
(2012) 07 PAT CK 0030
In the Patna High Court
Case No : CWJC No. 8964 of 2002

Sunita Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-07-2012

Acts Referred:

Citation : (2012) 4 PLJR 847

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Pramod Mishra, Vivek Kumar and Vijay Kumar "Mukul", for the Appellant; Ataul Haque, for the Respondent

Final Decision : Allowed

Judgement

Chakradhari Sharan Singh, J.—As prayed, learned counsel for the petitioner is permitted to add District Programme Officer, Vaishali as party Respondent No. 9 in the present writ application. Amendment in the cause title of the writ application be made in course of the day. Heard Mr. Pramod Mishra, learned counsel for the petitioner and Md. Ataul Haque, AC to GP-4 for the State.

2. The present writ application has been filed challenging the Office order dated 21.6.2002 passed under the signature of Child Development Project Officer, Jandaha, Vaishali (Annexure-7), whereby the petitioner's selection as Anganbari Sevika has been cancelled on the ground that in course of inspection it was found that concerned Anganbari Centre was not running and she absented herself for long period, adversely affecting the scheme meant for the beneficiaries and general public.

3. The writ petition was admitted for hearing on 14.8.2002. More than ten years have elapsed from passing of the impugned order dated 21.6.2002. There is no material on record to reach to the conclusion whether someone else has appointed on the post on which the petitioner was working and whether any third party right has been created during the pendency of the writ application. It has,

however, been submitted at the bar that till date no person, has been appointed against the post in question.

4. The main ground for challenging the impugned order dated 21.6.2002 is that before passing the said order no opportunity was accorded to the petitioner to explain her conduct. It is submitted on behalf of the petitioner that from the impugned order itself, it will appear that no such opportunity was given inasmuch as in the impugned order there is no reference to any notice having been issued with regard to the alleged misconduct against the petitioner or with regard to non-submission of her reply in spite of such notice. In the writ petition it has been stated that no opportunity in the form of show cause was given to the petitioner before passing the impugned order.

5. A counter affidavit has been filed on behalf of the State, wherein it has been stated that there were several complaints against the petitioner, leading to inquiry and on the basis of an Inspection Report and after due show cause notice the selection of the petitioner was cancelled. It has been stated in paragraph 10 of the counter affidavit that the petitioner was asked to submit her explanation but she intentionally did not file a reply. An Office order dated 9.4.2002 has been brought on record as Annexure-B to the counter affidavit by which the petitioner was asked to show cause against the proposed cancellation of her selection.

6. The impugned order dated 21.6.2002 does not mentioned any issuance of show cause notice to the petitioner, nor does it mention the failure on the part of the petitioner to reply to such show cause notice. The order on the face of it appears to be illegal, passed in violation of the principles of natural justice. As regards the assertion made in the counter affidavit with regard to the issuance of show cause notice to the petitioner, the same does not inspire confidence. Further there is no assertion in the counter affidavit that the said notice seeking petitioner's explanation was in fact served on the petitioner. Accordingly, the impugned order dated 21.6.2002 as contained in Annexure-7 is quashed being in violation of the principles of natural justice.

7. Learned counsel for the petitioner very fairly submits that the petitioner is not seeking any consequential benefits arising out of quashing of the impugned order except that if the post on which the petitioner was working is found vacant, she should be considered for her appointment against that post.

8. Considering the fair stand taken on behalf of the petitioner, the District Programme Officer, Vaishali is directed to consider the petitioner's case for her appointment as Anganbari Sevika against the post on which she was working prior to issuance of the impugned order dated 21.6.2002. The same should be done within a period of three months from the date of receipt/production of a copy of this order. In the result, this application is allowed to the extent mentioned above.