

(2013) 10 PAT CK 0030

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12475 of 2012

Rekha Kumari @ Rekha Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : (2013) 10 PAT CK 0030

Hon'ble Judges : Mihir Kumar Jha, J

Bench : Single Bench

Advocate : Ajit Kumar Singh, for the Appellant; Sunil Kr. Mandal, SC-24, for the Respondent

Final Decision : Dismissed

Judgement

Mihir Kumar Jha, J.—Heard learned counsel for the parties. The prayer of the petitioner in this writ application is to quash the order dated 01.08.2011 passed by the District Programme Officer, Sheikhpura removing the petitioner from the post of Anganbadi Sevika and its affirmance in appeal by the District Magistrate, Sheikhpura vide his order dated 21.06.2012. The petitioner has also prayed for consequential relief of being reinstated in service.

2. The facts which are not in dispute and would be sufficient for disposal of this case lie in a narrow compass. The petitioner was selected and appointed for the post of Anganbadi Sevika at Centre No. 29, Sukan Sah Talab under Sheikhpura Town on 27.06.2007. On 15.07.2011 the Anganbadi Centre No. 29 was inspected by the A.D.M, Sheikhpura who in his inquiry report had found that the distribution of take home ration (T.H.R) was not being made by the petitioner in adequate and prescribed quantity. In the said inquiry report the A.D.M., Sheikhpura had also found that only 13 out of 43 children were in the prescribed uniform which again reflected on the poor control of the petitioner in capacity of Anganbadi Sevika.

3. In view of the aforementioned inspection report of A.D.M, Sheikhpura, the District Programme Officer, Sheikhpura vide memo No. 284 dated 16.07.2011 had issued a show cause notice seeking explanation from the petitioner as with regard to the deficiency found by the A.D.M., Sheikhpura in course of his inquiry and as to why for those deficiencies, she should not be removed from the post of Anganbadi Sevika. The petitioner on receipt of the show cause notice had filed her reply dated 20.07.2011, wherein, she had taken a defence that the said finding of the A.D.M., Sheikhpura was based on a complaint of one Sunita Devi, who however was an illiterate lady and had given her statement to the A.D.M., Sheikhpura due to fear and nervousness. She had claimed that the said Sunita Devi had sworn an affidavit in favour of the petitioner that she was getting adequate quantity of take home ration. The District Programme Officer, Sheikhpura upon perusal of the show cause reply as also after affording opportunity of hearing to the petitioner had passed the impugned order on 01.08.2011, wherein, while removing the petitioner from the post of Anganbadi Sevika, he had rejected the show cause reply filed by the petitioner and had disbelieved the affidavit of Sunita Devi. The petitioner thereafter had moved this Court by filing the writ application being C.W. J.C No. 14385 of 2011 which however was not entertained on the ground of alternative remedy of appeal. The petitioner thereafter had filed an appeal before the District Magistrate, Sheikhpura by order dated 21.06.2012, the said appeal has been also dismissed while affirming the order of removal passed by the District Programme Officer, Sheikhpura.

4. Learned counsel for the petitioner while assailing both the impugned orders passed by the District Programme Officer, sheikhpura and its affirmance by the D.M., Sheikhpura has submitted that both the authorities have failed to taken into account that the affidavit of Sunita Devi was in favour of the petitioner and as such the allegation of short supply of take home ration (T.H.R) to the beneficiaries at the centre was not at all established. He has also submitted that the report of lady supervisor was in fact in favour of the petitioner but somehow both the authorities had treated it to be against the petitioner. In addition to these aspects, learned counsel for the petitioner has also sought to seek support from the letter dated 13.07.2011 written by the Child Development Project Officer, Sheikhpura to the District Programme Officer, sheikhpura, wherein, it was reported by the C.D.P.O that the amount required for take home ration (T.H.R) could not be withdrawn from the bank and as such the difficulties were being faced in distribution of take home ration (T.H.R). In the said letter, the C.D.P.O had also requested for making local arrangement for distribution of take home ration. Based on the aforementioned letter of the C.D.P.O, Sheikhpura the petitioner has also produced the extract of the bank statement to show that the amount of Rs. 10,975/-that Posahar of the month of July-2011 was credited in her account only on 18.07.2011. On the basis of these documents, learned counsel for the petitioner has submitted that if the amount of Posahar was not given in time, the allegation against the petitioner of distributing lesser amount

of take home ration as was recorded in the inquiry report of the A.D.M., Sheikhpura was itself unsustainable.

5. In the considered opinion of this Court, there is no flaw in the decision making process while removing the petitioner from the post of Anganbadi Sevika. It is not in doubt that the Centre of the petitioner was inspected by the A.D.M., Sheikhpura on 15.07.2011 and in his inquiry report he had specifically mentioned about the deficiency in supplying lesser quantity of rice (1.5 Kg in place of 3 Kg to the beneficiary), in fact the A.D.M., Sheikhpura had also found that there was also deficiency in supply of Uniforms to the childrens, inasmuch as, only 13 out of 43 children were found to be in the prescribed Uniform. The petitioner in her show cause reply did not contest the inspection made by the A.D.M., Sheikhpura or the findings recorded by him in his inquiry report but she had taken a plea that such finding recorded on the version of one Sunita Devi and the said Sunita Devi who had given her statement before the A.D.M., Sheikhpura regarding short supply of take home ration had done so out of fear and nervousness and in support of it she had enclosed the affidavit of concerned Sunita Devi on 18.07.2011.

