

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4868 of 2014

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Anita Kumari, D/o Baikunth Choudhary, W/o Harendra Prasad Jaiswal, Anganwari Sevika, Posted at Fulharabano Centre No. 40, Fulhara Bazar, P.S- Rajapakar, Block- Hajipur, District- Vaishali (Hajipur).

.... Petitioner

Versus

1. The State of Bihar.
2. The Commissioner, Tirhut Pramandal, Muzaffarpur.
3. The District Magistrate-Cum-Chairman, District Niyojan Samiti, Vaishali, (Hajipur).
4. The District Programme Officer, Vaishali (Hajipur).
5. Anju Devi, D/o Rajnarajan Singh, Narayanpur Mahua Mahila Supervisor Posted At Rajapakar, District- Vaishali (Hajipur)

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Rajendra Prasad Singh, Sr. Advocate Mr. Mukesh Kumar Singh, Advocate
For the State	:	Mr. Manoj Kumar Ambastha, G.P.14 Mr. T.N. Ambastha, A.C. to G.P.14

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 05-05-2016

Petitioner was working as an Anganwari Sevika in the district of Vaishali. Based on an advertisement and process initiated for appointment on contract for the post of Anganwari Supervisor from the quota of Anganwari Sevika, petitioner applied and was provisionally placed at serial no.46. She was hoping to be appointed as a Supervisor but to her shock, when the final publication indicating the list of selected candidates was published, which is Annexure-6, she did not find her name therein. She approached the authorities raising the grievance of such non-inclusion and now it emerges that the primary reason why the

petitioner was not considered was because she supposedly sat for the examination of graduation, while she was working in the capacity as Anganwari Sevika without any permission from the competent authority. For all practical purposes, her graduation marks was not considered and that turned out to be crucial factor in non-selection of the petitioner.

2. Petitioner moved various authorities including the Divisional Commissioner, Tirhut Division, Muzaffarpur in ICDS Appeal No.28-08/2012. The Divisional Commissioner dismissed her appeal for the same set of reason that she did not take permission or at least produce evidence that she did take permission of the authority before sitting for the examination.

3. Learned senior counsel representing the petitioner submits that she was appointed/engaged as an Anganwari Sevika which is not an employment under the State but a contractual engagement on a fixed remuneration. She was enrolled for graduation in the year 1987-89 batch and did her Honours in 1989-90. Since session was late, the examination was held in September, 1991 and the result was declared in November, 1992. The petitioner, therefore, has completed her studies as a regular student much before her engagement as an Anganwari Sevika though she does not deny that she sat for the examination in September, 1991.

4. All along there seems to be a basic fallacy in the reason for denying the petitioner her right for consideration for appointment as



a Supervisor because what the respondents are insisting upon are requirements for a permanent, substantively appointed government servant. No doubt the State hires the services of persons, like, the petitioner as an Anganwari Sevika on a fixed remuneration on contract but the State never gives status of an employee to such persons. It is a case of contract for service and not of service.

5. In addition to that the Court can take judicial notice of the fact that such engagement is not a full time engagement and the centres are run for a fixed period of time. If that be so, then participation of the petitioner in the examination conducted by the University on completion of the course, which she did prior to her hiring, cannot be held out against her for having breached any Rules or denying the dictates of any superior in not taking any kind of permission for sitting in the examination. There is some dispute about permission as well but that is of no relevance. What is of importance is that the petitioner is a graduate and when the consideration for engagement on the post of a Supervisor on contract was taken up, the respondents should have confined themselves to the issue of award of suitable weightage and marks on the basis of the petitioner being a graduate. Obviously the respondent authorities did not apply themselves to these facts and went on a tangent and robbed the petitioner of her legitimate right of consideration and selection. The same irrational view subsisted and persisted across all authorities including at the level of the Divisional

Commissioner as would be evident from reading of Annexure-1.

6. In view of the same, the impugned order contained in Annexure-1, dated 02.11.2013, passed by the Divisional Commissioner, Tirhut Division, Muzaffarpur is quashed. A direction is issued upon the District Magistrate-cum-Chairman, District Employment Committee, Vaishali at Hajipur that the case of the petitioner will be reconsidered and based on the marks which she has obtained including the weightage for graduation, she will be placed at the right position in the list of selected candidates for appointment as an Anganwari Supervisor on contract. Such a decision must be taken within a period of ten weeks from the date of production of a copy of this order.

7. Writ is allowed in terms of the above.

(Ajay Kumar Tripathi, J.)

SanjayKumar/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	06.05.2016
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