

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.692 of 2014
IN
Civil Writ Jurisdiction Case No. 13860 of 2012**

- =====
1. The State of Bihar.
 2. Principal Secretary, Social Welfare Department, Government of Bihar, Old Secretariat, Patna.
 3. The Director, Integrated Child Development Services, Bihar, Patna.
 4. The Commissioner, Darbhanga Division, Darbhanga.
 5. The District Magistrate, Darbhanga.
 6. President Selection Committee, ICDS Darbhanga.
 7. The District Programme Officer, Darbhanga cum Secretary Selection Committee ICDS Darbhanga.

.... Appellants

Versus

1. Madhumala Singh, D/O Uday Bhanu Prasad Singh, R/O Bakarganj Laharia Sarai, P.S. Lahariasarai, District - Darbhanga.--- ---- Respondent 1st Set
2. Soni Kumari, W/O Sri Navin Kumar Mishra, Resident of Village and Post - Pator (West Tola) Via Anandpur, P.S. Ashok Paper Mill, District - Darbhanga.
3. Usha, W/O Sri Sanjay Kumar, Resident of Holi Mission School, Bengali Tola Laheriasarai, District - Darbhanga.
4. Soni Kumari, W/O Sunil Kumar Suman, D/O Sri Ravi Shankar Srivastava, C/O BL DAS (Rtd. Police Inspector) Moh. Gandhi Nagar, Post - Lakmisagar, District - Darbhanga.
5. Jankee Kumari, W/O Sri Sohan Sharma, D/O Yogendra Thakur, resident of Village - Sohra, P.O.- Anandpur, P.S. Ashok Paper Mill, District - Darbhanga.
6. Sima Kumari, W/O Sri Ajay Kumar, Resident of Ganj Bagitpur, Ward No. 1, District - Darbhanga.
7. Kranti Pushpa Bala, D/O Sri Yugal Kishore Prasad Verma, C/O Smt. Manju Verma, Resident of Azamnagar, Durga Mandir (Near Sabri Mandi), P.O. Lalbag, District - Darbhanga.
8. Tanwir Fatima, W/O Firoz Haider, Resident of Mohalla - Maulaganj Khanchawk, P.O. - Lalbagh, District - Darbhanga.
9. Kumari Gayatri, W/O Sri Ram Bharat Paswan, Resident of Village and Post - Banauli, Via Bharathi, District - Darbhanga

.... Respondents

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Appearance :

For the Appellant/s : Ms. Namrata Mishra, G.A.6
For the Respondent No.1: Mr. Surendra Kumar Singh with Mr.
Avinash Shekhar, Advocates

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 08-11-2016



I.A. No.3539 of 2014

The interlocutory application has been filed for condoning the delay of 93 days in filing the appeal.

On a consideration of the facts stated in the application and upon hearing learned counsels for the appellants and respondent No.1, the other respondents not appearing, the delay in filing the appeal is condoned.

I.A.No.3539 of 2014 is, accordingly, disposed of.

The appeal has been filed against the common judgment and order dated 9.5.2013 passed in CWJC No. 13860 of 2012, filed by respondent No.1, along with another writ application bearing CWJC No. 13472 of 2012. It is stated that with respect to CWJC No. 13472 of 2012, LPA No.306 of 2014 was filed but the same has been dismissed for non-compliance of the peremptory order of this Court.

The writ application, out of which the present appeal arises, was filed for a direction on the respondents to award 15 bonus marks to the petitioner in terms of the provisions contained in Clause IV(GA) of the Resolution dated 10.6.2010 and prepare a merit list and appoint the petitioner to the post of Female Supervisor and for other consequential reliefs.

Pursuant to the Advertisement dated 16.8.2011 inviting applications for appointment to the post of Female Supervisor under ICDS Scheme the writ petitioner, Madhumala Singh, had applied. The



writ petitioner had successfully completed her graduation and post graduation in the subject of Home Science. The appointment was governed by the Resolution dated 10.6.2010 issued under the signature of the Principal Secretary, Social Welfare Department, Government of Bihar, by order of the Governor of Bihar. With regard to the appointment in question, it was provided in the said Resolution that the average marks obtained at the level of Matriculation or equivalent examination, Intermediate and Graduation ought to be calculated and the candidates who had completed the Graduation and Post Graduation with more than 45% marks in certain subjects, including Home Science, were to be granted 5 marks and 10 marks respectively as bonus marks over and above the average marks in three examinations. The manner in which the provision of Clause IV (GA) had been framed with respect to providing 5 bonus marks and 10 bonus marks in Graduation and Post Graduation appears to be vague and requires interpretation. However, the same was followed by three specific examples as to how calculations were to be made with respect to candidates who had completed Graduation as also Post Graduation in the specified subjects and a hypothetical example was given of one Meera Kumari who had obtained 72 marks in Matriculation Examination, 76 marks in Intermediate Examination and 48 marks in Graduation and was further a Graduate in the specified subject as also Post Graduate in the specified subject; on the



basis of the same it was calculated that the said hypothetical candidate had obtained average mark of 75.33; for Graduation with specified subject she was entitled to bonus marks of 5 and for Post Graduation in specified subject to 10 marks and accordingly her full marks was shown as 75.33%, i.e., only 10 bonus marks was shown on account of the Post Graduation and not cumulative addition of 5 and 10 marks in the Graduation and Post Graduation in the specified subjects.

