
(2009) 09 PAT CK 0053
In the Patna High Court
Case No : CWJC No. 11902 of 2009

Rubi Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 4 PLJR 917

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner and the State. Petitioner was appointed as Anganwari Sewika. She was found absent from her centre on 14.3.2008. which was the date fixed for distribution of the grains to the beneficiaries. As the petitioner was found absent on 14.3.2008 from the centre, which was the date fixed for distribution of the grains to the beneficiaries, the enquiry was made and in view of the report of the Enquiry Officer without affording the opportunity of being heard to the petitioner, her appointment was cancelled by the District Magistrate, Sheikhpura under Memo No. 157 dated 15.3.2008, Annexure-3 to this application. Against the said order dated 15.3.2008, Annexure-3, petitioner filed Service Appeal No. 13 of 2008 before the Divisional Commissioner, Munger, which was also dismissed under order dated 13.8.2008, Annexure-4 to this application.

2. Petitioner assailed the two orders dated 15.3.2008 and 13.8.2008. Annexures-3 and 4 to this writ application by filing this writ application on the ground that notwithstanding the instructions of the Director, Social Welfare contained in letter No. 3023 dated 10.10.2007 not to afford any opportunity of being heard to those who are found absent from their centre and to dismiss them from the service of Anganwari Sewika. the opportunity of being heard has to be provided to the Anganwari Sewika as the same forms part of Article 14 of the Constitution of India and any order terminating the employment without granting

opportunity of being heard shall tantamount to violating Articles 14 and 16 of the Constitution of India. Division Bench of this Court under orders dated 27.7.2009, passed in L.P.A. No. 410 of 2009 (Asha Devi vs. The State of Bihar & Ors.) has proceeded to set aside the termination order of the appellant of the said appeal and has remanded back the matter to the District Magistrate with direction to reconsider the matter after giving opportunity of being heard to Asha Devi, appellant of the said appeal. Relying on the said order, counsel for the petitioner has also submitted that this Court should also set aside the original order as also the appellate order dated 15.3.2008 and 13.8.2008, Annexures-3 and 4 to this writ application and remit back the matter to the District Magistrate, Sheikhpura.

3. Counsel for the State, however, submitted that if this Court proposes to set aside the aforesaid two orders dated 15.3.2008 and 13.8.2008, Annexures-3 and 4 to this writ application, then opportunity to file counter affidavit be provided to him.

4. Instead of providing opportunity to the State Counsel to file counter affidavit, I deem it expedient to direct the Divisional Commissioner, Munger, who has passed the appellate order dated 13.8.2008, Annexure-4 to this writ application to reconsider the matter in the light of the order dated 27.7.2009, passed in L.P.A. No. 410 of 2009 and verify from the records whether petitioner was allowed any opportunity before the Enquiry Officer or the District Magistrate to explain the circumstance in which she was absent from the centre on 14.3.2008, the date fixed for distribution of the grains to the constituents attached to the centre.

5. Accordingly, I direct the petitioner to assail the two orders dated 15.3.2008 and 13.8.2008, Annexures-3 and 4 to this writ application by filing fresh appeal before the Divisional Commissioner, Munger and with the memo of appeal, petitioner should annex not only the order dated 27.7.2009, passed in L.P.A. No. 410 of 2009, but also my order and thereafter the Divisional Commissioner should reconsider the matter and pass a fresh order and if he is satisfied that the petitioner was not given any opportunity of being heard either before the Enquiry Officer or before the District Magistrate, as is evident from the impugned order dated 15.3.2008. Annexure-3 then he shall recall his own order dated 13.8.2008 as also set aside the order dated 15.3.2008, passed by the District Magistrate, Sheikhpura and remit back the matter to the District Magistrate. Sheikhpura for granting fresh -opportunity of being heard to the petitioner and thereafter shall proceed with the matter afresh. Necessary exercise in terms of this order be completed by the Divisional Commissioner, Munger within four weeks from the date of receipt of the memo of appeal. This writ application is. accordingly, disposed of.