children were mentioned whereas, only three children were present at the centre but, the same is not mentioned in the show-cause, so he cannot expand the charges and dismiss the appeal.

6. Learned counsel for the State submits that when the petitioner was removed from the post of Anganbari Sevika, one Pinki Kumari has been appointed in her place, so she should be added as party respondent as in absence of her, it will not be proper and desirable to pass order in favour of the petitioner.

7. Identical issue came for consideration before the Hon'ble Supreme Court in the case of Poonam vs. State of Uttar Pradesh and Ors. reported in 2016(1) PLJR 218 (S.C.) wherein the Hon'ble Supreme Court has held that after removal of original allottee, the appellant was subsequent allottee of the shop, cannot be a necessary or proper party, who assailed the order unsuccessfully.

8. In view of the aforesaid decision, this Court is of the view that Pinki Devi is not a necessary and proper party as she has been appointed after the post of Anganbari Sevika became vacant. The petitioner has to succeed on its own merit not because of fact that Pinki Devi has been appointed after removal of the petitioner as she was not in fray when the petitioner was appointed as Anganbari Sevika, inasmuch as, Pinki Devi, has never challenged the recruitment of the present petitioner as Anganbari Sevika, so the plea of the State that she has to be made as party respondent is rejected.

9. It appears that plea has been taken by the petitioner that at the time of inspection there was heavy rain, on that account, sufficient number of children have not come but, later on, 28 children were assembled, which was verified by the Child Development Project Officer, Singhwara, Darbhanga. Furthermore, Clause 1(2) of the letter dated 20.06.2012 issued by the directorate of

Integrated Child Development Services (ICDS) Scheme (Annexure-7) speaks that in the centre if the number of children is found to be below 14 without any reasonable cause, proper action can be taken. However, in the present case, plea has been taken by the petitioner that on the day of inspection, there was heavy rain and this fact is corroborated and supported from the letter of the Child Development Project Officer, Singhwara, Darbhanga, dated 28.06.2013, wherein it has been stated that on the day of inspection there was heavy rain, inasmuch as, in the guidelines, it has specifically been mentioned that if children is found to be below 14 in number and the reasonable ground has been shown, in such circumstance, action is required to be avoided. In the present case, plea has been taken by the petitioner that on the day of inspection there was heavy rain, on that account, sufficient number of children were not present and this fact is corroborated from the letter of the Child Development Project Officer. Furthermore, the appellate authority has enlarged the scope of consideration of the claim of the petitioner.

10. In such view of the matter, the order contained in memo no. 277 dated 08.12.2012 passed by the District Programme Officer, Darbhanga, and order dated 06.09.2013 passed by the District Magistrate, Darbhanga, do not survive and accordingly, the same are quashed. Consequences will follow.

11. With the aforesaid observations and directions, this writ petition is allowed.