

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17761 of 2010

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Kumari Malti Sinha W/O Sri Kishori Prasad R/O Vill.- Pirwan, P.S.- Gurua,
Distt.- Gaya Petitioner

Versus

1. The State Of Bihar
2. The Commissioner, Magadh Division, Gaya
3. The District Magistrate, Gaya
4. The District Programme Officer, Gaya
5. The Child Development Project Officer, Gurua, Distt.- Gaya
6. Aruna Kumari W/O Sri Vijay Singh R/O Vill.- Pirwan, P.S.- Gurua,
Distt.- Gaya Respondents

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Appearance :

For the Petitioner : Mr. Sanjeev Kumar Mishra, advocate
For the State : Mr. Saroj Kr.Sharma, AC to AAG 5
For pvt. respondent no.6 : Mr. Jay Prakash Singh, advocate

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA
PRATAP SINGH**
ORAL ORDER

6 03-03-2016 The petitioner seeks quashing of the order dated 26.8.2010, passed by the Commissioner, Magadh Division, Gaya in Anganbari case no. 57 of 2009 whereby he has set aside order dated 19.6.2009, passed by the District Magistrate, Gaya which was in her favour.

2. Facts of the case in short are as follows:-

3. The petitioner as well as respondent no.6 applied for the post of Anganbari Sevika in the Anganwari center in village Pirwan. Respondent no.6 was selected for the said post in the year 2007. Being aggrieved, the petitioner filed complaint before the District Magistrate, Gaya. Her case before the District Magistrate was that though she had more marks than respondent



no.6, still she was not selected. Her contention was accepted. Petitioner was directed to be appointed in place of respondent no.6. Respondent no.6 being aggrieved moved this Court in writ petition, bearing C.W.J.C.No. 1621 of 2009. Respondent no.6 assailed the order of District Magistrate on the ground that the impugned order has been passed without providing a hearing to her. The Court accepted the submission of respondent no.6 and remanded the matter to the District Magistrate, Gaya for fresh consideration after providing opportunity of hearing to all the parties. The order of the District Magistrate was also set aside. A copy of order is contained in Annexure 18. On remand, the District Magistrate after providing hearing to all the sides once again reiterated his earlier view vide order, dated 19.6.2009. Being aggrieved, respondent no.6 moved this Court in C.W.J.C.No. 10455 of 2009. The writ petition was disposed of on 25.8.2009 with a liberty to respondent no.6 to seek alternative remedy of appeal against, order, dated 19.6.2009 before the Divisional Commissioner, who would call for the records from the office of the Collector, Gaya and ascertain whether petitioner was heard subsequent to the receipt of the order, dated 4.3.2009 and pass appropriate order after hearing all on merit. The matter as such came to be heard by the Divisional Commissioner,



Magadh Division, Gaya in Anganbari Case no. 57 of 2009, who vide order dated 26.8.2010 allowed the appeal of respondent no.6 and reversed the order, dated 19.6.2009 passed by the District Magistrate, Gaya by which petitioner was directed to be appointed in place of respondent no.6.

4. The petitioner submits that initially she was not selected as there were discrepancies with respect to her name in the certificate issued by the University. The matter was subsequently clarified by the University, in view of which, the District Magistrate directed for her appointment. The petitioner next submits that the Commissioner has set aside her appointment on technical issues for which she did not get sufficient opportunity to put her case before him.

5. On the other hand, respondent no.6 has supported the order of the learned commissioner.

6. I have heard learned counsel for the petitioner as well as learned counsel appearing for the other sides.

7. I find that the learned Commissioner rejected the claim of the petitioner and allowed appeal of respondent no.6 as there were discrepancies with respect to the date of birth and the registration number in the admit card as well as in the School leaving certificate. The petitioner's case is that she was not given

sufficient opportunity to meet the allegations.

7. Having regard to the facts and circumstances of the case, without disturbing the impugned order, the matter is remitted to the learned Commissioner, Magadh Division, Gaya to provide one last opportunity to the petitioner to meet the allegations and pass order, preferably within a period of six months from the date of receipt of a copy of this order. Fresh order of the learned Commissioner would also govern the earlier order dated 26.8.2010.

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(Samarendra Pratap Singh, J)

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