

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15684 of 2016

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1. Nilam Devi, W/o Kaushal Paswan, resident of Hatiya Tola Khunt, Ward no. 7, Post-Chopra Ramnagar, P.S.-Janakinagar, District Purnea.
 2. Sapna Jha, W/o Late Mukesh Jha, Resident of Village-Nagar Panchayat, Ward No.16, Post-Banmankhi, P.S.- Banmankhi, District- Purnea.
 3. Anshu Kumari, W/o Sri Mithilesh Kumar, Resident of Village- Khunt, Ward No.-4, Post-Chopra Ramnagar, P.S.- Janakinagar, Disrict- Purnea.

.... Petitioner/s

Versus

1. The State of Bihar, through the Secretary, Department, of Social Welfare, Government of Bihar, Patna.
2. The Director (I.C.D.S.), Integrated Children Department Administrative -cum- District Officer, Purnea.
3. Joint Commissioner -cum- Secretary Regional Transport Authority, Office of Sub Divisional Commissioner, Purnea.
4. The District Officer, Purnea.
5. The District Programme Officer, Purnea.
6. The Deputy Collector, Land & Reforms, Banmankhi, Purnea.
7. The Child Development Project Officer, Banmankhi, Purnea.
8. Bechani Kumari @ Devi, W/o Kaila Rishideo, at Hatiya Tola, Post- Chopra Ramnagar, P.S.- Janakinagar, Disrict- Purnea.

.... Respondent/s

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Appearance :

For the Petitioner/s : Ms. Mira Kumari, Adv.
For the Respondent-State : Mr. Sunil Kumar Mandal, SC-3
Mr. Bipin Kumarr, AC to SC-3
For Private Respondent No.8 : Mr. Tarun Kumar Shekhar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-11-2017

Heard Ms. Mira Kumari, learned counsel appearing for the petitioners, Mr. Bipin Kumar, learned Assisting Counsel to Standing Counsel No.3 for the State and Mr. Tarun Kumar Shekhar, learned counsel appearing for the private respondent no.8.

The writ petition was initially filed questioning the termination order of the petitioners from the post of Anganwari Sahayika in different centres under Banmankhi block in the district



of Purnea however while the writ petition is pending that a fresh selection process was initiated resulting in appointment of the newly added respondent no.8 in place of petitioner no.1. An interlocutory application bearing I.A. No.4308 of 2017 was thus filed for impleading respondent no.8 as party respondent. The prayer was allowed vide order passed on 25.7.2017 and notice was issued to the newly appointed Anganwari Sahayika. Upon service of notice that the respondent no.8 appeared on 16.10.2017 and prayed for time to file counter affidavit. Affording time to the private respondent to file her counter affidavit that the matter was adjourned to 6th of November, 2017 but despite time granted no counter affidavit is filed and yet a prayer for adjournment is being made, which is rejected and the matter is considered on merits.

This writ petition was filed on behalf of the three petitioners but since the petitioner no.3 Anshu Kumari was appointed as a Constable that she did not wish to pursue the writ petition and vide order passed on 25.7.2017 the writ petition in so far as petitioner no.3 is concerned, was dismissed as not pressed and has proceeded in respect of petitioner nos.1 and 2.

The facts on record would transpire that following the advertisement at Annexure 17 to the supplementary affidavit that process was initiated for appointment of Anganwari Sevika and



Sahayika in the district of Purnea. The advertisement would indicate that the District Magistrate, Purnea had satisfied himself as to the preliminary exercise required to be carried out before the advertisement was published for appointment of Anganwari Sevika and Sahayika.

Be that as it may, it is following the advertisement at Annexure 17, the two petitioners (petitioner nos.1 and 2) applied and having succeeded in the selection process that appointment orders were issued on 5.2.2015 and 18.2.2015 in respect of the two petitioners herein, copies of which are placed at Annexures 2 and 3 respectively. It is barely a month after the appointment orders were issued that some kind of post-facto enquiry was carried out, the report of which is placed at Annexure 5 series and which points out certain irregularities in the selection process. The report relating to Centre No.205 on which the petitioner no.1 had been appointed, mentions the following irregularities:

- (a) The Mapping Panji and determination of majority class has not been carried out;
- (b) No evidence is available as regarding the approval of centre; and
- (c) The letter of the Ward Councillor is not present.

