

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2126 of 2014

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1. Smt. Vibha Jha Wife of Shri Udeswar Jha Resident of Village - Jamua, P.S.
Tarabadi, District - Araria

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Department of Social Welfare,
Government of Bihar, Patna
2. The Divisional Commissioner, Purnea
3. The District Magistrate, Araria
4. The Sub-Divisional Officer, Araria
5. The District Programme Officer, Araria
6. The Child Development Project Officer, Araria
7. The Block Development Officer, Araria, District - Araria
8. Smt. Rita Devi Wife of Shri Vyas Nath Jha Resident of Village - Jamua, P.S.
Tarabadi, District - Araria

.... Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Uma Kant Shukla, Adv. Mr. Mukesh Kumar Singh, Adv.
For the Respondent/s :	Mr. Deepak Kumar, A.C. to S.C.5 Mr. Mrigendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 28-07-2016

Heard Mr. Uma Kant Shukla, learned counsel for the petitioner,
learned counsel for the State and Mr. Mrigendra Kumar, learned
counsel for the respondent No.8.

With the consent of the parties this writ petition has been heard
and is being finally disposed of at the stage of admission.

The petitioner is aggrieved by the order dated 9.5.2013 passed
by the Collector, Araria impugned at Annexure-1 to the writ petition
and the order passed by the Commissioner as an appellate authority
dated 13.11.2013 impugned at Annexure-2 whereby the appeal filed

by the petitioner has been dismissed.

The sequence of events leading to the impugned orders, needs to be discussed. The post in contest is that of a Anganbari Sevika on which the respondent No.8 was initially appointed in the year 2008. The appointment of the respondent No.8 was questioned by the petitioner before the District Magistrate and by order dated 5.7.2008 the District Magistrate taking note of the issues raised by the petitioner to question the appointment of the respondent no.8 proceeded to cancel her appointment. The issue raised by the petitioner was that while the respondent no.8 did not fall in below the poverty line category, even on marks, the petitioner had secured a better qualification. Vide order dated 16.7.2008 the appointment of the private respondent was cancelled and the petitioner was directed to be appointed which was questioned by the respondent No.8 before the commissioner and was rejected leading to filing of a writ petition in this Court giving rise to C.W.J.C.No.273 of 2009. This Court vide order passed on 21.6.2011 present at Annexure-12 allowed the writ petition and remitted the matter for reconsideration by the Commissioner, Purnea Division. In turn the Commissioner taking note of the issues raised by the respondent No.8 further remitted the matter for fresh consideration by the District Magistrate, Araria as according to the Commissioner, Purnea Division the appointment of



the respondent No.8 had been set aside without an opportunity of hearing. On remand the District Magistrate, Araria passed the impugned order dated 9.5.2013 whereby the order of appointment of the petitioner was set aside inter alia on grounds that she was not a resident of the village where the Anganbari Centre was located rather was a resident of a Araria Municipality and which order annexed at Annexure-1 has been affirmed by the Commissioner when the appeal of the petitioner was dismissed on 13.11.2013 vide Annexure-2. The petitioner feeling aggrieved is before this Court.

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

No lengthy arguments has been advanced by Mr. Shukla to question the impugned order(s). In fact while questioning the appointment of the respondent No.8 he yet maintains that the respondent No.8 does not come within the BPL category and even on marks, the petitioner was a better candidate. In so far as the opinion of the District Magistrate, Araria that the petitioner was not a resident of the Jamua Anganbari Centre rather a resident of the Araria Municipality, Mr. Shukla has relied upon a number of documents present at page 69 to 75 which includes a voter identity card at Annexure-18/A page 70, the voter list at page 71, the ration card at page 73, the residential certificate granted by the Block Development



Officer which is dated 4.8.2004 i.e. the year in which the appointment took place at Annexure-19 and Annexure-19A. In reference to these certificates, it is argued by Mr. Shukla that the finding of the District Magistrate is contrary to the records and despite absence of any evidence to prove that the petitioner was not the resident of the village where the centre was located.

Although energetic arguments have been advanced by counsel for the State and Mr. Mrigendra Kumar learned counsel for private respondent but considering that the veracity of the documents brought on record vide Annexure-18 series and 19 series has not been put to any serious contest rather it is fairly accepted that these documents continue to hold the field, meaning thereby, the residential certificate issued by the Block Development Officer has not been set aside by the Superior authority, a mere reflection of the name of the petitioner's husband in the voter list of a municipality even if accepted for the sake of argument, would not ipso facto be a ground to unsuit the petitioner.

In the circumstances discussed where the residence of the petitioner in the village where the centre is located, is not under dispute, obviously, the contest has to be decided on the basis of marks secured and since the petitioner has obtained better marks than respondent No.8, hence her appointment was just.

For the reasons aforementioned, the orders impugned passed by the Collector, Araria as affirmed by the Commissioner impugned at Annexures-1 and 2 respectively cannot be upheld and are accordingly set aside. The petitioner is restored to her post of Anganbari Sevika.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	
CAV DATE	
Uploading Date	12-8-16
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