

(2013) 08 JH CK 0006
Jharkhand High Court
Case No: WP (S) No. 6474 of 2011

Smt. Pinki Devi

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: Aug. 30, 2013

Citation: (2013) 4 JLR 301

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Sanjay Kr. Dwivedi, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Aparesh Kumar Singh, J.

Heard learned counsel for the parties. The service of the petitioner has been terminated vide order dated 14.10.2011 issued by the Child Development Programme Officer, Bokaro for the alleged charges that on inspection on 24.6.2011 by the District Level Authority, the said Aaganbari Centre, Mamrkundar, Code No. 78, Chas, Rural Project was found closed. The petitioner was served with a show cause dated 1.7.2011 containing allegation that on 24.6.2011, the said Aaganbari Centre was closed and it reflected that the petitioner was not carrying out the duties in a regular manner in accordance with law. She was negligent in discharging her duties. She furnished her reply vide Annexure-12, dated 7.7.2011 inter alia taking a plea that on the said date she had gone to see her ailing mother at Mighra, Bokaro, who had undergone operation. According to her, she had given information to Chairman of the Mata Samiti namely Smt. Yamuna Devi and requested her to look after the Centre till the time she comes back. She had left for her mother's house at 5.30-6.00 AM in the morning and returned back Bokaro at 3.45 to 8.50 AM. She had also stated in her show cause reply that in the attendance register, 10 children were found present on the said date, which was also enclosed to her reply as

Annexure-10 to the writ petition. It is contended on behalf of the petitioner that for such a charge of remaining absent for one day that too in a particular period of day on 26.6.2011, the respondent-Deputy Development Commissioner, Bokaro passed the order of termination of her services on 1.10.2011, which has been communicated by the Child Development Project Officer, Chas vide impugned order dated 14.10.2011. Learned counsel for the petitioner has relied upon the Single Bench judgment of this Court rendered in the case of [Krishna Choudhary Vs. State of Jharkhand and Others](#). He submits that in the said case also it has been held that the punishment of termination for absenteeism for only one day is shockingly disproportionate to the alleged misconduct and accordingly, the impugned order of termination was quashed. Learned counsel for the petitioner has also relied upon the judgment rendered in the case of Nillima Mandal vs. The State of Jharkhand & Ors. passed in W.P.(S) No. 4561 of 2006 vide order dated 30.1.2008 whereunder according to him it has been held that the Deputy Development Commissioner did not have jurisdiction to pass the order of removal of Aaganbari Sevika. On these grounds, the impugned order has been assailed by the petitioner.

2. Counsel for the respondents, at the outset, submits that the impugned order is an appealable one as per the Rules relating to service condition of Aaganbari Sevika. It is further contended on his behalf that she was found absent on 24.6.2011 on inspection by the District Level Authority and therefore show cause was furnished thereafter. It was found that she was not conscious of her duties and further irregularities had been committed in conducting the said Centre. Learned counsel for the respondent relies upon the judgment of the Single Bench of this Court rendered in the case of Pano Devi vs. State of Jharkhand & Ors. passed in W.P.(S) No. 4784 of 2009 vide order dated 7.2.2013 where according to him para-16 of the letter prescribing the guidelines for appointment and removal of Aaganbari Sevika/Sahayika has been discussed. He submits that the Deputy Development Commissioner being an authority for approval of such an appointment is therefore entitled to pass order of cancellation for such appointment if there is any illegality found therein.

3. I have heard learned counsel for the parties at some length and gone through the relevant materials on records including the impugned order. The admitted facts of the instant case are that the petitioner was found absent for one day period on 24.6.2011 on inspection by the District Level Authority from the Aaganbari Centre, Mamrkundar, Code No. 78, Chas, Rural Project. The show cause was issued on 1.7.2011 under the Signature of the Deputy Development Commissioner, Bokaro upon the petitioner asking her to file reply to the show cause. The petitioner explained her absenteeism by stating that she had gone to see her ailing mother. She had given information to the Chairman of Mata Samiti namely Smt. Yamuna Devi. She also states in her show cause reply that she came back at 8.45 to 8.50 AM in the morning and even on that date 10 children were in fact attending the school whose attendance were also recorded in the register maintained in the School. The

said document has also been annexed as Annexure-10 to the present writ petition. It is, therefore, the case of the petitioner that Aaganbari Centre was in fact not closed on that day.

4. Be that as it may, the petitioner has been imposed with a punishment of termination from service from the post of Sevika on the ground of having been absented for only one day. In the circumstances, the judgment relied upon by the petitioner reported in [Krishna Choudhary Vs. State of Jharkhand and Others](#), in the case of Krishna Choudhary (supra) appears to be applicable to the facts of the instant case as well. In the said case also termination of service of the said person also as Aaganbari Sevika was quashed, since the order of termination was found to be shockingly disproportionate on account of absence of only one day in the said case. In the present case also, the allegations are of absence for one day on 24.6.2011, which the petitioner has tried to explain in her show cause reply. In the circumstances, the impugned order of punishment appears to be shockingly disproportionate for the alleged misconduct of one day absenteeism and therefore, cannot be sustained in law and is, accordingly, quashed.

5. The petitioner shall be reinstated in service consequent thereupon. Respondents shall be at liberty to initiate action, however, after giving opportunity to the petitioner to defend herself. Accordingly, the writ petition is allowed.