

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.296 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 17352 of 2011**

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Nutan Kumari, Wife of Naresh Kumar Mahto, Residence Of Village + P.O.
Udaypur, Block- Rosra, Distt. Samastipur

.... Petitioner /Appellant

Versus

1. The State of Bihar
2. The District Magistrate, Samastipur
3. The District Welfare Officer, Samastipur
4. The Sub-Divisional Officer Rosra, Distt. Samastipur
5. The Block Development Officer Rosra, Dist. Samastipur
6. The Child Development Project Officer, Rosra, Dist. Samastipur
7. Anita Devi @ Anita Kumari, Wife of Naresh Mahto @ Mirshu Resident Of
Village + P.O. Udaypur, Rosra, Dist. Samastipur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ram Narayan Mahto, Advocate

For the Respondent/s : Mr. Kaushal Kumar Jha, AAG 14

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 15-07-2016

The order dated 18th November, 2011 passed by the learned
Single Bench in CWJC No. 17352 of 2011 is the subject matter of the
challenge in the present Letters Patent Appeal, whereby the challenge
to the order passed by the District Magistrate, Samastipur, dated
5.7.2011, remained unsuccessful.

The appellant was appointed as Anganwari Sevika by letter
of appointment dated 27.05.2007 in Village Udaypur, Ward No. 15,
Block Rosera, District Samastipur. Subsequently, her appointment



was set aside by the District Magistrate, Samastipur, on 22.02.2008 for the reason that father of the appellant is in Government service and, therefore, she is ineligible for appointment. Being aggrieved, the appellant filed CWJC No. 5358 of 2008. This Court remitted the matter to the District Magistrate to reconsider his order in terms of the judgment of this Court in the case of *Sunita Kumari vs. State of Bihar & Ors. [2010 (3) PLJR 68]*. It is in terms of the said order that the District Magistrate, Samastipur, considered the matter and rejected the appeal. Still aggrieved, the appellant filed the present writ petition which has since been dismissed.

The entire basis of the arguments of the learned counsel for the appellant is the judgment of the learned Single Judge of this Court in the case of *Sunita Kumari* (supra) where the rule prohibiting appointment as Anganwari Sevika whose relation is employed has been struck down. Therefore, the argument is that the appointment of the appellant on the same basis cannot be sustained. In the aforesaid case, the petitioner Sunita Kumari was removed as Anganwari Sevika by order dated 24th August, 2007, inter alia, on the ground that her relation is in Government service. This Court allowed the writ petition. The relevant extract from the order are as follows:-

“20. I, therefore, strike down part of sub-clause (Anga) of clause 3 of the guidelines framed by the Government in relation to functioning and appointment under the Anganbari scheme which imposes a

blanket bar for appointment of relatives of the Government servant and direct the Secretary, Welfare Department, to impose a ban or a qualification which is reasonable and within the ambit of Article 14 of the Constitution.

21. This order is restricted to the petitioner and will be prospective and no party in concluded transactions of appointment to said posts can take the benefit of the order.”

It is thereafter the writ petition filed by the appellant was decided as mentioned above on 26th April, 2011, whereby the following order was passed:-

“The impugned order dated 1.3.2008 directs that an Aam Sabha should be held within 15 days and appointment of Anganwari Sevika should be made. This case is remitted back to the District Magistrate, Samastipur to reconsider his order in terms of a judgment delivered by this Court in the case of Sunita Kumari vs. State of Bihar through the Secretary, Welfare Department, Bihar, Patna [2010 (3) PLJR 68] within a period of four months from the date of receipt/production of a copy of this order. It is clarified that if the appointment has been made in the meantime, the new incumbent will have to be heard before any final order is passed.”

Thereafter, the District Magistrate upheld the removal of the appellant.

Learned counsel for the appellant vehemently argued that the sub-clause 3(e) of the Guidelines having been struck down which restricts the candidate whose relation is in Government service for appointment as Anganwari Sevika, therefore, removal of the appellant as Anganwari Sevika is not tenable.



On the other hand, Mr. Kaushal Kumar Jha, vehemently argued that in fact the clause has been struck down but with prospective effect. It is also argued that the benefit was extended only to the writ applicant and is not meant for other candidates. Therefore, the appellant is not entitled to the benefit of the judgment in *Sunita Kumari's* case.

We have heard learned counsel for the parties and are unable to agree with the arguments raised on behalf of the appellant. Even though the writ application filed by the petitioner was remitted back to the District Magistrate but the direction was to consider the claim of the appellant in terms of the judgment in *Sunita Kumari's* case. The judgment in *Sunita Kumari's* case has two parts. One part deals with the relief granted to the petitioner and other in respect of striking down of a guideline prospectively. Even though the rule or guideline was declared invalid prospectively but in respect to the petitioner therein the benefit was granted. Therefore, as far as the writ applicant was concerned, the benefit was granted to her but in respect of all other candidates clause 3(e) has been struck down prospectively.

Therefore, the case of the appellant has to be considered as if the condition that a candidate should not have any relative as Government servant is a valid condition on the date of appointment made in 2007. Such condition was struck down only on 6th May,

2010. Therefore, removal of the appellant as Anganwari Sevika on the basis of then prevalent guidelines cannot be said to be illegal or unwarranted. Thus, we do not find any error in the order passed by the learned Single Bench which may warrant any interference in the present Letters Patent Appeal.

The appeal is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

mrl

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