

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.668 of 2022

In

Civil Writ Jurisdiction Case No.15130 of 2018

Minu Kumari @ Minu Kumari Devi, W/o Ravindra Sahani, Resident of Village- Dumari, Post- Dumari, Dumari Urt. Mahamadpur Mobark, District- Muzaffarpur, Bihar, 840119.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department.
2. The Director ICDS Bihar, Patna.
3. The Commissioner of Tirhut (Muzaffarpur) Division, Muzaffarpur.
4. The District Magistrate, Muzaffarpur.
5. The District Programme Officer of Muzaffarpur.
6. The Child Development Project Officer, Mushahari, Gramin, Muzaffarpur.
7. The In- charge Medical Officer, Mushahari, Gramin, Muzaffarpur.
8. Smt. Sangita Kumari, wife of Upendra Sahni, Resident of Village- Dumari, Police Station- Mushari, District- Muzaffarpur and at present Aanganbari Centre No.- 156 Mushari, District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Arun Kumar Tiwary, Advocate

For the Respondent/s : Mr. Gyan Prakash Ojha, (GA-7)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 04-10-2024

1. Heard learned counsel for the appellant and learned counsel for the State of Bihar.



Re: I. A. no. 1 of 2023

2. The instant interlocutory application has been filed by the appellant praying therein for condoning the delay of 11 days in filing of the instant appeal.

3. It is submitted by learned counsel for the appellant that the appeal could not be filed in time as the appellant was suffering from fever, cough and cold from 14.11.2022 to 22.11.2022. On feeling good in health, she consulted her lawyer on 23.11.2022 and thereafter, the appeal was filed on behalf of the appellant.

4. The application is opposed by learned counsel appearing for the State of Bihar who submits that except for making a bald statement about her suffering from fever, cough and cold, no document or prescription in support of the same has been brought on record. It is further submitted that while a statement is made about the illness till 22.11.2022 and the appellant consulting her lawyer on 23.11.2022, *vakalatnama* was executed by the appellant on 21.11.2022 and requisition was filed for obtaining a certified copy of the order of the learned Single Judge on 10.11.2022. It is submitted that in view of the facts stated above, the statement made by the appellant in the interlocutory application are not accurate and thus, the same



be dismissed.

5. Having heard learned counsel for the parties and having perused the contents of the application, the Court is satisfied that the appellant has made out a case for condonation of delay and accordingly the delay in filing of the instant appeal is condoned.

6. I. A. no. 1 of 2023 stands allowed.

Re: L.P.A. no. 668 of 2022

7. The instant appeal has been preferred by the appellant against the judgment dated 17.10.2022 passed in CWJC no. 15130 of 2018.

8. The case of the appellant in brief is that the respondent no.8, who happens to be the *Anganwadi Sevika* of Ward no.15, Centre no.156 in Mushahari, Muzaffarpur was found absent without any sanctioned leave from 27.2.2011 to 3.3.2011 on the eve of Pulse Polio Vaccination Programme and on the matter being reported by the Medical Officer In-charge to the District Programme Officer, Muzaffarpur, an explanation was called for from her and subsequently her appointment cancelled. The respondent no.8 preferred Appeal Case no.15 of 2011-12 before the District Magistrate. It is the case of the appellant that in the meantime, in the *Aam Sabha* held on



24.8.2016, she was selected as *Anganwadi Sevika* and started working in the said capacity. Subsequent thereto, the District Magistrate allowed the appeal preferred by respondent no.8, set aside the order by which respondent no.8 had been removed and directed for her joining as *Anganwadi Sevika* at Centre no.156. As such, the appellant filed representations before the District Magistrate and the Commissioner and not having got any relief moved this Court by filing CWJC no. 15130 of 2018 praying therein to quash the order dated 17.11.2017 of the District Magistrate, Muzaffarpur whereby the respondent no.8 had been reappointed after dismissal after a lapse of more than seven years. The writ application having been dismissed by order dated 17.10.2022, the instant appeal has been preferred.

9. It is submitted by learned counsel appearing for the appellant that the learned Single Judge failed to appreciate that while the Rules/Guidelines provide for appeals to be decided within a period of 30 days, the District Magistrate decided the same after seven years. The District Magistrate neither took into consideration that fresh appointments had been made, nor the appellant was impleaded as a party in the appeal filed. It is thus submitted that the appellant not having been heard, the order reinstating the respondent no.8 as an *Anganwadi Sevika* is not



sustainable and in not appreciating the said contention, the learned Single Judge has also erred. As such, it is prayed that the order of the learned Single Judge also be set aside and the appeal be allowed.

10. In response, learned counsel appearing for the State of Bihar submitted that there is no illegality in the order under challenge. It was soon after her removal as *Anganwadi Sevika* in the year 2011 that the respondent no.8 preferred an appeal vide Case no. 15 of 2011-12 before the District Magistrate. Though it is correct that in the year 2016 the appellant was appointed as an *Anganwadi Sevika*, the appeal filed by respondent no.8 having succeeded, she was rightly reinstated as *Anganwadi Sevika* in Centre no.156.

