

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2338 of 2014

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Mamta Kumari Wife Of Sri Manoj Kumar Rai Resident Of Village Jimraha,
Panchayat Ethar Block And Police Station Kusheshwar Asthan East District
Darbhanga

.... Petitioner

Versus

1. The State Of Bihar Through The Secretary Human Resources Department, Bihar,
Patna
2. The Commissioner, Darbhanga Division, Darbhanga
3. The Collector, Darbhanga
4. The Child Development Project Officer, Kusheshwar Asthan, Darbhanga
5. The Block Development Officer, Kusheshwar Asthan East, Darbhanga
6. Incharge Medical Officer, Primary Health Centre, Kusheshwar Asthan,
Darbhanga
7. Kanchan Kumari @ Rani Devi Wife Of Sri Shankar Rai Resident Of Village
Jimraha Panchayat Ethar, Block Kusheshwar Asthan East P.S. Kusheshwar Asthan,
District Darbhanga

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ganpati Trivedi, Sr.Adv. Mr. Avinash Kumar, Adv.
For the Respondent/s	:	Mrs. Namrata Mishra, GA6 Mrs. Archana Jha, AC to GA6
For respondent no.7	:	Mr. Yugal Kishore, Sr.Adv. Mr. Ugranath Mallik

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 14-12-2016

Heard learned counsel for the parties.

The petitioner prays for quashing of the order dated 26.12.2013 passed by the Commissioner, Darbhanga Division, Darbhanga (respondent no.2) in Anganwari Case No. 5/2012-13, whereby the appeal of the private respondent no.7 has been allowed and the order dated 11.2.2011 passed by the Collector, Darbhanga (respondent no.3) in Misc. Case No. 73/2009 has been set aside. Copies of the order passed by the Commissioner, Darbhanga Division,



Darbhanga and the Collector, Darbhanga are impugned at Annexure 5 and 3 respectively to the writ petition.

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 facts of the case briefly stated is that respondent no.7 was appointed in the year 2007 as Anganwari Sevika, Centre No.9, village Jimraha, in the district of Darbhanga. Her appointment was questioned by the petitioner, inter alia, on grounds that the appointment was procured on forged documents. According to the writ petitioner, the private respondent no.7 had earlier worked as an 'ASHA' Worker and had submitted her date of birth certificate which reflected her date of birth as 15.12.1978 issued by the High School, Darbhanga. For the purpose the petitioner relies on a transfer certificate present at Annexure 6 series. It is the case of the petitioner that respondent no.7 resigned from her post to join the post as Anganwari Sevika and this time she submitted a certificate issued by the Bihar Sanskrit Shiksha Board showing her date of birth as 3.8.1987 which lowers her age by almost nine years. The objection raised by the petitioner to question appointment of the private respondent was upheld by the District Magistrate, Darbhanga who vide order passed on 11.2.2011, impugned at Annexure 3, quashed the appointment of respondent no.7. Feeling aggrieved respondent no.7 filed an appeal before the Commissioner, Darbhanga Division, giving



rise to Anganwari Case No. 5/2012-13 and the order of the District Magistrate cum Collector, Darbhanga has been reversed by the Commissioner, Darbhanga Division vide order passed on 26.12.2013 restoring respondent no.7 to the post. Feeling aggrieved the writ petitioner is before this Court.

The argument advanced by Mr. Ganpati Trivedi, learned Senior Counsel appearing for the writ petitioner, is that the conduct of respondent no.7 in submitting documents supporting her date of birth at two stages, which are at variance, is by itself a reason for her termination and to disqualify her from the post. According to Mr. Trivedi, even if the certificate issued by High School, Darbhanga at Annexure 6 series and the certificate issued by the Bihar Sanskrit Shiksha Board may not reflect forgery but it definitely confirms the action of the private respondent to alter her date of birth to gain advantage of appointment and which conduct is sufficient for her disqualification. It is his argument that an applicant for a public post cannot be allowed to indulge in any manipulation to gain access to an appointment.

The argument of Mr. Trivedi was contested by Mr. Yugal Kishore, learned Senior Counsel appearing for the private respondent, to submit that the documents relied upon by the writ petitioner to allege that the private respondent had worked as an 'ASHA' worker, are manufactured documents, inasmuch as the private respondent has



never worked as an 'ASHA' Worker. It is in consideration of disputed nature of facts raised by the contesting parties where the foundation for the contest rested on the issue whether or not, the private respondent had worked as an 'ASHA' Worker at the Primary Health Centre, Kusheshwar Asthan, Darbhanga and which rested on the documents present at Annexure 1 series and 6 series that this Court directed respondent no.6 i.e. In-charge Medical Officer, Primary Health Centre, Kusheshwar Asthan, Darbhanga to respond to the issues and inform this Court whether the private respondent has worked as an 'ASHA' Worker at the centre.

It is responding to the order of this Court passed on 16.11.2016 that the respondent no.6 through the State Counsel, has filed a supplementary counter affidavit on 30.11.2016 and paragraph 7 of the supplementary counter affidavit so filed by the In-charge Medical Officer is sufficient to put the contest at rest. It is specifically stated by the In-charge Medical Officer, Primary Health Centre, Kusheshwar Asthan that respondent no.7 was never an employee at the Primary Health Centre nor she has worked or drawn any incentive from the centre. It is specifically stated that the documents present at Annexure 1 series and 6 series are not even available in the office of the In-charge Medical Officer. Meaning thereby, the foundation for charge set up by the petitioner against respondent no.7, itself is doubted on its genuineness. Apart there from, considering that it is the



specific stand of the In-charge Medical Officer that respondent no.7 has never worked at the Primary Health Centre, the entire allegation set up by the petitioner to question the appointment of respondent no.7, falls on the ground since the foundation itself stands removed. Though Mr. Trivedi, learned counsel for the petitioner, attempts to question the genuineness of the statement in reference to the documents present at Annexure 'A' series to the supplementary counter affidavit of respondent no.6 alongside a similar information present at Page-70 of the affidavit filed by respondent no.7, but in my opinion unless there is any document on record of the proceedings to confirm the engagement of respondent no.7 as an 'ASHA' Worker, and to contest the specific statement of respondent no.6 at paragraph 7 of the supplementary counter affidavit, this Court is not persuaded to engage itself in a roving enquiry into the matter.

Considering the circumstances noted above, the order of the Commissioner, Darbhanga Division, Darbhanga suffers from no infirmity requiring interference by this Court. The writ petition is, accordingly, dismissed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.12.2016
Transmission Date	NA

