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**(2016) 07 JH CK 0035**

**In the Jharkhand High Court**

**Case No : Writ Petition (S) No. 1514 of 2014**

Suman Kumari

APPELLANT

Vs

State of Jharkhand

RESPONDENT

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**Date of Decision : 22-07-2016**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (2017) 1 JBCJ 204**

**Hon'ble Judges : Mr. Ananda Sen, J.**

**Bench : Single Bench**

**Advocate : Mr. Vijay Shankar Prasad, Advocate, for the Petitioners; Mr. Rajesh Shankar, J.C. to G.A., for the Respondents**

**Final Decision : Disposed Off**

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## **Judgement**

Mr. Ananda Sen, J. - The petitioner in this writ application has prayed to set aside the order dated 18.01.2014 passed by the Deputy Commissioner, Palamau, communicated to the petitioner vide Memo No. 57 dated 29.01.2014.

2. The claim of the petitioner is that the petitioner was better qualified than respondent no.7, but ignoring her claim, respondent no.7 has been appointed as Aanganbari Sevika in respect of Anganbari Centre, Rajhara-1. The additional claim of the petitioner is that she being disabled lady should have been given preference while considering her case.

3. The petitioner had earlier approached this Hon'ble Court in W.P. (S) No. 1025 of 2013, which was disposed of on 21.10.2013 with a direction to the Deputy Commissioner to decide the representation of the petitioner within a period of eight weeks. The Deputy Commissioner decided the matter and rejected the claim of the petitioner and communicated the order to the petitioner vide Memo No. 57 dated 29.01.2014.

4. Learned counsel appearing on behalf of the petitioner submits that though the petitioner was called for hearing on 28.01.2014, but the order clearly shows that

the said hearing was a mere farce as the decision on the representation of the petitioner was already taken way back on 18.01.2014, which is apparent from the signature of the Deputy Commissioner in the impugned order not only in one place but in two places. He prays that on this score alone the impugned order is liable to be quashed.

5. Counsel for the State submits that there was no direction in the order dated 21.10.2013 passed in W.P.(S) No. 1025 of 2013 to give any opportunity of hearing to the petitioner, but even then the petitioner had been given opportunity to appear on 28.01.2014 for personal hearing and in fact, the impugned order was passed on 28.01.2013, which was communicated to the petitioner vide Memo No. 57 dated 29.01.2014. Due to inadvertence the date, which was put by the Deputy Commissioner, just below his signature, was 18.01.2014 in place of 28.01.2014. He submits that on merit the petitioner has got no case.

6. I have perused the order dated 21.10.2013 passed in W.P.(S) No. 1025 of 2013. It is correct that there was no obligation on the part of the Deputy Commissioner to give personal hearing to this petitioner, but it cannot be lost sight that notice was issued to the petitioner for giving her personal hearing. When a notice has already been given for personal hearing, the petitioner should have been properly heard and thereafter any order could have been passed.

7. I have perused the impugned order also. The then Deputy Commissioner, Palamau, has signed the impugned order in two places. In both places he has put the date as 18.01.2014. It is admitted that the date of personal hearing was fixed as 28.01.2014. This gives rise to natural presumption that the order was passed before hearing the petitioner, though memo no. 57 by which the order was communicated is dated 29.01.2014.

8. To verify this fact, the original record was called for, which was produced by the counsel for the State. From perusal of the note sheets, it is apparent that on 07.01.2014, a draft notice was sent for approval, as notices were to be sent to the petitioner fixing the date of personal hearing. The movement of the file clearly suggests that on 14.01.2014 the Deputy Commissioner fixed date on 28.01.2014 for personal hearing of the petitioner. After the noting in the file dated 17.01.2014, the next noting is dated 25.03.2014. There is no noting in the file in between 17.01.2014 to 25.03.2014 to suggest as to when hearing had taken place and when the order was passed. This omission fortifies the stand of the petitioner that, in fact, the order was passed on 18.01.2014 before the date fixed for personal hearing of the petitioner. There is no noting made in the file on 28.01.2014, on which date allegedly the petitioner was given personal hearing.

9. Further the explanation in the counter affidavit that the Dy. Commissioner had inadvertently had put the date as "18.1.2014" in place of 28.01.2014 cannot be accepted because the counter affidavit has not been sworn by the Deputy Commissioner. It is only the person who committed the mistake can accept it and

no one else.

10. In view of the findings made above, the impugned order dated 18.01.2014 passed by the Deputy Commissioner, Palamau, communicated to the petitioner vide Memo No. 57 dated 29.01.2014 is set aside and quashed.

11. At this juncture, on query, the counsel for the State submits that the Deputy Commissioner, who had earlier passed the impugned order, has now been transferred from Palamau and a new incumbent has already joined.

12. In that view, I remand this matter and direct the present Deputy Commissioner, Plamau to pass a reasoned order on the representation of the petitioner after giving a proper opportunity of hearing to the petitioner. The Deputy Commissioner will pass a fresh order without being prejudiced by the order passed by his predecessor.

13. Be it noted that this Court has not gone into the merit of the case.

14. This writ application is, thus, disposed of.