

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13643 of 2015

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Sweta Kumari w/o Sri Sudama Paswan, resident of village Kamta, Police Station Hilsa, district Nalanda.

.... Petitioner/s

Versus

- 1.The State of Bihar.
- 2.The Principal Secretary, Welfare Department, Government of Bihar, Patna.
- 3.The Director, Integrated Child Development Scheme, Welfare Department, Government of Bihar, Patna.
- 4.The Commissioner, Patna Division, Patna.
- 5.The District Magistrate, Nalanda.
- 6.The District Programme Officer, Nalanda.
- 7.The Child Development Project Officer, Hilsa at Nalanda.
- 8.The Gram Panchayat, Kamta, through its Secretary under Hilsa Block in the district of Nalanda.
- 9.The Secretary, Gram Panchayat, Kamta under Hilsa Block in the district of Nalanda.
- 10.Smt. sudha Kumari, Wife of Sri Rajesh Ranjan, Resident of Village-Kamta, Post Office and Police Station Hilsa, District Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Ishwar Prasad, Adv

For the Respondent/s : Mr. Upendra Pratap Singh, AC to SC-25

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 03-09-2015 Heard learned counsel for the parties as with regard to the following relief, prayed in this writ application:-

“That this is an application by petitioner for issuance of a writ in the nature of certiorari or any other writ/writs, order/orders, direction/directions for setting aside, quashing and cancelling (i) memo no. 3431 dated 21.11.2007 contained in Annexure-10 passed by Director, Integrated Child Development Scheme, Welfare Department, Government of Bihar, Patna (Respondent No. 3) (ii) order dated 15.02.2010 passed by the District Magistrate cum Collector, Nalanda (Respondent No. 5) in Misc. (Anganwari) Case No. 65 of 2009 (Sudha Kumari versus the State of Bihar), contained in Annexure-16 by which the selection of the petitioner to the post of Anganwari Sewika at Anganwari Centre, Kamta, Centre No. 113 has been cancelled.(iii) Order dated 31.07.2012 passed in Misc. Appeal

No. 159 of 2010 (Sweta Kumari versus The State of Bihar and Others) contained in Annexure-18 passed by the Commissioner, Patna Division, Patna (Respondent No. 4) affirming the orders aforesaid contained in Annexure-16 and directing respondent no. 5 to fill up the post of Anganwari Sevika of Centre, Kamta, aforesaid according to law.”

Learned counsel for the petitioner has submitted that despite the order given by this Court, the authorities have failed to consider the case of the petitioner in proper perspective. He has then submitted that selection and appointment of Neelu Kumari, respondent no. 11, in place of the petitioner is bad because her name did not figure in the panel. Finally, he has submitted that if this Court is not inclined to interfere with the impugned order, liberty may be given to the petitioner to file another representation.

Learned counsel for the State, on the other hand has submitted that the petitioner stands removed from the post of Anganbadi Sevika, way back in the year 2007 and therefore, she cannot claim the post of Anganbadi Sevika, which have also remained vacant for all these period. He has also explained that the case of



the petitioner was considered both by the Collector in his reasoned order dated 15.02.2010, as also by the Commissioner in his order dated 31.07.2012, wherein, it was found that one Smt. Sudha Kumari, respondent no. 10, was better candidate on merits and her appointment on the post of Anganbadi Sevika was denied on a wholly invalid ground that he had also been selected for the post of Shiksha Mitra.

In the considered opinion of this Court, there would be no question of violation of any direction of this Court. In this regard, this Court would appreciate that when the services of the petitioner were terminated in the year 2007, she had moved to this Court in C.W.J.C No. 4036 of 2008 and this Court did not decide anything on merits, save and except, has allowed the petitioner to file a representation before the Principal Secretary of the Welfare Department. To that extent, the order of this court dated 08.09.2009, being relevant, is quoted hereinbelow:-

“This matter has been taken up out of turn on a

motion slip filed by the counsel for the petitioner who did not wish to argue the matter on merit but wanted an order simpliciter for disposal of his representation.

In view of the limited prayer mad this writ application is disposed of with direction to respondent no. 2 to consider and decide the representation of the petitioner, Annexure-6 series in accordance with law within a maximum period of three months from the date of receipt and/or presentation of a copy of this order.

It is made clear that this Court has not gone into merits of the matter which shall remain open for consideration by the concerned respondent in his discretion, in its entirety."

The second order which was passed by this Court in C.W.J.C No. 11206 of 2010 disposed of on 05.10.2010, was directed against the order of the Collector of Nalanda district dated 15.02.2010, this Court had held the writ application to be not maintainable. To that extent, the order dated 05.10.2010, is also quoted hereinbelow:-

"Heard learned Counsel for the petitioner and the learned Counsel for the State.

Learned Counsel for the State raises a preliminary objection to the availability of the remedy of appeal before the Commissioner against the order of the District Magistrate dated 15.2.2010.

Only if such an appeal is filed within a period of thirty days from today let the same be considered and disposed off by the Appellate Authority by a reasoned and speaking order after hearing all concerned including respondent no. 8 preferably within a maximum period of four months from the date of receipt and/or presentation of a copy of this order.

The writ application stands disposed."



Thus, when this Court would find that the Commissioner had disposed of the appeal by a reasoned order, there would be no difficulty in holding that none of the alleged directions given by this Court have been flouted in any manner.

The aspect that the petitioner's appointment was cancelled in the year 2007, and the representation of the petitioner was dismissed in the year 2010, again an appeal was dismissed in the year 2012 by the impugned orders, will itself go to show that this belated writ application filed on 28.08.2015, after three years of the order passed by the Commissioner is otherwise not maintainable on the ground of delay and laches.

Let it be noted that the working on the post of Anganbadi Sevika is not a Government service and therefore, the post could not have remained vacant awaiting the result of the cases being filed by the petitioner from time to time. Thus, if the post has been filled up by appointing one Neelu Kumari, this Court is

not inclined to interfere with the same.

Finally, as with regard to the merit of the claim of the petitioner, it would be found that she herself had been appointed on the post of Anganbadi Sevika in the year 2007 in an illegal manner because Smt. Sudha Kumari was a better candidate in all respect, who was at Serial No. 1 of the panel but Gram Sabha somehow did not select her on the ground that she had been selected for the post of Shiksha Mitra. Such denial of the appointment of Smt. Sudha Kumari was itself out and out illegal and therefore, when the finding in favour of Smt. Sudha Kumari has been reiterated both by the Collector and the Commissioner in their impugned orders, this Court would not find hardly any reason now to allowed the petitioner to file another representation. The anganbadi guidelines only lay down deciding of a complaint by way of petition and appeal. In this case, both remedies have already been exhausted by the petitioner and therefore, this Court is not inclined to give

liberty to the petitioner to file any representation.

That being so, this writ application must fail and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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