

(2012) 03 JH CK 0138

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6251 of 2009

Sunita Devi and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Citation : (2012) 3 JCR 166

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : Shailesh, for the Appellant;

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present writ petition has been preferred mainly challenging the order dated 30th September, 2009, passed by the Chief Development Project Officer, Chhatarpur within the district of Palamau (respondent No. 8), which is at Annexure 10 to the memo of petition. Learned counsel for the petitioners submitted that the petitioners were selected as Anganbari Sevika/Anganbari Sahayika. Subsequently, their services having been brought to an end, the petitioners had preferred writ petition being W.P.(S) No. 194 of 2009, which was decided by this Court along with other analogous writ petitions by common order dated 12th May, 2009, which is at Annexure 9 to the memo of petition and the orders of termination, passed by the Child Development Project Officers, were quashed and set aside and it was also directed in paragraph No. 8 of the judgment/order, delivered by this Court dated 12th May, 2009, that if any decision is taken by the Deputy Commissioner in the form of guideline, given to the Child Development Project Officers, for passing the orders, which have been quashed by the High Court, shall be ignored and the matters were remanded to the Child Development Project Officers for taking a fresh decision, in accordance with law, rules, regulations and the Government policies.

2. Learned counsel for the petitioners further submitted that the Child

Development Project Officer, Chhatarpur within the district of Palamau is as ignorant as he was earlier as he has passed again a non-speaking order dated 30th September, 2009, which is at Annexure 10 to the memo of petition, even after the matter has been remanded. No reasons have been given in the impugned order and it has been stated in the impugned order that both the parties are heard and the earlier direction, given by the Deputy Commissioner dated 26th December, 2008, is upheld, as if he is sitting in appeal against the order, passed by the Deputy Commissioner. Child Development Project Officer is an inferior officer to the Deputy Commissioner and looking to the last paragraph of the impugned order, it appears that he is sitting in appeal against the order, passed by the Deputy Commissioner and has upheld the decision, taken by the Deputy Commissioner and that too without any speaking order. Therefore, the impugned order being full of non-application of mind, arbitrary, whimsical and capricious, deserves to be quashed and set aside. No reason has been assigned for termination of the services of the petitioners. What is directed to be ignored in paragraph No. 8 of the earlier decision, given by this Court in the earlier writ petition, has been willfully considered, in violation of the earlier order and, therefore, let the matter be remanded and let it be decided by some another officer of the neighbouring district.

3. Learned counsel for the respondent-State submitted that as per the order, passed by this Court dated 12th May, 2009 in W.P.(S) No. 194 of 2009 and other analogous cases, respondent No. 8 has taken a fresh decision, which is at Annexure 10 to the memo of petition dated 30th September, 2009 and the earlier decision taken by the Deputy Commissioner, Palamau dated 26th December, 2008 has been held as a valid one.

4. Learned counsel for the respondents has also submitted that adequate opportunity of being heard was given to all the petitioners and, therefore, the writ petition deserves to be dismissed.

5. Having heard learned counsel for both the sides and looking to the facts and circumstances of the present case, I hereby quash and set aside the order, passed by the Child Development Project Officer, Chhatarpur within the district of Palamau dated 30th September, 2009, which is at Annexure 10 to the memo of petition, mainly for the following facts and reasons:

(i) The present petitioners were appointed as Anganbari Sevika/ Anganbari Sahayika, as stated in the memo of this petition and subsequently, their services were brought to an end by the very same officer of the concerned Blocks, upon the direction given by the Deputy Commissioner of the concerned district. The order of termination were challenged by way of several writ petitions. Petitioners herein had filed W.P.(S) No. 194 of 2009, challenging the order of termination, passed by the Child Development Project Officers. The orders, passed by the Child Development Project Officers, based upon the directions/guidelines given by the Deputy Commissioner, were quashed and set aside by this Court vide order dated 12th May, 2009, which is at Annexure 9 to the memo of petition, and

the matter in the instant case was remanded to respondent No. 8 to take a fresh decision, ignoring the earlier guidelines/directions, if any, passed by the Deputy Commissioner, because as per the policy floated by the respondent-State, if Anganbari Sevikas/ Anganbari Sahayikas want to prefer an appeal, they can prefer appeal before the Deputy Commissioner and, therefore, the guidelines, given by the Deputy Commissioner, was to be ignored, while taking fresh decision. This clear direction was given in paragraph No. 8 of the common order, passed by this Court dated 12th May, 2009 in W.P.(S) No. 194 of 2009 and other analogous writ petition, which reads as under :

If any decision is taken by the Deputy Commissioner, giving guidance to the Child Development Project Officer, as stated in these petitions, the same will be ignored by the Child Development Project Officers and independently, the conclusion will be arrived at by the respective Child Development Project Officers. Once an independent decision is taken by the respective Child Development Project Officers, further action will be taken, in accordance with law, rules, regulations and the policies.

(ii) Looking to the impugned order, passed by the Child Development Project Officer, Chhatarpur within the district of Palamau dated 30th September, 2009, which is at Annexure 10 to the memo of petition, it appears that no reasons have been assigned in the impugned order. Whenever the services of any employee are brought to an end, the bare minimum requirement is to assign reasons. In the facts of the present case, in the impugned order no reasons have been assigned for terminating the services of the present petitioners. Thus, the order, passed by respondent No. 8 is thoroughly a non-speaking order and, therefore, though an appeal is provided under Clause 16 of the Policy, as observed in the earlier order, it will be of no use at all, because the appellate authority is not knowing what is running in the mind of the sub-ordinate officer, while passing the impugned order. Non-speaking order always leads to arbitrariness. Arbitrariness and equality are sworn enemies of each other. When arbitrariness is present, equality is always absent and when equality is present, arbitrariness is absent.

(iii) It further appears from the impugned order at Annexure 10 to the memo of petition, passed by respondent No. 8, that he has upheld the order, passed by the Deputy Commissioner, Palamau. Respondent No. 8 was never hearing an appeal against the order, passed by the Deputy Commissioner, Palamau. He was directed by the order, passed by this Court dated 12th May, 2009 in the earlier writ petition being W.P.(S) No. 194 of 2009, to take a fresh decision, in accordance with law. (iv) It appears that respondent No. 8 has not at all understood the order, passed by this Court and unnecessarily, he has upheld the order, passed by the Deputy Commissioner, Palamau, who is his superior officer. What has been ordered to be ignored, has been considered.

In view of the aforesaid facts and circumstances, I hereby quash and set aside the order, passed by the Child Development Project Officer, Chhatarpur within the district of Palamau dated 30th September, 2009, which is at Annexure 10 to the

memo of petition, and the matter is remanded to the Child Development Project Officer. I direct respondent No. 5, the Deputy Commissioner, Palamau, to allot this matter for a fresh decision to some another officer, other than who has passed the order at Annexure 10 to the memo of petition. If the same officer is continuing, the matter will be decided by the" Child Development Project Officer of another Block. This case is absolutely in defendable, because respondent No. 8 has not at all appreciated the earlier order, passed by this Court and again a non-speaking order has been passed, which has given birth to the present writ petition. I, therefore, allow this writ petition with a cost of Rs. 9,000/-(rupees nine thousand), which will be paid by respondent-State authorities to each of the petitioners in equal share, within a period of four weeks from the date of receipt of a copy of the order of this Court.