
(2004) 04 PAT CK 0130

In the Patna High Court

Case No : C.W.J.C. No. 9942 of 1992 and Civil Review No. 23 of 1993 and
C.W.J.C. No. 290 of 1991

Smt. Sajjan Devi and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-04-2004

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2004) 2 PLJR 833

Hon'ble Judges : P.N. Yadav, J;Nagendra Rai, J

Bench : Division Bench

Advocate : Ganesh Prasad Singh, Manish Kumar and Anisur Rahman, for the Appellant; D.K. Sinha and Kunwar Alok, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai, J.—The Petitioners have filed C.W.J.C. No. 9942/1992 for quashing the order dated 9.9.1992 passed by the Child Development Project Officer, Punpun, cancelling the engagements of the Petitioners and restoring the engagements of Renu Kumari and others (writ Petitioners of C.W.J.C. No. 290 of 1991) in pursuance of an order passed by the higher authorities in terms of the order dated 27.4.1992 passed by this Court in the said writ application, whereby the cancellation of the selection of the writ Petitioners of the aforesaid writ application was quashed.

2. Civil Review No. 23 of 1992 has been filed by the Petitioners to review the order dated 27.4.1992. passed in C.W.J.C. No. 290 of 1991, by which, as stated above, cancellation of selection as Anganwari Sewika of Renu Kumari and others (Petitioners of C.W.J.C. No. 290 of 1991) was quashed by this Court, the effect of which is that the subsequent engagements of the writ Petitioners in their places stood cancelled by order dated 9.9.1992, as stated above.

3. The Petitioners of C.W.J.C. No. 9942 of 1992 and Civil Review No. 23 of 1993

will be referred to as the writ Petitioners and the Petitioners of C.W.J.C. No. 290 of 1991, who are Respondent in C.W.J.C. No. 9942 of 1992 and Civil Review No. 23 of 1993 will be referred to as the private Respondent hereinafter.

4. The facts, which are not in dispute are that the Government came out with a scheme for providing food to the downtrodden and poor boys as well as the pregnant ladies of the village. The scheme provided for engagement of Anganbari Sewika for working at the Centres created for the said purpose, for which they would be paid honorarium. If the Anganbari Sewika is a Matriculate or having a higher qualification, then she will get honorarium of Rs. 275/-per month and in case of lesser qualification, she will get Rs. 225/- per month According to the terms of the scheme only the in-laws of the village as well as daughters, who are alone born from their parents of the village are to be engaged as Anganbari Sewika. No outsider of the village is to be engaged as Anganbari Sewika.

5. It is an admitted position that an advertisement was issued for selection of Anganbari Sewika in different Panchayats of the Punpun Block in the year 1985-1986 and an interview was held. Thereafter, the private Respondent were selected as Anganbari Sewika and in terms of the scheme, they were sent for three months training and, thereafter, they were engaged on honorarium at different places in the Panchayats. Annexure-1 series of C.W.J.C. No. 290 of 1991 are the office orders of engagement of the private Respondent as Anganbari Sewika, which provide for payment of honorarium and three-months training. It is further provided therein that no other allowances will be admissible and in case of their services being not found satisfactory, they will be disengaged without any information.

6. The higher authorities visited several times at the places of engagements of the private Respondent and found most of them absent from duty. They were not even discharging their duties assigned to them and, thereafter, show-cause notices were issued to them, but inspite of service of notice, they did not file any show-cause and, thereafter, they were disengaged by order dated 13.2.1989 of the Deputy Director, Social Welfare, Patna Division and the said order of termination or disengagement was communicated to them by the concerned officer on 18.2.1989. Thereafter, a fresh advertisement and selection was made and the writ Petitioners were engaged in their places. The said two orders were challenged by the private Respondent in C.W.J.C. No. 290 of 1991. In the said case, the writ Petitioners were impleaded as private Respondent and it was clearly stated in the writ application at paragraphs No. 23 and 24 that after their disengagement, the writ Petitioners were appointed and they also challenged their subsequent engagements. However, when the said writ application being C.W.J.C. No. 290 of 1991 was taken up, a counter-affidavit was filed on behalf of the State. No notice was issued to the Petitioners, who were Respondent in the said case and without hearing them the said writ application was allowed by order dated 27.4.1992 and this Court having treated the appointment of Anganbari Sewika as the appointments in Government service, quashed the

order, of disengagement on the ground that the order of cancellation of their engagement did not show that the appointment was terminated on the ground of misconduct, on the other hand, the said order indicates that the selection itself was cancelled. This Court further directed that in case any proceeding was initiated against them and they were found guilty of misconduct or there was any justification for terminating their appointments, it would be open to the authorities to pass an order in accordance with law. In pursuance of the said order, the higher authority in the department passed an order restoring the engagement of the private Respondent and issued a consequential order disengaging the writ Petitioners, who were selected after cancellation of the engagements of the private Respondent.

