

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.642 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 13859 of 2012

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Kumari Sudama Devi D/o Alha Manjhi, W/o Mankeshwar Manjhi Resident of Village - Balapur PO - Sadarpur PS - Barharia, District - Siwan at present posted as Anganbari Sewika, Bal Vikash Pariyojana Centre no. 84, Barharia (Siwan)

.... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Social Welfare Department, Govt. of Bihar, Patna
3. The Director, ICDS, Patna
4. The Divisional Commissioner, Saran Division, Chhapra
5. The District Magistrate cum Chairman District Selection Committee, Siwan
6. The District Programme Officer, Siwan.
7. The Child Development Project Officer, Siwan.
8. Rina Kumari Daughter of Hira Lal Ram Resident of village - Nawadih, PS - Raghunathpur, District - Siwan
9. Gayatri Devi D/o - Gharbaharan Ram W/o Dhurwa Ram Resident of village - Malli Tola, PS - Barharia, District - Siwan

.... Respondent/s

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Appearance :

For the Appellant : Mr. Santosh Kumar Singh, Advocate

For the State : Mr. Sunil Kumar, AC to GA 12

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 27-09-2016

Heard learned counsel for the parties.

2. The challenge in the present intra-court appeal is to the order dated 08.10.2012 passed by the learned Single Bench by



which C.W.J.C. No. 13895 of 2012, filed by the appellant has been dismissed.

3. The appellant was appointed as *Anganbadi Sevika* on 12.05.1988 on the basis of having passed matriculation examination. In 1989, the appellant passed Intermediate examination and thereafter also obtained Graduation degree in the year 1993. Pursuant to advertisement published on 08.09.2011, the appellant applied for appointment on the post of Lady Supervisor which was to be made from among the *Anganbadi Sevikas*. Another communication was published in the newspaper on 22.12.2011 in which it was stated that the candidate applying for the post of Lady Supervisor must produce letter to show valid approval for pursuing higher education during service period, and in absence of the same, no bonus points would be given for such higher qualification. In the provisional merit list, the name of the appellant was at serial no. 30 and extra points for possessing Intermediate and Degree qualification were not granted to her. There being some dispute with regard to the merit list, a fresh one was published on 18.04.2012 in which taking into account the Matriculation certificate of the appellant, she was placed at serial no. 45. Being aggrieved, the appellant approached this Court in C.W.J.C. No. 9414 of 2012, which was disposed off on 15.05.2012 with liberty to the appellant to approach the Divisional Commissioner. The



representation filed by the appellant was rejected by the Divisional Commissioner, Chapra by order dated 19.06.2012. In the meantime, the final merit list was also published on 21.05.2012 but she was not finally selected in the merit list prepared on 21.05.2012. The appellant being aggrieved filed C.W.J.C. No. 13859 of 2012 for quashing the order of the Commissioner dated 19.06.2012 and the final merit list published on 21.05.2012. The order dated 08.10.2012 of the learned Single Bench dismissing the writ petition has given rise to the present Letters Patent Appeal.

4. Learned counsel for the appellant submitted that though the post of *Anganbadi Sevika* is not a civil post but still the selection for the post of Lady Supervisor, being under the Government and by the Government, is amenable to writ jurisdiction since there has been discrimination against the appellant in such selection. It was submitted that the qualification obtained by the appellant could not have been ignored on the ground that she had not taken prior permission to pursue the said course as there was no such restriction in view of the fact that *Anganbadi Sevika* not being a government servant, the principles applicable to government servants for pursuing higher educational qualification in service, cannot apply to her. It was further submitted that the appellant had taken oral consent of the then Child Development Project Officer for obtaining



the higher qualification of Intermediate and Graduation.

5. Learned counsel for the State submitted that the submission of learned counsel for the appellant that there was no requirement for taking prior approval of the authorities for obtaining higher qualification is erroneous in view of the fact that as per the departmental instructions itself, for any such qualification obtained after being selected for the post of *Anganbadi Sevika*, without the consent of the authorities, no extra points could be granted to the appellant. It was submitted that the resolution/guideline issued by the Social Welfare Department contained in Memo No. 2733 dated 19.10.2011 clearly stipulates that extra points shall be awarded for possessing higher qualification obtained during service period, provided permission had been granted for pursuing such higher course, and thus, the contention of the appellant that she had taken oral permission cannot be accepted as in official matters, there is no scope or provision for grant of oral permission by any officer.

6. Having considered the rival contentions, we do not find any merit in the present appeal. The appellant cannot assail the policy of the State Government where, in principle, it has been decided that all higher qualifications obtained by any *Anganbadi Sevika*, only if acquired after due permission of the authorities, can be granted extra points. Even though, strictly, the Rules relating to



government servants may not apply, but it is a sound condition, inasmuch as, the post of *Anganbadi Sevika*, which is crucial in the scheme meant for the underprivileged sections of the society, the working of such Centres is on a day to day basis, while pursuing of full time higher studies also has to be necessarily during the same time period for which the Anganbadi Centre is supposed to be open. Thus, if an *Anganbadi Sevika* was pursuing such study without taking permission of the authorities, it means she was not attending her duty and the scheme for which she has been appointed obviously cannot be satisfactorily implemented. The requirement of taking permission is reasonable, inasmuch as, the authorities, if finding it fit, may grant permission and may also make alternate arrangement by clubbing it with a contiguous centre so that the interest of the children and weaker sections does not suffer. When it is not the case of the appellant that she has not performed the duty of *Anganbadi Sevika* or has not pursued her higher studies on full time basis, both cannot be pursued simultaneously; either her duties as *Anganbadi Sevika* or her attending her classes has been compromised. Thus, the appellant not being served a show cause or being removed from the post of *Anganbadi Sevika* itself, for having pursued full time courses, without permission, for which classes are, but obviously, held during the same time period as that of the Anganbadi Kendra, has been shown



indulgence by the authorities concerned. Thus, with such conduct, claiming for extra points for such higher qualification, as a matter of right, is totally misplaced and untenable.

7. In view thereof, we do not find any ground to interfere in the order passed by the learned Single Bench dismissing the writ application. Accordingly, the Letters Patent Appeal stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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