

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2339 of 2013

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Usha Kumari D/O Sri Ramjee Sharma W/O Sri Ramanand Sharma Resident Of
Village - Banwaria, Police Station -Hulasganj, District - Jehanabad

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Department Of Welfare, Govt. Of Bihar, Patna
3. The Commissioner, Magadh Division, Gaya
4. The District Magistrate, Jehanabad
5. The Deputy Development Commissioner, Jehanabad
6. The Block Development Officer, Hulasganj Block, Jehanabad
7. The Child Development Project Officer, Hulasganj Block, Jehanabad
8. Mukhiya Tira Gram Panchayat Under Hulasganj Block, District
Jehanabad, Namely Arvind Sharma Son Of Sri Jamuna Sharma Resident Of
Village Bira, P.O. Dhawalbigha, Police Station Hulasganj, District -Jehanabad
9. Smt. Sunita Kumari W/O Sri Ram Nayan Sharma Resident Of Village And P.O.
Banwaria, Police Station - Hulasganj, District - Jehanabad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar, Adv.
For the State : Mr. Anil Kr. Sinha, AC to GA-9
For the Respondent No.9 : Mr. Sanjay Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 23-02-2016

Heard learned counsel for the petitioner and counsel for
the respondents.

In this case, the petitioner has a grievance that she has
been deprived of her appointment as an Anganwari Sevika and,
thereby, challenging the order passed by the Commissioner, Magadh

Division dated 24.11.2012, rejecting the claim of the petitioner.

Two female candidates, the petitioner, namely, Usha Kumari and the private respondent no.9, namely, Sunita Kumari had applied for the post of Anganwari Sevika for Centre No. 201, Village Banwaria of Gram Panchayat Tira. As per the claim of the petitioner,, she has a qualification of Madhyama 1st division which is equivalent to Matric and Intermediate having secured 550 marks whereas Sunita Kumari, private respondent no.9, has passed Intermediate in 3rd Division. Both candidates were called for interview by the Aam Sabha and Sunita Kumari was selected as Anganwari Sevika. The claim of the petitioner is, she was wrongly been deprived of her appointment without proper consideration and her claim was rejected without valid consideration and, as such, action of the respondent is illegal and not sustainable in law.

The petitioner filed a writ application, CWJC No. 14603 of 2006 and the same was disposed of by order dated 19.11.2009 with the following direction:-

“In that view of the matter, this Court would dispose of the writ application with a liberty to the petitioner to file a representation as against the selection and appointment of respondent no.7 and in the event such a representation is filed by the petitioner along with a copy of this order, the Collector of Jehanabad District will be under obligation to decide the same in accordance with law after affording opportunity of personal hearing to the petitioner, respondent

no.7 and the representative of the Gram Panchayat concerned. Such exercise however must be completed within a period of six months from the date of receipt/production of a copy of this order.

With the aforesaid observations and directions this writ application is disposed of.”

Accordingly, the petitioner was directed to approach to the appropriate authority. In pursuance thereof, the petitioner had approached to the District Magistrate, Jehanabad raised a grievance of her non-selection which was also disposed of by recording that there is illegality in the selection of Anganwari Sevika as the Aam Sabha, while making selection of Anganbari Sevika, has not selected the person having better marks and the persons having lower marks have been selected. When the petitioner did not receive any order from District Magistrate, Jehanabad, the petitioner filed contempt petition being MJC No. 4856 of 2010 and the District Magistrate, Jehanabad filed show-cause enclosing the order bearing Memo No. 710 dated 15.10.2010 by which the selection of private respondent no.9 was cancelled. Being aggrieved by the order of the District Magistrate, Jehanabad, the private respondent no.9 Sunita Kumar approached this Court in CWJC No. 21414 of 2011 where the Court has directed the private respondent no.9 to approach the appellate authority within thirty days from the date of the order and the appellate authority will consider her case and dispose of the same by a reasoned and speaking



order preferably within a period of three months from the date of receipt/production of a copy of this order. The private respondent Sunita Kumari approach the Commissioner, Magadh Division who,, on consideration of the fact, set aside the order of the Collector holding that the selection was made in terms of the Government letter no. 1662 dated 10.12.2013 as selection was to be made by way of consideration of overall performance of candidate including facts and circumstances. It is not necessary to give preference to the person having better marks but paramount consideration who will be best suitable candidate for this job.

