

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 501 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 3591 of 2013

Along with

Interlocutory Application No. 2199 of 2015

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Vishakha Devi @ Vishakha Kumari, Wife of Shri Bhola Sharma, Resident of Village - Baijnathpur, Ward No. 1, Panchayat Kalabalu, Block Raniganj, District - Araria.

.... Appellant/s

Versus

1. The State of Bihar.
2. The District Magistrate, Araria.
3. The District Programme Officer, Araria.
4. The District Welfare Officer, Araria.
5. The Child Development Project Officer, Raniganj, District - Araria.
6. The Mukhiya, Gram Panchayat Raj Kalabalwa, Block - Raniganj, District - Araria.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ram Narayan Mahto, Advocate
For the State : Mr. Shiv Kumar, A.C. to G.A.7

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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: 26-07-2016

Heard learned counsel for the parties.

Re.: Interlocutory Application No. 2199 of 2015

2. The Interlocutory Application has been filed seeking condonation of 618 days delay in filing of the Letters Patent Appeal.

3. Upon hearing learned counsel for the parties and considering the averments made in the Interlocutory Application, we find that sufficient cause has been shown for delay in filing of the appeal. Consequently, the delay in filing of the Letters Patent Appeal is condoned.

4. Interlocutory Application No. 2199 of 2015 stands

disposed off.

Re.: Letters Patent Appeal No. 501 of 2015

5. The Challenge in the present appeal under Clause-X of the Letters Patent of Patna High Court is to the order dated 25.02.2013 passed by the learned Single Bench by which C.W.J.C. No. 3591 of 2013 filed by the appellant has been disposed off with certain directions/observations.

6. The appellant along with one Nirjala Devi had applied for the post of Anganwari Sevika for Anganwari Centre No. 256, in Village- Baijnathpur under Panchayat Kalabalua in Raniganj Block of Araria district. Nirjala Devi, despite having lesser marks was appointed. On complaint made by the appellant, the District Welfare Officer, Araria, after hearing the parties, passed order dated 16.12.2008 cancelling the appointment of Nirjala Devi and appellant was directed to be considered for such appointment which was communicated to the concerned Mukhiya and Block Development Officer. Nirjala Devi, being aggrieved, moved this Court in C.W.J.C. No. 15201 of 2009, in which, by order dated 26.11.2009, the order dated 16.12.2008 was set aside and the matter was remanded to the District Programme Officer, Araria. Pursuant to the said remand, the District Programme Officer, Araria after hearing the parties passed order dated 15.07.2010 directing for appointment of the appellant primarily on the ground that the appellant had 83% marks in



matriculation examination whereas Nirjala Devi has 49% marks in the said examination. The appellant thereafter gave her joining on 05.08.2010 before the Child Development Project Officer, Raniganj (C.D.P.O.). When no action was taken, the appellant filed representation before the District Programme Officer, Araria on 01.01.2011. Again, when no action was taken, the appellant filed representation before the District Magistrate, Araria on 16.06.2011. The appellant thereafter once again filed representation before the District Magistrate, Araria; District Programme Officer, Araria; Sub-divisional Officer, Araria and the Block Development Officer, Raniganj on 09.04.2012 followed by further representations to the District Magistrate, Araria on 15.05.2012, 06.08.2012, 18.08.2012 and 15.09.2012. When things did not move, the appellant moved this Court in C.W.J.C. No. 3591 of 2013 which was disposed off by the learned Single Bench by order dated 25.02.2013 holding that no order could be passed for appointing the appellant on the post of Anganwari Sevika and if the post is advertised or has already been advertised, the same will be governed by the new selection norms in which, if the petitioner is a candidate, her case could also be considered along with others in accordance with latest Government policy relating to appointment on the post of Anganwari Sevika. The order dated 25.02.2013 is the subject matter of challenge in the present Letters Patent Appeal.



7. Learned counsel for the appellant submits that the learned Single Bench has erroneously indicated that the post needs to be advertised and fresh selection made in terms of the new selection norms, failing to appreciate that a competent forum vested with the jurisdiction of deciding the issue had gone into the matter and had found that the appellant was wrongly not selected and in that background, Nirjala Devi's appointment was cancelled and the appellant was directed to be appointed. It is submitted that the appellant, fulfilling all the eligibility criteria, and also being more meritorious, her selection was required to be made, which was wrongly not done and, thus, there ought not to have been such a direction by the learned Single Bench.

8. Learned counsel for the respondents submits that pursuant to the original order of the District Programme Officer, Araria dated 15.07.2010, implementation of which was the relief sought for by the appellant, has been complied with and she has been appointed on the post of Anganwari Sevika at the concerned centre under Memo No. 29 dated 18.01.2016, issued by the C.D.P.O. and as such, no cause of action survives.

9. Having considered the submissions of learned counsel for the parties, we find force in the submission of learned counsel for the State. The appellant having been appointed pursuant to the order of the District Programme Officer, Araria, which itself

was passed pursuant to remand by the High Court earlier as per order dated 26.11.2009 in C.W.J.C. No. 15201 of 2009, for all practical purposes, has brought the curtains down on the issues involved. However, since the learned Single Bench in the order dated 25.02.2013 in C.W.J.C. No. 3591 of 2013 has indicated that if the post is advertised or already been advertised, it will be governed by the new selection process, in the facts and circumstances of the present case, the same is modified to the extent that the appointment of the appellant pursuant to the order of the District Programme Officer dated 15.07.2010 shall not in any manner be affected by the observations made in the order under appeal. The appointment of the appellant on the post of Anganwari Sevika in the said Anganwari Centre is, thus, held to be valid.

10. Accordingly, the Letters Patent Appeal stands disposed off in the aforementioned terms.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

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CAV DATE	NA
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