
(2009) 04 CHH CK 0015
In the Chhattisgarh High Court

Smt. Rukhmani Devi

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2009) 04 CHH CK 0015

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—The petitioner, by this petition seeks the following reliefs:

7.2 The Hon''ble High court may kindly be pleased to issue an appropriate writ/order/direction in the nature of certiorari thereby quashing the order passed by the respondent No. 2 dated 10.1.2006 (Annexure P/1), as well as resolution passed by the respondent No. 3 dated 30.08.2005 (Annexure P/5), in the ends of justice.

7.3. The Hon''ble Court may kindly be pleased to direct the respondent No. 3 and 4 to make payment of salary of last 16 months to the petitioner, in the ends of justice.

2. The facts, in nutshell, as projected by the petitioner, are that the petitioner was appointed as Anganbadi worker on 10.04.1987 (Annexure P/3) at Anganbadi Centre, Chhindand on temporary basis. The petitioner continued her work satisfactorily, and as such, the Gram Sabha of Gram Panchayat Talwapara passed a resolution on 25.08.2005, admiring the satisfactory performance of the petitioner as Anganbadi worker and recommended for payment of back-wages of 16 months (Annexure P/4) to the petitioner.

3. The petitioner, on 04.09.2005 suddenly came to know that she has been removed from the post of Anganbadi worker and thereafter she came to know

that on the basis of a resolution passed by the respondent No. 3 on 30.09.2005 (Annexure P/5), the petitioner has been removed from the post of Anganbadi worker, hence this petition.

4. Shri Pandey, learned Counsel appearing for the petitioner would submit that no opportunity of hearing was given to the petitioner before passing of the impugned order of removal. Learned Counsel would further submit that the resolution dated 30.09.2005 (Annexure P/5) passed by the respondent No. 3 is in contravention of the scheme and the impugned order of removal was passed on the basis of some complaints.

5. Per contra, Smt. Ghai, learned Panel Lawyer for the State/respondents 1, 2 and 4 would submit that the performance of the petitioner as an Anganbadi worker was always suspicious. There were gross irregularities committed by her in distribution of food, taking attendance of students, keeping clean environment in the Anganbadi centre etc. There were many occasions when the petitioner's work was questioned by the higher authorities as is evident from the explanation letter issued by the Supervisor (Annexure R-1/2) wherein, three days time was granted to the petitioner to explain her conduct.

6. Smt. Ghai would further contend that inspite of several opportunities granted to the petitioner to improve her conduct, she failed miserably and as such, the respondent No. 3 passed the impugned order, who as per the appointment rules, is the competent authority.

7. I have heard learned Counsel appearing for the parties, perused the pleadings and documents appended thereto. The petitioner was appointed as Anganbadi worker on 10.04.1987 (Annexure P/3) purely on temporary basis stating that the petitioner could be removed from services without any notice on finding the work unsatisfactory. The petitioner has supplied a circular dated 27.05.1996 (Annexure P/2) whereunder procedure for removal of Anganbadi worker/ Assistants is provided. In case of the petitioner, the circular dated 27.05.1996 (Annexure P/2) may not be applicable in respect of the appointment. The petitioner has not produced any other circular which was prevalent at the time of her appointment. The above circular (Annexure P/2) does not provide for holding any enquiry after framing charges before removal of Anganbadi worker. It is stated in the circular that if there are serious irregularities, the Gram Panchayat may pass resolution and send it to the Supervisor to take steps for removal of the Anganbadi worker.

8. In the present case, on having received a complaint with regard to grave irregularities, a preliminary enquiry was conducted wherein it was found that the petitioner used to commit adulteration in oil with the purpose to derive benefits. Accordingly, a notice was issued seeking explanation of the petitioner. After having afforded proper opportunity of hearing, the impugned order dated 3.9.2005 (Annexure R/1-9) was passed. Against the said order, the petitioner preferred an appeal before the respondent No. 2 which was dismissed on

10.01.2006. The Collector/respondent No. 2 has examined all the aspects of the matter and came to the conclusion that there was no irregularity or illegality in removal of the petitioner.

9. The appointment of the petitioner as Anganbadi worker was not under any statutory rules framed in exercise of powers under proviso to Article 309 of the Constitution of India. The appointment of the petitioner was by respondent No. 4/ Project Officer on temporary basis. Thus, it cannot be held that the appointment of the petitioner was in accordance with law. Even otherwise, there was no publication of notice or invitation to all the concerned, and as such, the appointment of the petitioner was *dehors* the constitutional scheme of employment. If the appointment of the petitioner itself was *dehors* the constitutional scheme of employment, the petitioner has no right to continuation, reinstatement or reappointment. (See *Secretary, State of Karnataka and Ors v. Umadevi (3) and Ors*, *Indian Drugs and Pharmaceuticals Ltd. v. Workmen, Indian Drugs and Pharmaceuticals Ltd and Official Liquidator v. Dayanand and Ors.*)

10. Applying the well-settled principles of law as laid down by the Hon''ble Supreme Court in the cases (*supra*) to the facts of the present case and in view of the discussions made hereinabove, there is no merit in this case.

11. Accordingly, the petition is dismissed. No order as to costs.