

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.249 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 8255 of 2015**

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Meenu Kumari, W/o- Sri Vinesh Kumar Pawan, resident of village - Sikandarpur
Dhevai, P.O- Injore, Panchayat- Walidad, P.S.- Mehendiya, District- Arwal.

.... Appellant/s

Versus

1. The State of Bihar
2. The Dy. Director, Welfare, Magadh Division, Gaya.
3. The District Programme Officer, Arwal.
4. The Child Development Project Officer, Mehendiya, District- Arwal.
5. Anamika Kumari, W/o- Shri Randhir Kumar, resident of village- Sikandarpur
Dhewai, P.O.- Injore, Panchayat- Walidad, P.S.- Mehendiya, District- Arwal.
6. The Director, I.C.D.S. Bihar, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Singh, Advocate

For the Respondent/s :

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 16-12-2016

Re.:I.A. No. 968 of 2016

The application is for condonation of delay of 133 days in
filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory
Application, we are satisfied that the appellant has shown sufficient
cause to seek condonation of delay of 133 days in filing the present
Letters Patent Appeal.

3. Consequently, Interlocutory Application No. 968 of
2016 is allowed and delay of 133 days in filing the Letters Patent



Appeal is condoned.

Re.: L.P.A. No. 249 of 2016

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 6th of August, 2015 in C.W.J.C. No. 8255 of 2015 whereby, the writ application filed by the appellant seeking appointment as Anganwari Sevika remained unsuccessful holding that the appellant is ineligible for the reason that her sister-in-law is already employed and working on the post of Panchayat Teacher.

3. The facts in brief are that on 9th of June, 2012, Aam Sabha of the Gram Panchayat invited applications for the posts of Anganwari Sevika. One of the condition for appointment on the post of Anganwari Sevika at that time was that a candidate shall not be eligible for appointment as Anganwari Sevika if his or her relation is working under the State Government or the Semi Government. Relevant condition reads as under:-

Para/ Sub Para	Present Provision	Amended Provision
4/4.9	The wife, daughter-in-law and relatives of the Government/ Semi Government Servants, posted in the concerned districts, shall not be selected on the post of Sevika (Relative means-Wife, Daughter-in-Law, Sister, Nanad (husband's sister), Bhaujai (brother's wife), daughter.	The relatives of the Government (Central and State Government)/ Semi-Government staff and officers posted at the concerned Panchayat/ Block/ Circle/ Sub-Division and district, shall not be selected on the post of Sevika. (Relative means-mother, wife, daughter-in-law, nanad, bhabhi [wife of elder and younger brother), daughter, sister]. This para does not apply to those



		staff and officers working on contractual or honorarium basis whose monthly income is Rs. 6000/- (Rupees six thousand only) or less than it.
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4. The sister-in-law of the appellant was employed as Panchayat Teacher and, therefore, she was not appointed as Anganwari Sevika.

5. The challenge to her non-appointment was for the reason that aforesaid condition has been modified on 10th of June, 2013 whereby, the candidates whose relations are working under the State Government are eligible to be appointed, provided their salary is less than Rs. 6,000/- per month. It is, thus, contended that the sister-in-law of the appellant was drawing salary of Rs. 6,000/- per month, therefore, the appellant is eligible for appointment as Anganwari Sevika as the appointment was made after the amendment of the rules on 10th of June, 2013.

6. The learned Single Bench returned a finding that according to the conditions as were applicable on the date of advertisement i.e. on 9th of June, 2012, the appellant is ineligible. Since on that day, the appellant was ineligible for appointment, therefore, by subsequent amendment, the appellant will not become eligible for appointment.



7. We do not find any error in the finding recorded by the learned Single Bench.

8. When the applications were invited by the Aam Sabha, the condition was that a person whose specified relations are working under the State Government would not be eligible for appointment. Relying upon the said condition, many other candidates might not applied for appointment as Anganwari Sevika. Therefore, the finding of the learned Single Bench that the rule which is applicable on the date of advertisement would be applicable is in public interest to provide equal opportunity to all the candidates for appointment as other candidates who did not respond to the advertisement cannot be excluded from consideration for appointment.

9. Learned counsel for the appellant then argued that the finding of the learned Single Bench is that Panchayat Teacher is a Semi-Government employee and, therefore, employment of the specified relation as Panchayat Teacher will make the appellant ineligible, is not correct. It is contended that Panchayat Teacher is not an employee of the State Government but of a Panchayat, therefore, the finding of the learned Single Bench is not correct.

10. It is admitted that the rules for appointment of Panchayat Teacher have been framed by the State Government. Panchayats are the third tier of local Government administration



constituted under Part-IX of the Constitution of India. One of the functions which are required to be discharged by the Panchayat is education including primary and secondary schools (Entry 17, Eleventh Schedule). Therefore to give effect to the mandate of the Constitution, the State Government has conferred power on the Panchayat to make appointment as Panchayat Teachers. The State can make rules only if the service is under the State. The State cannot frame rules of an institution which is not controlled or supervised by it. Therefore, the rules having been framed by the State Government with regard to the service condition of the Panchayat Teachers, the Panchayat Teaches would be the State Government employees and, consequently, the appellant has been rightly found to be ineligible for appointment as Anganwari Sevika.

11. In view thereof, we do not find any merit in the present Letters Patent Appeal. The same is dismissed.

(Hemant Gupta, ACJ)

(Arvind Srivastava, J)

P.K.P.

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	21.12.2016
Transmission Date	

