

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.12838 of 2008**

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Shirani Kumari @ Sirani Devi wife of Rakesh Kumar, Resident of village  
Sikandarpur, P.S. Punpun, District Patna

.... .... Petitioner

Versus

1. The State of Bihar,
2. The Principal Secretary, Welfare Department, Government of Bihar, Patna,
3. The Director, Integrated Child Development Programme, Welfare Department,  
Government of Bihar, Patna,
4. The District Magistrate, Patna,
5. The District Welfare Officer, Patna,
6. The District Programme Officer, Patna,
7. The Child Development Project Officer, Punpun Block, Patna,
8. The Block Development Officer, Punpun Block, Patna,
9. Mukhia, Gram Panchayat Raj, P.S. Punpun, Patna,
10. Panchayat Secretary, Gram Panchayat Raj, P.S. Punpun, Patna,

.... .... Respondents

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**Appearance :**

For the Petitioner : Mr. Shiv Kumar, Advocate

For the Respondent/s : Mr. I.P. Mandal, AC to GA 7

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**CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN**

**ORAL JUDGMENT**

**Date: 20-01-2016**

I have heard learned counsel for the petitioner and the respondent nos. 1 to 8 and 10. No notice has been issued upon the respondent no. 9 as it has been contended on behalf of the petitioner that she has no grievance against the Mukhiya of the concerned Gram Panchayat since Aam Sabha has already selected her as Anganbari Sevika.

Through this writ application, the petitioner seeks direction to the respondent authorities to accept her joining and take work from her as Anganbari Sevika who has duly been



selected by the Aam Sabha of the concerned Gram Panchayat for Sikandarpur Anganbari Centre situated in Gram Panchayat Raj Pothahi of Punpun Block within the district Patna. Petitioner further seeks direction to the respondent authorities after accepting her joining and to send her for training meant for the selected Anganbari Sevika and Sahayika.

The petitioner was selected on 21<sup>st</sup> March, 2007 by the selection committee of the Gram Panchayat on the post of Anganbari Sevika for the concerned Anganbari Centre. The petitioner was granted letter showing her selection appended as Annexure 2, which shows that three persons including the petitioner were selected. The other two persons were Nitu Kumari and Ranjan Juneja.

It is contended on behalf of the petitioner that, thereafter, she is running from pillar to post for her joining but the respondents are not accepting her joining and she has not been sent for training prescribed for Anganbari Sevika.

A counter affidavit and two supplementary counter affidavits have been filed on behalf of the respondent nos. 4 to 7 stating that, on the relevant date of selection, the Child Development Project Officer(hereinafter referred to “as CDPO”) was not present as special invitee and, as such, the quorum was

not complete, therefore, the entire selection process stands vitiated.

On such stand having been taken, the petitioner filed a rejoinder stating that Nitu Kumari and Ranjan Juneja were also selected on the same date of the meeting of the same Gram Panchayat for different Anganbari Sevika but work is being taken by them despite the aforesaid lacuna as pointed out by the petitioner.

On such stand having been taken by the petitioner, again a supplementary counter affidavit has been on behalf of the respondent nos. 4 to 7 stating that so far Nitu Kumari is concerned, in the meeting of the selection committee the State was represented through a lady supervisor and, as such, the aforesaid lacuna cannot be found in her case. So far Ranjan Juneja is concerned, she has also been removed in view of the erroneous selection and some other person has been appointed on that post.

Both the parties agree that the procedure of appointment of Anganbari Sevika and Sahayika is done and regulated under the guidelines prepared for the said purpose appended as Annexure A to the counter affidavit. The guideline for selection of Anganbari Sevika lays down in clear terms that there would be a Panchayat level selection committee of seven members and one



of them would be the CDPO or any other officer to be nominated by the District Magistrate of the concerned District. It is written in clear terms that his/her presence would be mandatory. In above view of the matter, a stand has been taken by the State that the concerned CDPO or other person nominated by the District Magistrate not being present at the time of selection, the same stands vitiated and, thus, the petitioner cannot be allowed to join on the recommendation of such an erroneous procedure followed by the selection committee.

