

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 455 of 2015

IN

Civil Writ Jurisdiction Case No. 2487 of 2015

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Kalpana Kumari, Daughter of Sri Shiv Shambhu Rai & Wife of Sri Subodh Kumar Rai @ Subodh Rai, resident of Village-Malti, P.O. & Panchayat-Pipra Devas, P.S.-Fulwaria, Block-Barauni, District-Begusarai.

.... Petitioner/Appellant

Versus

1. The State of Bihar.
2. The Principal Secretary, Social & Welfare Department, Govt. of Bihar, Patna.
3. The Director, I.C.D.S. Social & Welfare Department, Govt. of Bihar, Patna.
4. The Commissioner, Munger Division, Munger.
5. The Deputy Director, Welfare, Munger Division, Munger.
6. The District Magistrate, Begusarai.
7. The District Programme Officer, Begusarai.
8. The District Welfare Officer, Begusarai.
9. The Child Development Project Officer, Barauni, Begusarai.
10. Member of Selection Committee, Gram Panchayat Raj Pipra Devas, Barauni, Begusarai.
11. Simpi Devi, Wife of Sri Ramanand Choudhary, resident of Village-Malti, P.O. & Panchayat-Pipra Devas, P.S.-Fulwaria, Block-Barauni, District-Begusarai.

.... Respondents/Respondents

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Appearance :

For the Appellant : Mr. Bipin Kumar, Advocate

For the Respondents : Mr. Kumar Manish, S.C.-21

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 11-08-2015

This appeal arises out of an order, dated 11/02/2015, passed by the learned Single Judge, in C.W.J.C. No. 2487 of 2015, whereby the writ petition filed by the appellant came to be dismissed.

2. The matter relates to appointment of Aanganbari Sevika for Gram Panchayat Raj, Pipra Devas, in the district of Begusarai, against which respondent No. 11 has been appointed. The appointments to Aanganbari Sevika/Sahayika are made, under Integrated Child Development Scheme, in accordance with the guidelines issued by the State Government, bearing Memo No. I.C.D.S./30010/1-2011/2862, dated 04/11/2011, amended from time to time. The appellant and respondent No. 11 both were aspirants for their engagement as Aanganbari Sevika. The dispute in the present appeal is confined to grant of points to the aspirants for the post on the ground of having been deserted by their husbands. Clause - 7 of the guideline prescribes that in the event of two candidates having equal merit points, preference will be given to them in the following order:-

(i) Widow,

- (ii) Deserted,
- (iii) Handicapped, and
- (iv) Oldest (age-wise).

3. The appellant claims that she has been deserted by her husband and a certificate to this effect has been issued by the Mukhiya of the concerned Gram Panchayat, who is competent to issue such certification. It is her further case that certificate, as regards the fact that the respondent No. 11 has been deserted by her husband, has been issued by Ward Councillor, who was not competent authority to issue such certificate. It is her further case that respondent No. 11 was the second wife of one Ramanand Choudhary inasmuch as the respondent No. 11, being the second wife, cannot be said to be legally married to said Ramanand Choudhary and, therefore, there would be no question of desertion by the said Ramanand Choudhary of respondent No. 11, there being no relationship of husband and wife between the deceased and respondent No. 11.

4. Learned counsel, appearing on behalf of the appellant, has vehemently argued that weightage for being a deserted wife was wrongly given to respondent No. 11 and had that not been given, the appellant, who has been deserted by her

husband, would have ranked higher in the merit list and would have been appointed as Aanganbari Sevika. Respondent No. 11, on the other hand, has disputed the fact that she is not legally married wife of said Ramanand Choudhary.

5. From the facts, it appears that in the process of selection, the respondent No. 11 was found to be having 68.14 merit points, whereas, the appellant was having 63.55 marks. The appellant had filed an application, seeking cancellation of appointment of respondent No. 11 before the District Programme Officer, Begusarai, on the sole ground that she was wrongly given 7 bonus marks on the basis of desertion certificate. The claim of the appellant was accepted by the District Programme Officer against which, the respondent No. 11 had preferred an appeal before the Deputy Director, Welfare, Munger Division, Munger, who set aside the order of the District Programme Officer and upheld the appointment of respondent No. 11.

6. In our opinion, the learned Single Judge has rightly refused to interfere with the impugned order, passed by the Deputy Director, Welfare, keeping in view the nature of dispute, inasmuch as both, the appellant and respondent No. 11, claim to have been deserted by their husbands. The appellant claims that

respondent No. 11 is not legally married wife of said Ramanand Choudhary, which fact is being strongly denied by respondent No. 11. In our opinion, writ proceeding cannot be the appropriate remedy for deciding disputed questions of facts. We do not find any infirmity in the order under appeal, dated 11/02/2015, passed by the learned Single Judge, in C.W.J.C. No. 2487 of 2015, whereby he has refused to interfere in writ jurisdiction of the High Court.

7. We do not find any merit in this appeal. This appeal is, accordingly, dismissed.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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