In so far as Centre no.278 for which the petitioner no.2



was appointed the report is present at page 19 of the writ proceedings which also form part of Annexure 5 series and similar objection are raised with an additional irregularity that the merit list was published belatedly.

It is proceeding on the enquiry report at Annexure 5 series that the District Programme Officer, Purnea drew proceedings for cancellation of appointment and simply seeking report from the Child Development Project Officer that he has proceeded to cancel the appointment of the two petitioners vide order bearing Memo No.807 dated 9.6.2015 in so far as petitioner no.1 is concerned impugned at Annexure 6 and order bearing Memo No.806 dated 9.6.2015 impugned at Annexure 7 in so far as petitioner no.2 is concerned without bothering to issue notice or give opportunity of hearing to them. The appeal preferred by the petitioner nos.1 and 2 bearing Service Appeal No.326 of 2015 and Service Appeal No.317 of 2015 respectively has also been dismissed by the District Magistrate, Purnea vide order passed on 11.8.2015 copies of which are impugned at Annexures 9 and 10 respectively. Feeling aggrieved these two petitioners are before this Court.

Although the petitioners have specifically stated in paragraphs 10 and 11 of the writ petition that the orders have been passed simply on the basis of inspection report and without



opportunity of hearing to the petitioners but since the orders impugned were passed on grounds of irregularities in the selection process that the petitioners were directed to support their stand that the exercise of Mapping Panji and determination of majority class had been followed. A supplementary affidavit is filed enclosing the documents relating to Mapping Panji of the centres in question as well as determination of majority class which goes uncontested.

The enclosures at Annexure 18 to the supplementary affidavit, sufficiently confirms that a full-fledged exercise in drawing Mapping Panji was carried out in so far as Centre Nos.205 and 278 are concerned for which these two petitioners were appointed and in so far as the determination of majority class is concerned, the evidence in so far as Centre No.205 is concerned, is present at running 74 and in so far as Centre No.278 is concerned the evidence is at running page 93.

As observed, the submission made in the supplementary affidavit goes uncontested even though a copy of the same was served on the State Counsel on 2nd of August, 2017. It is after a lapse of almost 3 months thereafter that this matter has been heard but the statement made in the supplementary affidavit together with the enclosures thereto goes uncontested for neither the State nor the private respondent have bothered to contest the same.



This single instance is sufficient to hold that the enquiry report at Annexure 5 series which is the foundation for the impugned order, is mechanical and de hors the material on records and thus the order passed thereon by the District Programme Officer, Purnea cancelling the appointment of the two petitioners both dated 9.6.2015 impugned at Annexures 6 and 7 together with the appellate order passed by the District Magistrate, Purnea at Annexures 9 and 10 are perpetuation of illegality because none of them have bothered to satisfy themselves from the record of the proceedings. Besides the illegality and lack of application noticed above, the issue that the petitioners were not given opportunity to defend themselves and when they could have presented these aspects to the notice of the authorities, is an addition to the default confirming that the orders impugned cannot be upheld.

The argument of Mr. Bipin Kumar, learned counsel for the State that even if the original authority did not afford opportunity to the petitioners, since the District Magistrate had heard the appeals on the issue it would cure the defect. In my opinion the argument advanced is only taken to be rejected because neither a void order can be sanctified nor the order of the appellate authority justifies application of mind. A plain reading of the order passed by the District Magistrate, Purnea would confirm that he has not bothered



to scan through the records of selection process for had he gone through the same, may be, the opinion would have been otherwise.

For the reasons so discussed the order impugned dated 9.6.2015 at Annexures 6 and 7 whereby the appointment of the two petitioners to the post of Anganwari Sahayika has been cancelled is quashed and set aside.

Since the appointment of private respondent no.8 vide order dated 4.10.2016 impugned at Annexure 14 to I.A. No.4308 of 2017 was in consequence of vacation of post by reason of the orders impugned and since the order of cancellation of the petitioners has been set aside, it is only a matter of consequence that the order of appointment of private respondent no.8 dated 4.10.2016 impugned at Annexure 14 be also quashed and it is accordingly set aside. The petitioner nos.1 and 2 are accordingly restored to their respective posts.

The writ petition is allowed.

(Jyoti Saran, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.11.2017
Transmission Date	NA

