

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6816 of 2010

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Smt. Rinku Kumari W/o Shri Sunil Kumar R/o Vill.-Suratpur Vidya, P.O.-
Belkunda, P.S.- Mahua, Distt.- Vaishali

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Tirhut Division, Muzaffarpur
3. The Collector Vaishali At Hajipur
4. The District Programme Officer Vaishali at Hajipur
5. The S.D.O., Mahua Sub Division at Mahua, Vaishali
6. The C.D.P.O., Raja Pakar Block at Rajapakar Distt.- Vaishali
7. The Panchayat Sachiv, Gram Panchayat Raj Narayanpur Bujurg, Block-
Rajapakar, Distt.- Vaishali
8. The Mukhiya, Gram Panchayat Raj Narayanpur Bujurg Block- Rajapakar,
Distt.- Vaishali
9. Kumari Kanchana Mahto W/O Late Manoj Kumar R/O Vill.- Suratpur Vidya,
P.O.- Belkunda, P.S.- Mahua, Distt.- Vaishali
10. Rani Kumari wife of Pramod Kumar, resident of village-Suratpur Vidha, Ward
No. 14, P.O. Balkunda, P.S. Mahua, District-Vaishali

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. RAJESH RANJAN
Mr. Panday Sanjay Sahay
For the State : Mr. Jitendra Kumar, A.C. to AAG-14
For the Respondent No. 10 : Mr. Sunil Kumar

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 22-11-2016

Heard Mr. Rajesh Ranjan for the petitioner, Mr. Jitendra
Kumar, Assisting Counsel to AAG-14 for the State and Mr. Sunil
Kumar for the respondent no. 10. Though served, the respondent no. 9
has not chosen to appear before this Court.

The petitioner is aggrieved by the order dated 21.12.2009 of
the respondent Commissioner, Tirhut Division, Muzaffarpur in
Service Appeal No. 154 of 2008 whereby the Commissioner while



dismissing the appeal of the petitioner has confirmed the order dated 03.5.2008 of the District Magistrate, Vaishali passed in Miscellaneous Case No. 70 of 2007-08 whereby the District Magistrate, Vaishali has upheld the complaint to hold that the respondent no. 9 was illegally not appointed against the post of Anganwari Sevika, Kendra No. 78, village-Suratpur Vidha, Post-Belkunda in the District of Vaishali although she belongs to the Extremely Backward Class which has a majority in the village. It is following the order(s) passed by the District Magistrate, Vaishali dated 03.5.2008 as affirmed by the Commissioner in Service Appeal No. 154 of 2008 that a termination order was passed by the Child Development Project Officer bearing Memo No. 124 dated 01.10.2008 impugned at Annexure-9 terminating the service of the petitioner.

While Mr. Rajesh Ranjan, learned counsel has taken this Court through the sequence of events to submit that the foundation for the complaint itself was incorrect and the District Magistrate, Vaishali proceeding on an illegal report of the Sub Divisional Officer, Mahua dated 07.10.2007 reporting that the majority class in the village was Extremely Backward Class, has upheld the claim of the respondent no. 9 when the factual position is contrary to the report as manifest from Annexure-4 which certifies that the majority class in the village is the general category. He submits that this position is confirmed from the current position when the fresh selection process initiated



following the termination of the petitioner, has resulted in an appointment of the respondent no. 10 coming from the general class which is the majority class as accepted by the appointment committee at proposal no. 3 of the proceedings enclosed at Annexure-13 to the supplementary affidavit. He thus submits that the complaint against the petitioner's appointment was founded on an illegality and the respondents authorities acting mechanically thereon, did not bother to satisfy themselves and have mechanically upheld the same when in fact the position is otherwise and the majority class in the village comes from the general category and that is why the respondent no. 10 has been appointed subsequently.

A rather unfortunate part of the matter is that though the writ petition was filed in 2010 and was taken up for consideration on 13.1.2011 when the respondents were directed to file counter affidavit but even after a lapse of six years, no counter affidavit has been filed. Although a prayer is being made by Mr. Jitendra Kumar, learned Assisting Counsel to AAG-14 for further adjournment, which is refused.

The issue raised by the petitioner is confirmed from the documents on record and the very fact that the respondent no. 10 who has replaced the petitioner in the fresh selection process that ensued after the cancellation of the appointment of the petitioner, comes from the general category, this single aspect of the matter is sufficient to



hold that the petitioner had wrongfully been removed from her post on an illegal report of the Sub Divisional Officer reporting that the majority class in the village the Extremely Backward Class. The report stands falsified from the mapping chart enclosed at Annexure-4 and the proceedings of the selection committee brought on record through supplementary affidavit at Annexure-13, which confirm that the majority class comes from the general category.

Mr. Sunil Kumar though appearing for the respondent no. 10 has endeavoured to contest the veracity of the mapping register at Annexure-4 to submit that the report may be got verified from the authorities even when the respondent no. 10 herself holds the post by virtue of belonging to the general category. The objection is thus taken to be rejected.

The second objection raised by Mr. Sunil Kumar is that the respondent no. 10 has better qualification than the petitioner having better marks. Even this objection is not worthy of consideration because the respondent no. 10 was not an applicant in the selection process, in which the petitioner and respondent no. 9 contested but the petitioner was appointed. In fact it is after the petitioner was illegally removed that a fresh selection took place in which the respondent no. 10, was appointed.

The third issue is that the appointment of the respondent no. 10 is conditional on the outcome of the present case. A plain reading



of the proceedings of the selection committee enclosed at Annexure-13 would show that the appointment committee was conscious of the pending writ petition filed by the writ petitioner and thus the appointment of the respondent no. 10 was made conditional, dependent on the outcome of the present writ petition.

For the reasons and discussions aforementioned, the order of termination dated 03.5.2008 passed by the District Magistrate, Vaishali in Miscellaneous Case No. 70 of 2007-08 together with the order passed in Service Appeal No. 154 of 2008 by the Commissioner, Tirhut Division as well as the consequential order bearing Memo No. 124 dated 01.10.2008 of the Child Development Project Officer impugned at Annexure-9 cannot be upheld and are accordingly quashed and set aside.

Since the appointment of the respondent no. 10 was made conditional upon the outcome of the present writ petition her appointment is accordingly quashed and set aside.

The petitioner stands restored to her post.

The writ petition is allowed.

(Jyoti Saran, J)

S.Sb/-

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Uploading Date	
Transmission Date	