6. In view of the fact that in the inquiry report the name of Sunita Devi was specifically not mentioned. This Court is not impressed with the so called subsequent affidavit dated 18.07.2011 sworn by Sunita Devi or the plea taken on the basis of the same by the petitioner. Such affidavit has been rightly considered and rejected by both the District Programme Officer, Sheikhpura and the District Magistrate, Sheikhpura. The submission of learned counsel for the petitioner that the earlier inspection report of the same date of the lady supervisor was in favour of the petitioner is also not correct, inasmuch as, such report in the prescribed proforma giving remarks on each and every column was against the petitioner and in her remarks she had mentioned as follows:--

7. The petitioner in fact did not contest the said report of the lady supervisor and had confined her case to the report of the A.D.M., Sheikhpura which was also of the same date i.e., 15.07.2011. This Court could have given benefit of doubt to the petitioner for not dealing with the aforesaid report of the lady supervisor dated 15.07.2011 in her show cause reply submitted to the District Programme Officer, sheikhpura because the show cause notice was confined to the findings of the A.D.M., Sheikhpura alone but then when the District Programme Officer, Sheikhpura had referred to this report of lady supervisor she did not contested even in her appeal as would be apparent from perusal of the earlier order passed by the District Magistrate, Sheikhpura. Thus, whatever was found by the A.D.M., Sheikhpura in his inspection report was earlier reiterated in the inspection report of lady supervisor. In fact the report of lady supervisor had become part of the A.D.M., Sheikhpura because in the note portion of the report of A.D.M., Sheikhpura, he had directed the lady supervisor to prepare the detailed report whereafter the quoted portion of the report of the lady supervisor was recorded.

8. Reliance placed by the petitioner on an entry made in the inspection register

of the lady supervisor would not inspire confidence, inasmuch as, from its perusal it becomes clear that it was neither in the prescribed proforma nor the inspection book had been verified by any other authority and in fact from perusal of the show cause reply filed by the petitioner, it would be clear that this report of the lady supervisor in favour of the petitioner was not even referred to much less relied to discredit the findings of the A.D.M., Sheikhpura. In any event the detailed report of the same lady supervisor of the same date in the prescribed proforma had recorded adverse finding and yet the petitioner did not contest the same by placing reliance on the so called entries made in the inspection register of the Centre. It thus becomes clear that alike the affidavit of Sunita Devi, this document was also subsequently prepared by way of defence only for the purposes of this writ application.

9. The submission of learned counsel for the petitioner that the funds for take home ration (T.H.R) was received belatedly for the month of July-2011 for the Centre in question as sworn on an affidavit dated 18.07.2011 would not improve the position in any manner because it was never her case in the show cause reply that on account of lack of fund she was not in a position to give full supply of take home ration to the beneficiaries. Thus, this new plea which was never raised by the petitioner either before the District Programme Officer, Sheikhpura in her show cause reply or before the D.M. Sheikhpura in her memo of appeal cannot be gone into by this Court.

10. What would still clinch the issue is that the petitioner was fully aware of the remarks and findings given by the A.D.M. Sheikhpura and she had in fact also prepared her defence by obtaining affidavit of Sunita Devi as with regard to lesser quantity of supply of take home ration being incorrect but then she did not choose to controvert the allegation with regard to non-supply of the Uniform to the students even though that also was part of the allegations in the inquiry report of the A.D.M. Sheikhpura. The very fact that the petitioner did not deny about the allegation of the children being not in prescribed Uniform will go a long way to show that the findings recorded in presence of the petitioner by the A.D.M. Sheikhpura in his inquiry report dated 15.07.2013 were correct and whatever plea was sought to be developed by way of obtaining an affidavit in the date of 18.07.2011 from Sunita Devi was mere pretence. In fact the respondents have enclosed in their counter affidavit a copy of the notice sent to Sunita Devi by the office of District Magistrate dated 21.01.2012 asking her to remain present in course of hearing of the appeal for explaining her affidavit dated 18.07.2011 sworn in favour of the petitioner. The respondents have made a categorical averment that despite service of notice on Sunita Devi, she did not appear before the District Magistrate, Sheikhpura to support her earlier affidavit which was relied by the petitioner. It has to be kept in mind that copy of the counter affidavit enclosing the said notice of Sunita Devi was served on the learned counsel for the petitioner but was not sought to be controverted by her by filing any reply.

11. Thus on an overall analysis of the facts and circumstances of this case, this Court is satisfied that the petitioner was given adequate opportunity in course of proceedings before the District Programme Officer, Sheikhpura as also before the appellate authority to defend herself but nothing was brought on record which could have demolished the findings arrived by the A.D.M. Sheikhpura in his inquiry report which was accompanied with the report of lady Supervisor clearly reporting as with regard to short supply of take home ration to the beneficiaries.

12. It has to be also kept in mind that Anganbadi Sevika is not a Government Servant and cannot claim protection under Article- 311(2) of the Constitution of India. The Anganbadi Sevikas are voluntary workers who are working under the scheme for upliftment of the poor beneficiaries and hapless children and if they are found to be lacking in performance of their duty as assigned to them, this Court will be absolutely loathe to sit in appeal over the findings of the authorities who have been vested with the power of inspection and supervision of the Centres. These schemes are being constantly monitored by the Apex Court and deficiency in service in the Anganbadi Centres therefore sought to be removed by the competent authorities by taking appropriate action against the erring persons cannot be interfered by this Court in a routine manner only on the basis of sympathy.

13. This Court in exercise of power of judicial review under Article 226 of the constitution of India is not even required to go into the merit of the decision and has to only examine the decision making process. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of juridical review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.

Considering all these aspects, this Court does not find any merit in the application and the same is, accordingly, dismissed.