11. Having heard learned counsel for the parties and having perused the material on record, the relevant facts in brief are that the respondent no.8 was appointed as an *Anganwadi Sevika* at the centre in question and was working in the said capacity till she was removed in the year 2011. She challenged her removal by filing an appeal before the District Magistrate, Muzaffarpur, which was registered as Case no.15 (Misc.) of 2011-12. In the meantime, as a result of an *Aam Sabha* held on 24.8.2016, the appellant was selected as *Anganwadi Sevika* for



Centre no.156, however, on the appeal preferred by the respondent no.8 having been allowed by the District Magistrate by his order dated 17.11.2017, the respondent no.8 was reinstated and consequently, the appellant was removed from being the *Anganwadi Sevika* of the centre in question.

12. So far as the appellant not having been made a party in the appeal filed by respondent no.8 is concerned, it is to be noted that while the respondent no.8 preferred her appeal in the year 2011-12, the appellant was engaged as an *Anganwadi Sevika* in the year 2016.

13. The appellant having been appointed as a result of the vacancy created on removal of the respondent no.8 and at the time when the case filed by respondent no.8 against her removal was still pending, what right the appellant had to be made party and heard, has been dealt with by the Hon'ble Supreme Court in a similar matter in the case of **Poonam vs. State of Uttar Pradesh & Ors. [(2016) 2 SCC 779]**, paragraph nos. 48, 49 and 53 of which are quoted herein below:-

“48. A few examples can be given so that the position can be easily appreciated. There are provisions in some legislations pertaining to Gram Panchayat or Panchayat Samiti where on certain grounds the competent authority has been conferred the power to remove the



elected Sarpanch or the Chairman, as the case may be on certain counts. Against the order of the Collector, an appeal lies and eventually either a revision or a writ lies to the High Court. After his removal, someone by way of indirect election from amongst the members of the Panchayats or the Panchayat Samiti is elected as the Sarpanch or the Chairman. The removed Sarpanch assails his order of removal as he is aggrieved by the manner, method and the reasons for removal. In his eventual success, he has to hold the post of the Sarpanch, if the tenure is there. The question, thus, arises whether the person who has been elected in the meantime from amongst the members of the Panchayat Samiti or Sabha is a necessary party. The answer has to be a categorical "No", for he cannot oppose the order of removal assailed by the affected Sarpanch nor can he defend his election because he has come into being because of a vacancy, arising due to different situation.

49. In the instant case, Shop No. 2 had become vacant. The appellant was allotted the shop, may be in the handicapped quota but such allotment is the resultant factor of the said shop falling vacant. The original allottee, that is, the respondent, assailed his cancellation and ultimately succeeded in appeal. We are not concerned with the fact that the appellant herein was allowed to put her stand in the appeal. She was neither a necessary nor a



proper party. The appellate authority permitted her to participate but that neither changes the situation nor does it confer any legal status on her. She would have continued to hold the shop had the original allottee lost the appeal. She cannot assail the said order in a writ petition because she is not a necessary party. It is the State or its functionaries who could have challenged the same in appeal. They have maintained sphinx like silence in that regard. Be that as it may, that would not confer any locus on the subsequent allottee to challenge the order passed in favour of the former allottee. She is a third party to the lis in this context.

53. We have referred to the said decision in Ramesh Hirachand case in extenso as there is emphasis on curtailment of legal right. The question to be posed is whether there is curtailment or extinction of a legal right of the appellant. The writ petitioner before the High Court was trying to establish her right in an independent manner, that is, she has an independent legal right. It is extremely difficult to hold that she has an independent legal right. It was the first allottee who could have continued in law, if his licence would not have been cancelled. He was entitled in law to prosecute his cause of action and restore his legal right. Restoration of the legal right is pivotal and the prime mover. The eclipse being over, he has to come back to the same position.



His right gets revived and that revival of the right cannot be dented by the third party”

14. As in the case of **Poonam** (*supra*), it was on removal of respondent no.8 as *Anganwadi Sevika* sometime in the year 2011 that the respondent no.8 preferred Appeal Case no.15 of 2011-12 before the District Magistrate. The said appeal remained pending for no fault of respondent no.8. In the meantime, the appellant was appointed as an *Anganwadi Sevika* for the centre in question on 24.8.2016. Subsequent thereto, the District Magistrate allowed the appeal preferred by the respondent no.8 by his order dated 17.11.2017, which led to her reinstatement and consequent removal of the appellant.

15. As held by the Hon’ble Supreme Court in the case of **Poonam** (*supra*), so far as the instant case is concerned, it was only on the illegal removal of respondent no.8 and the post of *Anganwadi Sevika* having fallen vacant that the appellant could be appointed. So far as the dispute with respect to the removal of respondent no.8 is concerned and her filing of the appeal which was allowed by the District Magistrate, the appellant had no right or *locus* and in the words of the Hon’ble Supreme Court in the above referred case, was merely a third party to the *lis* in that context.

16. In view of the facts and circumstances of the case,



the Court finds no merit in the instant appeal and the same is dismissed.

(Partha Sarthy, J)

K. Vinod Chandran, CJ: I agree.

(K. Vinod Chandran, CJ)

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AFR/NAFR	
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