The aforesaid award of marks as to whether 5 marks for Graduation in specified subject and further 10 marks for Post Graduation was to be added or not, was the subject matter of the writ petition before the learned Single Judge, the writ petitioner Madhumala Singh claiming addition of $5 + 10 = 15$ marks, and on the basis of the same she claimed her appointment on the post of Female Supervisor. The same was opposed by the State on the basis of the Resolution.

Learned counsel for the State before the learned Single Judge had also relied upon the clarification dated 17.9.2010 issued by the Director, ICDS in which it was stated that only 5 or 10 marks have to be awarded for Graduation and Post Graduation in specified subject and not 15 marks in case of a Post Graduate candidate. The learned Single Judge held that any clarification of Director, ICDS dated 17.9.2010 as also subsequent letter dated 19.7.2012 which, in fact, was in favour of the petitioner was wholly fake and unauthorized,



inasmuch as he could have neither overreached the Government Resolution nor his own earlier clarification issued on 10.1.2012 and for that the reason did not accept the clarification issued by the Director, ICDS. The learned Single Judge had also considered the concession of the Principal Secretary of the Social Welfare Department before the Court that the preparation of panel by the Collector, Darbhanga (in the present matter) was contrary to the Government decision and the patch up work done by the Director, ICDS by his letter dated 19.7.2012 was on his own accord without obtaining the approval of the State Government.

Learned Government Advocate No.6 appearing for the appellant-State submits that the matter has to be considered squarely on the basis of the Government Resolution dated 10.6.2010 and the said Resolution makes it clear as to how calculation of bonus marks has to be done. It is thus submitted that on the basis of the said Government Resolution and the hypothetical example given as to how the calculation is to be made, the writ petitioners had no case at all for obtaining additional 5 marks plus 10 marks for Graduation and Post Graduation in specified subjects and therefore the appointment made in Darbhanga district was in accordance with the said Resolution and ought not to have been interfered with by this Court.

Learned counsel for the respondent No.1, on the other hand, submits that in terms of the Resolution dated 10.6.2011 the writ



petitioner is entitled for 5 and 10 additional marks for Graduation and Post Graduation in specified subject separately and as such she was rightly awarded 15 marks as held by this Court.

It is submitted that almost all the districts, barring Darbhanga, have awarded 5+10 marks for Graduation and Post Graduation in specified subject and thus the judgment and order of the learned Single Judge ought not to be interfered with.

It is also submitted that the Resolution itself is clear on the point that marks are to be awarded cumulatively for Graduation and Post Graduation, i.e., 5 and 10 marks respectively in specified subject.

We have considered the submissions of learned counsels for the State-appellant and the writ petitioner-respondent No.1 before us. We are fully in agreement with that part of the observation of learned Single Judge that the Government Resolution dated 10.6.2010 was not open to any clarification by the Director, ICDS, Bihar and he had no authority to do so. We are, however, further of the view that the matter cannot be decided on the basis of any concession that the Principal Secretary may have made; when guidelines have been laid down by Resolution issued under the orders of Governor of Bihar then rights of the parties can only be determined on the basis of the said Resolution and not on any clarification by any officer of the Government or even a concession made before this Court by the Head



of the Department, namely, Principal Secretary. If the Resolution requires a clarification or amendment the same could only have been made by issuing another Resolution under the orders of the Governor and not otherwise.

In view of the aforesaid, the inter se rights of the candidates have to be decided on the basis of the Resolution dated 10.6.2010. So far as the main part of the Resolution is concerned, it is open to interpretation but it has been followed by three specific instances indicating as to how the Resolution has to be applied. In terms of the hypothetical example made in the case of Meera Kumari who had graduated and post graduated in specified subject the additional marks to be given was only 10 and not $5 + 10 = 15$ marks. That being the position, any appointment process would be bound to follow the same until a different view is taken by the Government by amending the Resolution itself. No such amendment has been brought to our notice which had taken effect prior to the appointment process.

In this regard, learned counsel for the writ petitioner-respondent No.1 refers to Clause 15 of the Guidelines which provides for interpretation of the said Guidelines. According to us, the same does not appear to be of any benefit to the petitioner. The clause provides that in case of any doubt appearing in following any provision of the Guidelines in question and any such case apart from the aforesaid guidelines comes to light then in such circumstances the



concerned District Magistrate would bring it to the notice of the Director, ICDS, who shall after considering the same in case of need issue appropriate direction after obtaining approval of the Government. It is not in dispute that no such approval of the Government had been taken for issuance of any guidelines by the Director, ICDS and, as a matter of fact, even the direction of the Director, ICDS at the relevant time was contrary to what has been sought to be interpreted on behalf of the petitioner. Moreover, such interpretation would only apply where a case not covered by the Guidelines would come into question but the Government Resolution itself has cited examples for the marks to be awarded in a matter like the present and there was no further room for interpretation of the same by the Director, ICDS and the Government. The appointment process having started pursuant to the advertisement, it would not be open to any authority to interfere with the same except where there was a grey area. In our view, there is no grey area in the present matter and the same is squarely covered by the aforesaid example for giving bonus marks.

For the aforesaid reasons, the appeal is allowed and the judgment and order dated 9.5.2013 passed in CWJC No.13860 of 2012 is quashed and the writ application is dismissed.

Since we have decided the appeal on the basis of interpretation of the State Government Resolution dated 10.6.2010,



the same would apply to the entire appointment process under the said advertisement in the district of Darbhanga.

(Ramesh Kumar Datta, J)

(Rajendra Kumar Mishra, J)

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