

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 1680 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 18263 of 2012

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Bharti Devi Wife of Sunil Yadav, Resident of Village - Tonaha Israin Santhal Tola,
Musahari, Ward No. 3, P.O. - Bhargama, P.S. - Bhargama, District - Araria.

....Petitioner/s / Appellant/s

Versus

1. The State of Bihar through the Commissioner-cum-Secretary, Social Welfare Department Government of Bihar, Patna.
2. The Commissioner, Purnea, Division, Purnea.
3. The District Magistrate, Araria.
4. The District Welfare Officer, Araria.
5. The District Programme Officer, Munger.
6. The Child Development Project Officer, Bhargama, Araria.
7. Poonam Devi, Wife of Ajay Kumar Yadav, Resident of Village - Tonaha Israin Johad Tola, Ward No. 3, P.O. - Bhargama, P.S. - Bhargama, District - Araria.

....Respondent/s / Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Awadh Bihari Ojha, Sr. Advocate Mr. Awadhesh Kumar Mishra, Advocate
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 16-11-2016

Heard learned counsel for the appellant and the

State.

2. The challenge in the present intra-Court appeal is

to the order dated 26.09.2014 by which C.W.J.C. No. 18263 of 2012

filed by the appellant has been dismissed.

3. The appellant and respondent no. 7 were



applicants for the post of Anganwari Sevika at Centre No. 167 in Dhaneshwary Ward under Bhargama Block in the District of Araria in the year 2007 and the appellant was selected and issued appointment letter on 24.08.2007. The respondent no. 7 being aggrieved by her non-selection moved this Court in C.W.J.C. No. 14438 of 2007 which was disposed off on 18.12.2009 giving liberty to her to file representation before the Collector of the District. Pursuant thereto, respondent no. 7 filed Miscellaneous Case No. 05/2010-2011 in which, by order dated 09.01.2012, the selection of the appellant was cancelled and direction was given for fresh selection in accordance with law. Challenge to the said order by the appellant in Miscellaneous Appeal No. 09 of 2012 was also rejected by order dated 01.08.2012 by the Divisional Commissioner, Purnea. The same was assailed by the appellant before the learned Single Bench in C.W.J.C. No. 18263 of 2012 and dismissal of the writ petition by order dated 26.09.2014 has given rise to the present Letters Patent Appeal.

4. Learned counsel for the appellant submitted that her selection in the year 2007 was in accordance with law and she having continued on the post for five years without any complain, the same ought not to have been cancelled. It was further submitted that the selection was after following the due procedure

and she was residing within the nutritional area and, thus, at the instance of respondent no. 7, whose very residence being under the nutritional area of the centre in question being in dispute, selection of the appellant should not have been cancelled.

5. Learned counsel for the State submitted that the Court in C.W.J.C. No. 14438 of 2007 had remanded the matter to the Collector of the District who had passed the order after hearing all the parties. It was further submitted that the Collector has rightly considered the matter as per the guidelines issued by the Government of Bihar for selection of Sevika/Sahiyaka in the year 2006, and the appellant being the daughter of a PDS dealer, was ineligible for such selection and, thus, rightly her selection has been interfered with.

6. Having considered the rival contentions, we do not find any merit in the present Appeal. In the guidelines of the year 2006, with regard to selection of Sevika/Sahaiyika, there is a clear Bar in Clause 3(e) with regard to the daughter of a Public Distribution Scheme Dealer being selected for such post. The said guidelines holding the field at the relevant time, the selection of the appellant was patently illegal as she was hit by the eligibility criteria. Thus, her selection was in fact void *ab initio* and just because she had continued for a few years cannot create a right in her favour.

7. In view of the aforesaid admitted factual position, the order passed by the Collector, Araria which has been upheld by the Divisional Commissioner, Purnea and challenge to the same before the learned Single Bench having been rejected cannot be faulted.

8. Accordingly, the present Letters Patent Appeal, being devoid of merit, stands dismissed.

(Ahsanuddin Amanullah, J)

Hemant Gupta, ACJ *I agree*

(Hemant Gupta, ACJ)

Anand Kr.

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