

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2954 of 2015

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Sultana Khatoon W/o Md. Iliyas Khan, Resident of Village - Semaru, P.O. + P.S. - Gurua, District - Gaya.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Social Welfare, Government of Bihar, Patna.
2. The Principal Secretary, Department of Social Welfare, Government of Bihar, Patna.
3. The Divisional Commissioner, Magadh Division, Gaya.
4. The Deputy Director, Social Welfare, Magadh Division, Gaya.
5. The District Collector, Gaya.
6. The District Programme Officer, I.C.D.S., Cell Gaya.
7. The Child development Project Officer (C.D.P.O.) Amas Block, District - Gaya.
8. Manju Kumari Wife of Rajendra Prasad, Resident of Village - Sarkanda, P.O. - Chowar, P.S. - Wazirganj, Block - Tankuppa, District - Gaya.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Y.V.Giri, Sr. Adv.

Mr. Rajeev Kumar, Adv.

For the Respondents State: Mr. Shashi Shekhar Pd. Sinha, AC to GA6

For respondent no.8 : Mr. Rajesh Kumar Singh, Adv.

Mr. Pradeep Chandra, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 22-11-2016

Heard Mr. Y.V.Giri, learned Senior counsel appearing for the petitioner, Mr. Shashi Shekhar Prasad Sinha, learned AC to GA6 and Mr. Pradeep Chandra, learned counsel appearing for respondent no.8.

With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission itself.

The petitioner held the post of Lady Supervisor, Amas Block, in the district of Gaya and is aggrieved by the order dated 19.12.2014 passed by the Divisional Commissioner, Gaya in Appeal Case No. 280/2012, whereby the petitioner's selection to the post of



Lady Supervisor has been set aside, inter alia, on the ground of alleged failure on the part of the petitioner to file a residential certificate issued by the Sub-divisional Officer in tune with Rule (iii)(ga) of the Paryavekshika Niyojan Margdarshika, 2010 issued under the resolution of the Social Welfare Department, Govt. of Bihar, dated 10.6.2010, which, inter alia, provides that the applicant for the post should be a permanent resident of the district and should produce a residential certificate issued by the Sub-divisional Officer. The petitioner is also aggrieved by the consequential order passed by the Child Development Project Officer, Amas, District Gaya bearing Memo No. 27 dated 3.2.2015, impugned at Annexure 6, whereby the services of the petitioner from the post of Lady Supervisor have been terminated.

The facts of the case are not too elaborate and briefly stating is that the appointment of the petitioner to the post of Lady Supervisor was questioned by the private respondent before the Divisional Commissioner in the appeal in question. The Divisional Commissioner has rejected the claim of the appellant- respondent no.8 in so far as inter se merit in between the appellant- respondent no.8 and the petitioner is concerned, in reference to the marks obtained by the two candidates. The Divisional Commissioner has accepted that the marks obtained by the petitioner is far above that of the private



respondent. However, even after holding that the petitioner is a better candidate, the Divisional Commissioner fell into serious error in upholding the appeal on grounds that the residential certificate produced by the petitioner issued by the Circle Officer was not valid. According to the Divisional Commissioner, since the relevant Rule present in the guidelines required such certificate to be issued by the Sub-divisional Officer, the application of the petitioner was held defective for being entertained and thus, her appointment to the post of Lady Supervisor was held illegal. A direction was issued to the District Magistrate, Gaya to hold the selection process afresh in consideration of the guidelines issued by the Social Welfare Department in the resolution dated 10.6.2010 and it is in pursuance of the order passed by the Commissioner, Magadh Division, Gaya in Appeal Case No. 280/2012, impugned at Annexure 5, that the consequential order has been passed by the Child Development Project Officer dated 3.2.2015, whereby the petitioner has been removed from the post of Supervisor and feeling aggrieved she is before his Court.

I have heard learned counsel for the parties and have perused the records.

As I have already indicated, on merits, the claim of the appellant- respondent no.8 was negated by the Divisional



Commissioner in consideration of the marks obtained by the two candidates to hold that the position of the writ petitioner was far above that of the private respondent. The appointment of the petitioner has been interfered with simply on the ground of failure on the part of the writ petitioner to produce a residential certificate issued by the Sub-divisional Officer in tune with the Regulation (iii)(ga) of the Guidelines issued by the Social Welfare Department dated 10.6.2010.

It is rather surprising that even when the Divisional Commissioner has taken note of the fact that the writ petitioner was holding the post of Anganwari Sevika and she had applied for the post of Lady Supervisor as a promotee candidate, yet he has based his opinion on a technicality of non-production of residential certificate ignoring the legal position that the guidelines relating to appointment of Anganwari Sevika, categorically prescribes the applicant to be a permanent resident of the Tola concerned. In fact the law relating to appointment of Anganwari Sevika is much harsh inasmuch as, the applicant concerned has to be a resident of Tola concerned, where centre is located. On the other hand, in the case of appointment of Supervisor, all that is required is that the applicant should be a resident of the district. Now the moment an applicant to the post of Lady Supervisor is from the promotee quota of Anganwari Sevika,



this on its own confirms that she is a resident of the district and in such cases, there is no relevance of production of a residential certificate unless any doubt is raised and when she can be asked to produce the required certificate. But the very fact that the applicant holds the post of Anganwari Sevika in the district concerned, it certifies and satisfies her residential qualification.

In my opinion, the Divisional Commissioner has unnecessarily harped on hyper technicality to disqualify the petitioner on residential qualification even while admitting to the fact that the petitioner as an Anganwari Sevika, was a promotee candidate.

For the reasons aforementioned, the order dated 19.12.2014 passed by the Divisional Commissioner, Gaya in Appeal Case No. 280/2012, impugned at Annexure 5, together with the order dated 3.2.2015 passed by the Child Development Project Officer, Amas, District Gaya, impugned at Annexure 6, whereby the services of the petitioner from the post of Lady Supervisor has been terminated, are quashed and set aside. The petitioner is restored to her post.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05.12.2016
Transmission Date	NA

