

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 3863 of 2011

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Asha Kumari Daughter of Sri Sahdeo Prasad, Wife of Sanjay Kumar
Resident of Village - Madhua, P.O. Ghaghra, P.S. – Bakhri Bazar, District -
Begusarai

.... Petitioner

Versus

1. The State of Bihar
2. The District Magistrate, Begusarai
3. The District Superintendent of Education, Begusarai
4. The District Welfare Officer, Begusarai
5. The District Program Officer, Begusarai
6. The Child Development Project Officer, Block - Bakhri, District - Begusarai
7. Smt. Neelam Devi Wife of Sri Ghan Shyam Ray Mukhiya of Ghaghra Gram Panchayat, Resident of Village - Simari, P.S. - Bakhri Bazar, District - Begusarai
8. The Panchayat Sachiv, Ghaghra Gram Panchayat , Block - Bakhri, District - Begusarai
9. Kabita Kumari Wife of Ram Pravesh Mahto Resident of Village - Madhua, P.O. - Ghaghra, P.S. - Bakhri Bazar. District - Begusarai

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Ambastha
For the Respondent/s : AC to GP – 9
Mr. Arun Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

4. 04-11-2015 Heard Sri Binod Kumar Ambastha, learned counsel for the petitioner, learned A.C. to Govt. Pleader – 9 as well as Sri Arun Kumar Singh, learned counsel who has appeared on behalf of respondent no. 9.

The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for directing the respondents to appoint her as Anganbari Sevika at



Ghaghra Panchayat Centre No. 61 under the Bakhri Block in the district of Begusarai. The petitioner has also prayed for quashing of an order dated 20-05-2010 passed by the District Programme Officer, Begusarai. By the said order, the District Programme Officer has rejected the claim of the petitioner and directed the Child Development Project Officer, Bakhri (Begusarai) for appointment of respondent no. 9. The order impugned has been brought on record as **Annexure – 7** to the writ petition.

Learned counsel for the petitioner submits that in a proceeding before the Gram Sabha dated 29-01-2007, a decision was taken to appoint the petitioner as Sevika. However, since an objection was raised on behalf of the respondent no. 9 on an allegation that the petitioner had produced forged Intermediate certificate, the Gram Sabha observed that it requires enquiry. Subsequently, the respondent no. 9 filed a complaint, which was registered as case no. 13 of 2010 before the District Programme Officer, Begusarai under the provisions of guidelines for appointment of Anganbari Sevika/Sahaika. The learned District Programme Officer, after affording the parties full opportunity and summoning relevant records, finally concluded that the petitioner was not entitled to be appointed as Sevika and a direction was given to appoint respondent no. 9.



Learned counsel for the petitioner submits that the petitioner had produced matriculation certificate as well as intermediate certificate for being selected. According to learned counsel for the petitioner, the petitioner was much qualified than respondent no. 9 and as such, the Aam Sabha had rightly decided to select the petitioner for being appointed as Anganbari Sevika. He has further argued that the order of the District Programme Officer is liable to be set aside on the ground that on the date of order i.e. 20-05-2010, the husband of respondent no. 9 was already employed as government servant, as Geography Teacher in Government School, Ghoghri. While substantiating his submission, he has referred to the observations made in the impugned order itself. On aforesaid ground, he has prayed for setting aside the order impugned and directing the respondent to appoint the petitioner as Sevika.

Learned counsel for the respondent no. 9 has raised objection on the point of maintainability of the present writ petition. He submits that if the petitioner was aggrieved with the order of the District Programme Officer, as per provisions contained in guidelines for appointment of Anganbari Sevika/Sahaika, there was remedy available to the petitioner and by-passing the said remedy, the petitioner has directly approached

the writ court and as such, in view of availability of efficacious alternative remedy, this court may not exercise the writ jurisdiction and dismiss the same.

Learned counsel for the State submits that from the order impugned itself, it is evident that for claiming appointment the petitioner had initially submitted a certificate issued by Hindi Sahitya Sammelan, Allahabad. He submits that the State Government has already declared such degree of Hindi Sahitya Sammelan, Allahabad, as invalid. He further submits that illegality is on face of the record, in view of the fact that the petitioner had changed the stand. He submits that at the time of selection, initially she claimed that she was intermediate from Hindi Sahitya Sammelan, Allahabad, however; at the time of proceeding before the District Programme Officer, she claimed that simultaneously she was pursuing intermediate course at Hasanpur College, Samastipur and almost for the same session, she had produced two certificates. So far as direction for appointing respondent no. 9 is concerned, learned State counsel submits that the selection process was initiated in the year 2007 itself and fact remains that at the time of entertaining candidature of the respondent no. 9 in the Aam Sabha, the husband of the respondent no. 9 was not in government service. However,

subsequently, after the process was initiated, the husband of respondent no. 9 was appointed on contract basis as government teacher. Accordingly, he submits that the respondent's candidature on the ground of being ward of a government employee was not required to be rejected, since at the time of Aam Sabha, her husband was not in government service.

In this case, counter affidavit has been filed on behalf of respondent-State as well as private respondent i.e. respondent no. 9, however; learned counsel for the petitioner submits that counter affidavit either of State or private respondent has not been served on him. Accordingly, the Court considers to ignore the counter affidavits.

From the order impugned, it is evident that if weightage of intermediate is given to the petitioner, her marks come to 57.7%, whereas the respondent no. 9 had obtained 60% marks.

Fact remains that the petitioner had changed her stand and even by changing her stand, she may not be treated as a candidate having much marks than respondent no. 9. So far as the plea of learned counsel for the petitioner that on the date of order i.e. 20-05-2010 passed by the District Programme Officer, the husband of the respondent no. 9 was a government employee, the

Court is of the opinion that the condition, which was available at the time of application as well as consideration by the Aam Sabha would be the relevant date. It is not in dispute that husband of the respondent no. 9 got employment much after the selection process was initiated and as such, on this ground also, the order impugned may not be interfered with.

In view of the facts and circumstances, I do not find any defect in the impugned order.

The writ petition stands dismissed.

(Rakesh Kumar, J.)

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