

Ruby Devi Vs. State of Jharkhand and ors.

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Court : Jharkhand

Decided On : Apr-29-2010

Judge : D.N. Patel, J.

Appellant : Ruby Devi

Respondent : State of Jharkhand and ors.

Disposition : Petition allowed

Judgement :

D.N. Patel, J.

1. The present petition has been preferred against an order, passed by the Child Development Project Officer, Hussainabad, Palamau dated 22nd September, 2009, which is at Annexure 5 to the memo of petition, whereby the services of the present petitioner as Anaganbari Sevika has been put to an end.

2. Learned Counsel for the petitioner vehemently submitted that this is a second round of litigation. Previously, an order was passed by the concerned officer, without giving any opportunity of being heard to the petitioner, without assigning any reasons, worth the name, and without giving any show cause notice and, therefore, the previously filed writ petition bearing W.P.(S) No. 115 of 2009 was allowed by this Court vide detailed speaking order dated 12th May, 2009 and ultimately, a direction was given by this Court that the Child Development Project

Officer shall decide the claim of the present petitioner once again afresh, without being influenced by the order, passed by the Deputy Commissioner. It is further submitted by the learned Counsel for the petitioner that after the aforesaid order, though the petitioner raised several issues, nothing has been accepted by the Child Development Project Officer and throughly, a non-speaking order once again has been passed on 22nd September, 2009 (Annexure 5 to the memo of petition), upholding the order, passed by the Deputy Commissioner. Thus, even after remand of the matter, no lesson has been learnt by the said Child Development Project Officer and with the same defects of non-application of mind and arbitrariness, once again an order has been passed, without assigning any reason, worth the name, for termination of the services of the present petitioner on 22nd September, 2009 and, therefore, the order at Annexure 5 to the memo of petition deserves to be quashed and set aside, with exemplary cost and it has been further submitted that now the matter may be remanded to be decided by another Child Development Project Officer and, at least, not the same officer.

3. I have heard learned Counsel for the respondents, who has submitted that the order at Annexure 5 to the memo of petition is giving a ratification to the decision, taken by the Deputy Commissioner, Palamau, and he has fairly submitted that no reasons have been assigned in the said order, worth the name, and he has submitted that let the matter be remanded and within the stipulated time, let the same be decided.

4. Having heard learned Counsel for both the sides and looking to the facts and circumstances and also looking to the impugned order at Annexure 5 to the memo of petition, I hereby quash and set aside the order, passed by the Child Development Project Officer, Hussainabad, Palamau dated 22nd September, 2009, mainly for the following facts and reasons:

(i) The petitioner was appointed as Anganbari Sevika on 4th November, 2006 vide order at Annexure 2 to the memo of petition. Thereafter, the petitioner has worked for several months honestly, sincerely, diligently and to the satisfaction of the respondents.

(ii) Abruptly, a decision was taken by the respondents, without issuing any notice and without giving any opportunity of being to the petitioner, whereby, the services of the present petitioner was initially terminated vide order dated 27th December, 2008.

(iii) This order was challenged before this Court by way of a writ petition bearing W.P.(S) No. 115 of 2009 and vide order dated 12th May, 2009, the said order was quashed and set aside and the matter was remanded for fresh decision by the Child Development Project Officer, without being guided by the opinion given by the Deputy Commissioner of the concerned district.

(iv) It appears that again after hearing the parties, thoroughly a non-speaking order has been passed by the Child Development Project Officer, Hussainabad, Palamau, dated 22nd September, 2009 and the only reason given in the impugned order is that the defence raised by the petitioner is not accepted and the order of termination was passed against the present petitioner. Thus, the impugned order is thoroughly a non-speaking order.

(v) Totally a non-speaking order has been passed by the respondent- Child Development Project Officer, Hussainabad, Palamau, The State authorities ought to keep in mind that whenever they are terminating the services of any person, at least, speaking order should have been passed, so that the higher authorities can understand what are the reasons for which the services have been terminated and for termination of the services, notice is must. Opportunity of being heard ought to have been given to the petitioner. Earlier also, no opportunity of being heard was given to the petitioner and, therefore, the matter was remanded, as stated hereinabove in the earlier writ petition. The Child Development Project Officer has not understood, at all, his responsibility. Powers, vested in the officer, are always coupled with the duties. They are not to be utilized arbitrarily, whimsically and capriciously. A non-speaking order leads to an 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 always absent. Thus, non-speaking orders lead to an arbitrariness and arbitrariness leads to an inequality. Thoroughly, a non-speaking order has been passed by the Child

Development Project Officer, Hussainabad, even after remand of the matter by this Court and, therefore, I hereby quash and set aside the order, passed by the Child Development Project Officer, Hussainabad, Palamau, dated 22nd November, 2009, which is at Annexure 5 to the memo of petition, and I hereby direct respondent No. 3 (Director, Social Welfare, Women and Child Development Department, Government of Jharkhand, Ranchi) to treat this writ petition as a representation and to decide the claim of the petitioner, in accordance with law, rules, regulations, policies and the government enforceable orders and to pass a speaking order, after giving an adequate opportunity of being heard to the petitioner or to her representative. Whatever may be the irregularities in the selection of the present petitioner, will be pointed out first to the petitioner, so that the petitioner can give proper reply to those allegations, which are running in the mind of the respondent-authorities.

5. As a cumulative effect to the aforesaid facts and reasons, the impugned order dated 22nd September, 2009, passed by the Child Development Officer, Hussainabad, Palamau, which is at Annexure 5 to the memo of petition, is hereby quashed and set aside and the writ petition is hereby allowed with a cost of Rs. 2,000/- (rupees two thousand). Initially, the cost will be paid by the State to the petitioner within a period of sixteen weeks from the date of receipt of a copy of the order of this Court and thereafter, it will be deducted from the salary/retirement benefits of the erring officer, after holding proper inquiry.

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