7. The review application has been filed on the ground that the order has been passed by this Court without giving an opportunity of hearing to the writ Petitioners, who were Respondent in C.W.J.C. No. 290 of 1991 and C.W.J.C. No. 9942 of 1992 has been filed challenging the order of cancellation as stated above.

8. So far as C.W.J.C. No. 290 of 1991 is concerned, admittedly, the writ Petitioners were the Respondent therein. In paragraphs No. 23 and 24 thereof, it was clearly stated by the private Respondent that after cancellation of their appointments, the writ Petitioners were engaged in their places. The private Respondent also challenged their engagements in the said writ petition.

9. Thus, it is an admitted position that the writ Petitioners were neither noticed nor heard in the matter and as such the order passed by this Court is vitiated because of non-giving opportunity of hearing to the affected persons, namely, the writ Petitioners. Accordingly, a case has been made out for recall of the order passed by this Court in C.W.J.C. No. 290 of 1991 on 27.4.1992. Accordingly, the same is recalled and the parties have also been heard on merit in C.W.J.C. No. 290 of 1991.

10. Now, the question for consideration is as to whether the cancellation of engagement of the private Respondent, who admittedly were engaged earlier to the writ Petitioners is valid or not. If it is valid, the order of cancellation of their engagement has to be quashed and they will continue in service and the writ Petitioners who have filed the subsequent writ application against cancellation of their engagements will have no case as their engagements were necessitated because of cancellation of engagement of the private Respondent.

11. The first question to be considered is as to whether the engagement of Anganbari Sewika is an engagement on a post in the Government service. If their engagements are on the posts in the Government service and (hey have been appointed following a procedure, in that case their engagements cannot be cancelled on the ground of misconduct without holding a departmental enquiry as provided under the Rules. If in case, they are not holding a post h the Government service and their engagements are on the basis of contract of a service under a Scheme, then their services can be terminated in terms of the

agreement after following a procedure consistent with the requirement of principle of natural justice.

12. The Scheme has been made to provide help to the poor and downtrodden persons covered by the Scheme as stated above. Engagement is made only by holding an interview and no payment of salary is being made nor the appointment is being made against any post in the Government service. Honorarium is paid for performing the duties for a particular period. In case, their services are not found satisfactory they can be removed from the post of Anganbari Sewika. Term of appointment clearly shows that they are not engaged in Government service nor are they holding any post in the Government Service, having umbrella of protection under Article 311 of the Constitution of India. In case, it is found that they are not performing duties, for which they were engaged, then in terms of the engagement letter they can be removed. They cannot claim initiation of a regular departmental enquiry prior to their disengagement.

13. Thus, the post of Anganbari Sewika is not a post in the Government service and as such the private Respondent cannot claim protection under Article 311 of the Constitution of India.

14. It appears from the record that inspections were held several times and the private Respondent were found absent from their duties. It was also found that while on duty, they did not discharge their duties, for which they were engaged and thereafter, show-cause notices were served upon them and they did not file any show-cause and, thereafter, their engagements were cancelled.

15. Requirement of principle of natural justice has been complied with and as they are not in Government service, they can not claim a regular proceeding prior to disengagement or removal by treating the aforesaid act as misconduct. Even alternatively it is assumed that they were on temporary employment in the Government service then also it is found that the authorities after having taken into consideration their past conduct as a motive and after giving an opportunity of hearing to them have disengaged them and as such they cannot claim any infirmity in their disengagement on the ground of violation of principle of natural justice.

16. Thus, the orders dated 13.2.1989 and 18.2.1989 passed by the authorities cancelling the engagement of the private Respondent as Anganbari Sewika who had filed C.W.J.C. No. 290 of 1991 challenging their cancellation of engagement as Anganbari Sewika are held to be valid orders and they do not suffer from any irregularity and accordingly. C.W.J.C. No. 290 of 1991 filed by the private Respondent is dismissed.

17. So far as the writ application being C.W.J.C. No. 9942 of 1992 is concerned, admittedly after cancellation of the engagement of the private Respondent, an advertisement was made and the writ Petitioners were engaged in terms of the Scheme and, thus, their engagements as Anganbari Sewika are valid one as the

order dated 27.9.1992 of this Court passed in C.W.J.C. No. 290/1991. by which the cancellation of engagement of the private Respondent was quashed, has now been recalled by this Court on the ground of having been passed without hearing the concerned parties. Accordingly, the order dated 9.9.1992 passed by the Child Development Project Officer. Punpun, and the order dated 5.9.1992 passed by the Director, Social Welfare, Patna as well as the " order dated 8.8.1992 passed by the Deputy Director, Social Welfare, Patna, in pursuance of the aforesaid order passed by this Court, cancelling the engagements of the private Respondent, are also quashed on the ground mentioned above.

18. In the result, C.W.J.C. No. 290 of 1991 is dismissed and C.W.J.C. No. 9942 of 1992 and Civil Review No. 23 of 1993 are allowed.

P. N. Yadav, J.

I agree.