

IN THE HIGH COURT OF JUDICATURE AT PATNA

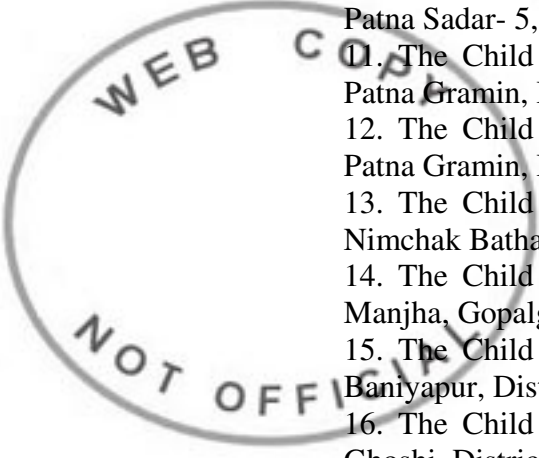
Civil Writ Jurisdiction Case No.18405 of 2015

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1. Raka Sahay, Wife of Sri Jai Kumar Sinha, Lady Supervisor, Child Development Project Office, Khagaria
 2. Renu Kumari, wife of Sri Ramchandra Sah, Lady Supervisor, Child Development Project Office, Matihani, District- Begusarai
 3. Kumari Veena Sinha, wife of Ajay Choudhary, Lady Supervisor, Child Development Project Office, Samasi, District- Samastipur
 4. Rita Devi. wife of Sri Bimlesh Prasad Child Development Project Office, Kau Kol, Nawada
 5. Reeta Singh, wife of Sri Dudhnath Singh, Lady Supervisor, Child Development Project Office, Patna Sadar- 4, Patna
 6. Mahapuniya Kumari wife of Sri Narayan Purbey, Lady Supervisor, Child Development Project Office, Patna Sadar- 5, Patna
 7. Sudha Sinha, Wife of Sri Krishna Prasad, Lady Supervisor, Child Development Project Office, Patna Gramin, Patna
 8. Kiran Tripathy, wife of Ramesh Kumar Tripathy, Lady Supervisor, Child Development Project Office, Gramin, Patna
 9. Prem Lata Kumari, wife of Sri Birendra Kumar Verma, Lady Supervisor, Child Development Project Office, Nimchak Bathani, Gaya, District- Gaya
 10. Sarswati Pandey, wife of Sri Lalan Tiwary, Lady Supervisor, Child Development Project Office, Manjha, Gopalganj, District- Gopalganj
 11. Geetanjali Kumari, wife of Sri Roop Kishore Sinha, Lady Supervisor, Child Development Project Office, Baniyapur Chapra, District- Saran
 12. Punam Sahay, Wife of Sudhir Kumar, Lady Supervisor, Child Development Project Office, Ghoshi, District- Jehanabad
 13. Eti Mandal, wife of Sri Rajendra Prasad Ray, Lady Supervisor, Child Development Project Office, Gopalpur, District- Bhagalpur
 14. Sati Rani Mishra, wife of Sri Shashi Kant Jha, Lady Supervisor, Child Development Project Office, Araria, District- Araria
 15. Kamini Kumari, wife of Late Nand Kishore Sinha, Lady Supervisor, Child Development Project Office, Bikram, Patna
 16. Muni Kumari wife of Ghanshyam Prasad, Lady Supervisor, Child Development Project Office, Danapur, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Government of Bihar, Patna
2. The Secretary, Social Welfare Department, Govt. of Bihar, Apna Ghar Bailey Road, behind Lalit Bhawan, Patna
3. The Additional Secretary, Social Welfare Department, Govt. of Bihar, Patna
4. The Director, Social Welfare Department, Govt. of Bihar, I.C.D.S. Indira Bhawan, Patna
5. The Child Development Project Officer, Child Development Project Office, Khagaria, District- Khagaria
6. The Child Development Project Officer, Child Development Project Office, Matihani, District- Begusarai
7. The Child Development Project Officer, Child Development Project Office, Samasi, District- Samastipur
8. The Child Development Project Officer, Child Development Project Office, Kau Kol, District- Nawada

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9. The Child Development Project Officer, Child Development Project Office, Patna Sadar- 4, District- Patna
 10. The Child Development Project Officer, Child Development Project Office, Patna Sadar- 5, District- Patna
 11. The Child Development Project Officer, Child Development Project Office, Patna Gramin, District- Patna
 12. The Child Development Project Officer, Child Development Project Office, Patna Gramin, District- Patna
 13. The Child Development Project Officer, Child Development Project Office, Nimchak Bathani, Gaya, District- Gaya
 14. The Child Development Project Officer, Child Development Project Office, Manjha, Gopalganj, District- Gopalganj
 15. The Child Development Project Officer, Child Development Project Office, Baniyapur, District- Saran
 16. The Child Development Project Officer, Child Development Project Office, Ghoshi, District- Jehanabad
 17. The Child Development Project Officer, Child Development Project Office, Gopalpur, District- Bhagalpur
 18. The Child Development Project Officer, Child Development Project Office, Bikram, District- Patna
 19. The Child Development Project Officer, Child Development Project Office, Araria, District- Araria
 20. The Child Development Project Officer, Child Development Project Office, Danapur, District- Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dudh Nath Singh

For the Respondent/s : Mr. Manoj Kumar Sinha, AC to SC 30

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 24-06-2016

A set of petitioners have filed the present writ application for a direction upon the respondents to fill up vacant posts of Child Development Project Officer (in short 'CDPO') in terms of the 1995 Rules, which provided for promotions on the same said post from the quota of persons, who were holding the post of Lady Supervisors under the ICDS Department. It is the case of these petitioners that they fulfill all the requirements in terms of the

eligibility i.e. the length of service etc. and have acquired a right for promotion in terms of the 1995 Rules. For a long period of time since no decision came to be taken despite demand having been made upon the respondent authorities, they decided to approach the High Court by filing the writ application.

A counter affidavit has been filed on behalf of the State since they were directed to do so. In the counter affidavit, a stand has been taken that for many a reasons the issue of promotion could not be taken up. There were also certain deliberations going on in the department, which culminated into issuance of a fresh set of Rules, which was notified on 22.8.2015 by the Social Welfare Department. The Rule is known as Bihar Child Development Service Rules, 2015 and this Rule has been notified under Article 309 of the Constitution of India. The Rule, especially Rule 19 specifically lays down that all the Rules, Resolutions, Orders and Instructions related to the recruitment of Chief Development Project Officers etc. stand repealed.

This is the reason why no promotions can be granted to the petitioners because the Rule has undergone a change so has the requirement.

Submission of the learned counsel for the petitioners thereafter is that since the right of the petitioners occurred prior to the

notification of the new set of Rules, they should be granted promotion on the basis of the right and the rules in existence then.

The submission of the counsel could have merited consideration provided the previous rules continued to subsist and exist. Since the past rules and regulations including order have been repealed, the only rule which will govern such right will flow from the 2015 Rules.

A right cannot subsist in absence of the Rules from where such right is derived. They are co-terminus in nature. If the Rule is repealed the right also is extinguished or altered accordingly.

In view of the above, the Court cannot pass any order to grant promotion to these petitioners on the basis of 1995 Rules. However, if they come within the ambit of consideration for promotion in terms of the 2015 notification or the Rules, noted above, then their case will surely be considered.

Writ is otherwise dismissed.

(Ajay Kumar Tripathi, J)

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AFR/NAFR	AFR
CAV DATE	
Uploading Date	27.6.2016
Transmission Date	