Learned counsel for the petitioner has submitted that as per the instructions issued from time to time, in normal circumstances, the person, having better marks, would be preferred unless the Selection Committee gives its own reason for rejecting the claim of such candidate and prefers selection on suitable consideration. The circular provides that the person having better marks will be given preference. In the present case, both the female candidates have identical qualification of I.A. whereas the petitioner has a better marks, Matriculation and Intermediate Examination as well as falls in the category of B.P.L. and she must have been given preference over Sunita Kumari, private respondent no.9 who has got 3rd division in Intermediate and not belonging to a B.P.L. category.

Learned counsel for the petitioner has relied on the judgment of this Court in the case of *GRIDCO Limited & Anr. Vs. Sri Sadananda Doloi & Ors.* reported in *2012(1) PLJR SC 321*.

Learned counsel for the respondents submits that higher marks or better qualification cannot be a simple ground for selection of a Anganbari Sevika but overall assessment has to be made and best would be selected taking into consideration who will be best suited to work of Anganbari Sevika while making assessment, many facets of the candidates would be looked into.

Learned counsel for the respondent no.9 Sunita Kumar has specifically submitted that if a person having equal qualification and selection is made by the Aam Sabha, it is not required to see who has better marks in academic achievement. There cannot be challenge with regard to manner of selection. He has placed reliance on the judgment of this Court in the case of *Dewanti Devi Vs. The State of Bihar & Ors.* reported in *2006 (4) PLJR 44* wherein this Court has said that for making selection on the post of Anganbari Sevika, many aspect of the matter has to be considered. A person having better marks may not be a proper candidate for the purpose of discharging the duty of Anganbari Sevika. In the case of *Nirmala Kuwar @ Nirmala Kumari Vs. The State of Bihar & Ors.* reported in *2006(3) PLJR 162* $\simeq$ *2006(4) BBCJ 250*, the Court has said that if the person has equal qualification, it is the



end of the matter and no other factor has to be looked into. Learned counsel for the private respondent has also relied on a judgment of this Court in the case of *Pinki Kumari @ Hira Devi Vs. The State of Bihar & Ors.* reported in *2011(4) PLJR 438* wherein in paragraph no.8 it has been held that if the natural justice has been complied with and that if the person has been heard, there cannot be further consideration in the matter. Learned counsel for the respondent has also relied on the Division Bench judgment of this Court in the case of *Neetu Kumari Vs. The State of Bihar & Ors.* reported in *2011(4) PLJR 20* and has challenged the maintainability of the writ application itself. Learned counsel for the private respondent no.9 has also submitted that the respondent no.9 is still working.

In the present case, the matter relates to the appointment of Anganbari Sevika who has been engaged as part of the Integrated Child Development Services Programme to combat child hunger and malnutrition. Anganbari centre also provides basic health care to the villagers which include contraceptive counseling and supply, nutrition education and supplementation as well as pre-school activities. The basic work of those who are attached with the Anganbari Scheme is to give care for newborn babies as well as to ensure that all children below the age of 6 are immunized or in other words have received vaccinations. They are also expected to provide antenatal care for



pregnant women and ensuring that they are immunized against tetanus. In addition to this, they must also provide post natal care to nursing mothers. As their primarily focus on poor and malnourished groups, it becomes necessary to provide supplementary nutrition to both children below the age of six as well as nursing to the pregnant women. They need to ensure that regular health and medical check ups of women who fall between the age group of 15 to 49 years. The major work is also to provide pre school education to children who are between 3 to 5 years old.