On such stand taken by the State, this Court put a pointed question as to whether the lady supervisor who was present during the selection process of the aforesaid Nitu Kumari was nominated by the District Magistrate or not ?

The State has taken a stand on affidavit that the lady supervisor was not nominated by the District Magistrate.

The petitioner submits that in such a situation presence of the lady supervisor would be meaningless and there is clear discrimination as Nitu Kumari was also appointed without participation of the CDPO or any officer authorized by the District Magistrate but she has been allowed to join and sent for training whereas the petitioner has been discriminated and has not been allowed to join. Learned counsel for the State has no answer

to this.

Now, on deeper scrutiny of the guidelines, it appears that for the purpose of selection of Anganbari Sevika or Sahayika, there would be a meeting of the general body, i.e., "Aam Sabha" of the concerned Gram Panchayat, and date, time and place would be fixed by the CDPO in consultation with the concerned Mukhiya. Thereafter, there is also provision that, for that purpose, the vacancies would be advertised by the District Magistrate of the concerned district clearly stipulating the date, time and place of Aam Sabha and the responsibilities of the CDPO would be to take steps in that regard so that it becomes known to the entire beneficiaries of the concerned Gram Panchayat and it would be the duty cast upon the District Magistrate to nominate more than one persons as State representative if more than one such meeting is being convened for the purpose of selection as the CDPO can only participate in only one of such meeting.

On perusal of the provisions contained in the guidelines, it appears that at every step there is involvement of the CDPO or the District Magistrate and no meeting of the Aam Sabha can take place for the said purpose without their knowledge. It is their duty to advertise the date, time and place of the meeting properly.



Now a question will arise that, even if knowing fully well regarding the meeting to be held for the purpose of selection, the District Magistrate fails in duty cast upon him to select as many representatives as required on a particular date or the CDPO knowing fully well regarding the meeting as being responsible for propagating about the date, time and place of the meeting fails to participate in that, then whether the persons selected could be penalized for their fault?

Answer has to be in negative as this Court in an unreported decision rendered in **C.W.J.C. No. 20546 of 2010(Nutan Sinha v. The State of Bihar and others)** disposed of on 27.11.2015 has already decided a similar issue. Though that was with respect to appointment of an Assistant Teacher of a minority school but in that proceeding also nominee of the State was mandatorily required at the time of selection and, admittedly, he was not present, however, it has been held that if the date of interview was within the knowledge of the State authority but still no State representative was present at the time of interview then the entire selection process would not be vitiated. A reference was made to a decision rendered by a Division Bench of this Court on 12.09.2013 in **L.P.A. No. 1198 of 2011(The State of Bihar and others v. Smt. Anita Banka and another)** in which it was held



that if there was proper information to the District Magistrate regarding the interview to be held and even then a representative did not remain present throughout the period of interview having failed in his duty, the appointment of the writ petitioners cannot be vitiated.

In my view, the same principle would apply in the case of the petitioner also as it is apparent from the guidelines brought on record by the State authorities themselves that no date, time or place of the interview or the selection process could have been fixed without the knowledge of the District Magistrate or the CDPO, thus, it was the duty cast upon the CDPO to remain present at the relevant time during selection or if more than one meetings were to be held, then it was the duty cast upon the District Magistrate concerned to nominate more than one representatives of the State which they have miserably failed to do. One counter affidavit and two supplementary counter affidavits have been filed on behalf of the State but there is no whisper that the factum of the meeting of the Aam Sabha or selection committee was not within the knowledge of the District Magistrate or the CDPO. That being the situation, in my view, the appointment of the petitioner cannot stand vitiated on the ground that the Government representative was not present at that point

of time as the respondents themselves have miserably failed in performing their duties.

Accordingly, this writ application succeeds and the respondents are directed to accept the joining of the petitioner and thereafter, send her for such training as would be required.

However, there would be no order as to costs.

**(Dr. Ravi Ranjan, J)**

SC/-

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