

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.199 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 12222 of 2011**

=====

Bachchi Devi, Wife of Umesh Thakur, Resident o village - Rajpur Bazar, P.O. and
P.S. Kesariya, District - East Champaran

.... Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Department of Social Welfare,
Government Of Bihar, Patna
2. The Principal Secretary, Department of Social Welfare, Government of Bihar,
Patna
3. The Collector, District East Champaran
4. The Child Development Project Officer, Kalyanpur District East Champaran
5. Nisha Devi, Wife of Raj Kishor Resident of Village - P.O. Rajpur, P.S.
Kesariya, District - East Champaran

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. G. K Jha, Advocate
Mr. S.K.Jha, Advocate.
For the State : Mr. Aditya Nath Jha, AC to SC 18.
For the Resp. No. 5 : Mr. Brajesh Kumar, Advocate.

=====

**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 04-08-2016

Heard learned counsel for the parties.

2. The challenge in the present intra court appeal, under Clause
X of the Letters Patent of Patna High Court, is against the order dated
19.09.2013 passed by the learned Single Bench, by which CWJC No.
12222 of 2011, filed by the respondent no. 5 herein, has been disposed off
by setting aside the order of the Collector, East Champaran, Motihari by
which the selection of respondent no. 5 had been cancelled, with a further
direction to reinstate her.

3. The appellant and the respondent no. 5 were the candidates for selection to the post of *Anganbari Sevika* at Centre No. 9 situated in Rajpur Bazar in Rajpur Panchayat in the District of East Champaran.

4. Pursuant to a meeting of the Aam Sabha held on 03.02.2004, the respondent no. 5 was selected as *Anganbari Sevika* and accordingly, office order was issued under Memo No. 424 dated 29.06.2005 by the Child Development Project Officer, Kalyanpur, East Champaran (hereinafter referred to as the 'CDPO').

5. The appellant, being aggrieved, filed CWJC No. 995 of 2005 and the same was disposed off by a common order on 13.11.2007 with a direction to the writ petitioners to file petition before the District Magistrate as provided under the 2006 Guidelines. The appellant filed application on 24.12.2007 before the Collector, East Champaran, Motihari giving rise to Misc. Case No. 39 of 2008 in which by order dated 15.06.2011, the appointment of respondent no. 5 was set aside with further direction that the CDPO shall ensure appointment of *Anganbari Sevika* as per the guidelines issued by the Social Welfare Department, Government of Bihar. The said order was challenged by the respondent no. 5 in CWJC No. 12222 of 2011 and the learned Single Bench has interfered in the matter by order dated 19.09.2013 giving rise to the present Letters Patent Appeal.

6. Learned counsel for the appellant submits that the ground on which the Collector had interfered in the appointment of respondent no. 5, was that the Aam Sabha meeting held on 03.02.2004 was chaired by the father-in-law of the respondent no. 5 and, thus, the decision stands vitiated



on the principle of bias. It is submitted that as per the guidelines of the Government dated 13.06.1998 and 13.12.2003, in the Aam Sabha to be convened for the purposes of selection of *Sevika/Sahayika*, only members of the beneficiary families shall take part; but the same was not followed. It was with a further stipulation that the *Sevika* should belong to the Class, which was in majority among the beneficiaries of the particular Centre. It is submitted that the Collector found that the CDPO had not done any enquiry with regard to the majority Class relating to the said centre and from the voter list, it was established that the area in which the centre was situated, population of Backward Class was the most, and the appellant belongs to Backward Class whereas respondent no. 5 belongs to the Extremely Backward Class, whose numbers were far less. He submits that the Collector has further found that respondent no. 5 did not belong to Below Poverty Line (hereinafter referred to as the 'BPL') category and she had not made any such claim in her reply. Learned counsel submits that the learned Single Bench has not considered the issue in its proper perspective and has erroneously interfered in the order of the Collector.

7. Learned counsel for the respondent no. 5 submits that the Collector has failed to notice the fact that being related to the Mukhiya was not a disqualification at the relevant time when she was selected. He submits that the husband of the respondent no. 5 being in the BPL list, the obvious import is that she also belongs to that category. He further submits that the order of the learned Single Bench is based on sound reasoning and needs no interference.



8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, we find substance in the submissions of learned counsel for the appellant. The order of the Collector is well considered and as per the relevant Guidelines, among the beneficiaries, the selection of the *Sevika* had to be from the Class which was in majority. Admittedly, the appellant belongs to the Backward Class which was more in number compared to Extremely Backward Class to which respondent no. 5 belongs and thus, in the selection, Backward Class candidate had to be given priority. This aspect has not been considered by the learned Single Bench. Further, the reasoning given by the learned Single Bench that there was no restriction of the relative of the Mukhiya being appointed in the year 2004, is erroneous for the reason that though there may be no restriction on the eligibility and candidature of the relative of the Mukhiya at the relevant time, but the Mukhiya could not have chaired the Aam Sabha meeting in which respondent no. 5 was selected for the said post. The law, in this regard, is well settled that there should not even be any semblance of bias in the performance of statutory or public duties and the mere fact that the selected candidate was the daughter-in-law of the Mukhiya, it was incumbent upon the Mukhiya to refrain from chairing the Aam Sabha or even participating in the same and he could have well rescued himself.

9. Thus, on an overall consideration, we find that the order of the learned Single Bench dated 19.09.2013 passed in CWJC No. 12222 of 2011 cannot be sustained. Accordingly, the same is set aside and the writ

petition stands dismissed.

10. The authority shall ensure that the direction given by the Collector, East Champaran, Motihari dated 15.06.2011 passed in Misc. Case No. 39 of 2008, relating to fresh selection, be complied with expeditiously.

11. The Appeal stands allowed in the aforementioned terms.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	02.09.2016
Transmission Date	