In the case of *Dewanti Devi Vs. The State of Bihar & Ors.* reported in *2006(4) PLJR 44*, the Court has examined the circular of the Government which covers the rule of selection of Anganbari Sevika which provides that a person, having better qualification, shall be preferred but, despite that the self same circular still directs Aam Sabha to select Anganbadi Sevika but, natural preference to be given to the person having better qualification but, that is not the ultimate and absolute requirement. Despite a person, being better educated, may not be selected by the Aam Sabha for many reason as the Aam Sabha has to focus on the subject that the very purpose of the selection is to entail appropriate attention to tiny toddlers of the village. Apart from qualification, many other aspects are required to look into such as kindness, zeal including the humanitarian approach.



May be a case where the Aam Sabha appoints a person having less qualification but the woman is otherwise eligible and more suitable than a better qualified candidate for the purpose she is engaged. In the case of *Nirmala Kuwar @ Nirmala Kumari Vs. State of Bihar & Ors.* reported in 2006(4) *BBCJ* 250, the appointment of Anganbadi Sevika was challenged. That came for consideration. The Court held that in absence of act and rule, the executive instruction can be exercised which occupies the field. The Court has taken a view that the person having a better and higher qualification will be given preference in the matter of either Intermediate or Graduate but the Division such as first division or second division will hardly play any role as both will be treated to be equal and possessing the same qualification and the Court found that Aam Sabha acted illegally while examining the merit of the case of the candidates and selection was found to be not sustainable and quashed. It is relevant to quote paragraph no.8 of the said judgment, which reads as follows:-

“8. On a consideration of condition no.5 laid down in Circular dated 13.6.1998 it is clear that it speaks of the same qualification. The only other condition where the said term has been used is that relating to educational qualification provided in condition no.1. There it has been stated that the minimum educational qualification for Anganbari Sewika is matric pass but preference will be given to candidate having higher educational qualification. It is evident that the preference is to a higher qualification in the nature of

either Intermediate pass or a graduate. Thus, whether a matriculate is in 1st Division or 2nd Division, as in the present case, in terms of condition no.5, both have to be treated as equal and as possession the same qualification. In such a situation a widow or abandoned woman has to be given preference over the other candidate who is also a matriculate and not having higher educational qualification.”

The issue with regard to nature of employment statuses and condition of service of Anganbari Sevika came for consideration in the case of *State of Karnataka & Ors. Vs. Ameerbi & Ors.* reported in (2007) 11 SCC 681. The Court has considered various facets and the nature of activities discharged by Anganbadi Workers is not indicative of any function of the State. They do not hold post under the statutes. Their posts are not created. Recruitment rules ordinarily applicable to the employees. Constitutional scheme of equality as adumbrated under Article 14 & 16 of the Constitution of India dealing with equality does not apply. The Hon'ble Court has held that rule framed under proviso to Article 309 of the Constitution of India are not attracted as they are appointed under the scheme which is not of a permanent nature, although there might have continued for a longer period. The Court has also taken a view that the Minimum Wages Act is not also applicable as they applies to the worker employed in the industry specified in schedule and Anganbari Sevikas are no longer industrial workers. The Court has also taken a view that the

Anganbari Workers are at liberty to even contest the election as they are not holder of a civil post. The Hon'ble Court has recognized their contribution towards the society, as they discharge different nature of welfare activities towards women and children. It will be relevant to quote paragraph no.20, 28, 31 and 34 of this judgment which reads as follows:-

- “20. Anganwadi workers, however, do not carry on any function of the State. They do not hold post under a statute. Their posts are not created. Recruitment rules ordinarily applicable to the employees of the State are not applicable in their case. The State is not required to comply with the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. No process of selection for the purpose of their appointment within the constitutional scheme existed. We do not think that the said decision has any application in the instant case.*
- 21. However, rules framed under proviso to Article 309 of the Constitution of India are not attracted in the case of the respondents. They are appointed under a scheme which is not of a permanent nature although might have continued for a long time.*
- 31. One of the questions which was raised before us was in regard to the right of an Anganwadi worker to contest an election. They are indisputably free to do so. A holder of a civil post may not be entitled thereto.*
- 34. Reference to the provisions of the Minimum Wages Act, in our opinion, is also not apposite. The said Act is applicable to the workmen working in the industries specified therein. It is not the case of the respondents that the ICDS programme would constitute an*



