

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.580 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 21987 of 2012

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Pushpa Kumari, Wife of Ramashish Sharma, Resident of Village- Bhikhanpur,
P.S.- Amarpur, District- Banka.

.... Appellant/s

Versus

1. The State of Bihar through the Divisional Commissioner, Bhagalpur Division, Bhagalpur.
2. The Divisional Commissioner, Bhagalpur Division, Bhagalpur.
3. The District Magistrate-Cum-Collector, Banka.
4. The District Programme Officer, Banka.
5. The Child Development Project Officer, Amarpur Block, Amarpur, District- Banka.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar Mishra with
Mr. Rishit Deo Kumar Singh, Advocates
For the Respondent/s : Mr. K.P. Yadav, GP-11
Mr. Umesh Kumar Roy, AC to GP-11

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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: 08-09-2016

The challenge in the present Letters Patent Appeal is to the order passed by the learned Single Bench on 20.02.2014 in C.W.J.C. No. 21987 of 2012 whereby the order of the Divisional Commissioner dated 30th October, 2012 directing fresh selection for the post of Anganwari Sevika, was not interfered with.

2. Earlier in a writ petition filed by the appellant, this Court directed the Collector to look into the grievance of the appellant and decide the same after giving opportunity of hearing to



the appellant. In pursuance of such direction, the District Magistrate has considered the contentions raised and by order dated 05.06.2012, in view of gross irregularities, directed that fresh merit list be prepared and appointment be made on the post of *Sevika* through the *Aam Sabha*. The said decision though, was affirmed by the Divisional Commissioner by order dated 30th October, 2012, but with slight modification, inasmuch as, it was directed to start selection afresh as per latest guidelines.

3. Learned counsel for the appellant submitted that once the selection of Ms. Rani Devi was set aside, appointment should have been made from the remaining available candidates, in which the appellant was at number one. It was further submitted that the selection process relating to the year 2005 should not have been directed to be gone into afresh as per the later guidelines, as right had already accrued in favour of the appellant. In the meantime, the appellant having crossed the age limit for selection, her right could not have been taken away as there is no fault or laches on her part.

4. Learned counsel for the respondents submitted that the selection of Ms. Rani Devi was cancelled due to the cancellation of the BPL card issued in favour of her family and not because of any fraud or forgery. It was submitted that once the selection was cancelled due to a later development, the seat would be



deemed to have fallen vacant later, as the selected candidate did continue to work for many years. It was submitted that in that view of the matter, especially taking into consideration the fact that new guidelines had been issued, the selection process was required to be gone into afresh, as per the fresh guidelines, and, thus, there is no error in the decision of the authorities or the learned Single Bench.

5. Having considered the rival contentions, we do not find any merit in the present Letters Patent Appeal. The selected candidate, who also worked for many years, was removed on the ground that the BPL card issued in favour of her family and which was the basis of such selection, was cancelled but it was after the selection having been made. Thus, at the time of selection, the BPL card was very much in existence and the same was neither forged nor fabricated. Therefore, the selection being in accordance with law and the selected candidate having joined and continuing on the post, being removed on the basis of a later development and also after having worked for some time, it cannot be said that the appointment itself was fraudulent or bad *ab initio*. Thus, the removal of Ms. Rani Devi amounts to there being a vacancy arising upon her selection being cancelled, which was on 05.06.2012. Therefore, the same is necessarily required to be filled up by a fresh process of selection and that has to be done in view of the latest and up-to-date



rules/guidelines issued by the State Government.

6. In view of the aforesaid, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the present Letters Patent Appeal which, accordingly, stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P. Kumar

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