'industry' or Anganwadi workers are industrial workmen. There cannot be any doubt whatsoever that it is one thing to say that the State would be liable to pay minimum wages irrespective of its financial constraints but it is another thing to say that as to whether such a claim can be raised in respect of those who are working under a project. It is not a case where the concept of minimum wage, living wage or fair wage can be brought in service."

This Court in the Division Bench Judgment in the case of *Neetu Kumari Vs. The State of Bihar & Ors.* reported in *2011 (4) PLJR 20*, has held that Anganbari Sevika is not the post having security of tenure or protection under Article 311 of the Constitution of India. Considering the very nature of the engagement which provides honorarium, if the person aggrieved may approach to the civil court for damages. There is nothing at stake in such a scheme other than the honorarium. In such cases, in case of illegal termination, reinstatement is not appropriate. Even if any breach of scheme or any other principle of law, the claim should be ordinarily permitted, if found good on merit, only for damages.

In the present case, the question is as per instruction of Anganbadi Sevika selection would be made of a better candidate. In the present case, the petitioner has better marks has been left out and the person who is below marks has been selected. Though this Court has taken a view better marks cannot always be the sole criteria for



selection of a candidate for Anganbari Sevika but, other side of aspects but selection without showing the reason of deviation of normal rule, it may lead to malady and purpose of selection of best candidate be defeated. If Aam Sabha intends to select women of less marks, decision must reflect the cause and reason. The Integrated Child Development Scheme gets entire fund from the Government runs under the administrative control of the State Government and its functionaries. The scheme is basically intended for development of children but, the idea is to improve their physical health to save from starvation and malnutrition and improve the condition and the standard of womenfolk who are poor.

Transparency is the hallmark of administration and justice. That includes the assignment of reason specially when a person who is better in marks has not been selected, given preference to the person having lesser marks. It is always in the interest of public the reason should reflect from the decisions taken by the authority as assigning reason in support of the decision shows complete application of mind and reduces the possibility of casualness and minimize the whims and capricious and, as such, it provides protection to the person against arbitrary official's conduct. In the case of *the Siemens Engineering & Manufacturing Co. of India Ltd. Vs. The Union of India & Anr.* reported in (1976) 2 SCC 981 it has been held that



rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. This has been again reiterated in the case of *Organo Chemical Industries & Anr. Vs. Union of India & Ors.* reported in (1979) 4 SCC 573. In the case of *Chairman & Managing Director, United Commercial Bank Vs. P.C. Kakkar-* reported in 2003(4) SCC 364, the Hon'ble Apex Court has held as follows:-

“15. ----- Even in respect of administrative orders Lord Denning, M.R. in *Breen v. Amalgamated Engg. Union* [(1971) 1 All ER 1148] observed: (All ER p. 1154h) “The giving of reasons is one of the fundamentals of good administration.” In *Alexander Machinery (Dudley) Ltd. v. Crabtree* [1974 ICR 120 (NIRC)] it was observed: “Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.” Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of

natural justice is spelling out reasons for the order made, in other words, a speaking-out. The “inscrutable face of a sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance.----”

There are many cases which consistently insisting recording of reason. In the present case, the authority is not exercising the power of quasi judicial body but, even selection is to be made of a person who is below in the merit. In that circumstances, reason is a sine quo non provides an opportunity to the non-selected persons to know the cause and reason of his/her non-selection.

In such view of the matter, the decision of the Aam Sabha to select Sunita Kumar (respondent no.9) is set aside and affirm the view of the Collector directing Aam Sabha to take fresh decision in accordance with law.

This application is, accordingly, allowed.

(Shivaji Pandey, J)

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