

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1988 of 2016
IN
Civil Writ Jurisdiction Case No. 2120 of 2014

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Kumari Rekha Bharati, W/o Sri Man Singh, R/O of Vill- Mirapur Tola,
Kumhrapakar, P.S.- Sakra, Distt,- Muzaffarpur.

.... Appellant

Versus

1. The State of Bihar through the Secretary, Social Welfare Department, Govt. of Bihar, Patna.
2. Director I.C.D.S, Department of Social Welfare, Govt. of Bihar, Patna.
3. Commissioner, Tirhut Division, Muzaffarpur.
4. District Magistrate, Muzaffarpur.
5. District programme Officer, Muzaffarpur.
6. Child Development Project Officer, Dholi (Muraul), Distt,- Muzaffarpur.
7. Mukhiya Gram Raj, Mirapur, Anchal-Muraul, P.S.- Sakra, Distt,- Muzaffarpur.
8. Panchayat Secretary, Gram Panchayat Raj, Mirapur, Anchal-Muraul, P.S.- Sakra, Distt.-Muzaffarpur.
9. Vimal Kumari, W/o Ramesh Prasad, R/o of Vill.- Mirapur Tola Kumhrapakar, Block-Muraul, P.S.- Sakra, Distt,- Muzaffarpur.

.... Respondents

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Appearance :

For the Appellant : Mr. Ganpati Trivedi, Sr. Advocate and Mr.
Manoj Kumar, Advocate.

For the State : Mr. K.K. Jha, A.A.G. 8.

For the Respondent No.9: Mr. Y.V. Giri, Sr. Advocate, M/S. S.C.Giri
and Suman Kumar Singh, Advocates.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)
Date: 26-04-2017

Heard learned counsel for the appellant and the
respondents.



2. In this Letters Patent Appeal, the challenge is made to the order dated 07.09.2016 passed in CWJC No. 2120 of 2014, by the learned Single Bench of this court, by which the writ petition filed by respondent no.9, has been allowed, which was filed for quashing the order dated 20.03.2013 passed by the Collector, Muzaffarpur in Case No. 83(Misc)/2012-13, cancelling her appointment to the post of Aanganwari Sevika, Center No.43/9, Block Muraul, Gram Panchayat Mirapur within the district of Muzaffarpur, on the ground that at the time of her appointment made in the year 2008, her father was a government teacher. The respondent no.9 had also sought for quashing of the order dated 30.10.2013 passed in Service Appeal Case No. 246 of 2013 by the Commissioner, Tirhut Division, Muzaffarpur, by which the order of cancellation of appointment of the respondent no.9 as referred above came to be affirmed.

3. The brief facts, leading to this Letters Patent Appeal are as under:-

The appellant and respondent no.9 made application for appointment on the post of Aanganwari Sevika at Aanganwari Centre No.43/09, Gram Panchayat Mirapur, Block Muraul, District-Muzaffarpur, for the purpose of appointment a merit list was prepared, in which the name of the respondent no.9 appeared



at serial no.01 and the name of the appellant appeared at serial no.02. The appellant came to be appointed on the post of Aanganwari Sevika, whereas the respondent no.9 could not be appointed, though having higher merit than the appellant. The District Programme Officer, Muzaffarpur quashed the appointment of the appellant vide order bearing Memo No. 14 dated 09.01.2008 and also directed for conducting fresh process of selection, thereafter appointment, consequently, the respondent no.9 came to be appointed by the fresh process of selection. The appellant earlier challenged her cancellation of appointment, before this Court in CWJC No. 3408 of 2008. A Bench of this Court quashed the order of termination of the appellant, holding therein that since the District Magistrate is competent to pass such order regarding the validity of appointment of Aanganwari Sevika, therefore, the order passed by the District Programme Officer, Muzaffarpur was without jurisdiction. The Single Bench of this court while quashing the order of cancellation of appointment of the appellant, allowed the respondent no.9 to continue on the post and further directed the District Magistrate, Muzaffarpur to consider the matter and pass appropriate orders, whereupon Case No.83(Misc)/2012-13 was instituted before the District Magistrate, Muzffarpur, and relying upon Clause 3 (Anga) of guidelines dated



03.10.2006, the respondent no.9 was held ineligible for appointment, on the ground that at the relevant time, her father was a government teacher. The order of the District Magistrate, Muzaffarpur subsequently affirmed by the Appellate Authority namely Commissioner, Tirhut Division, Muzaffarpur.

4. The learned counsel for the appellant submits that the father of the Respondent No. 9, was a government servant and was serving the post of teacher, in a government school is not under dispute, therefore, in terms of Clause 3 (Anga) of the guidelines dated 03.10.2006, the respondent no.9 was ineligible to hold the post of Aanganwari Sevika, thus her appointment was rightly been cancelled by the Collector, Muzaffarpur, which subsequently came to be affirmed by the Commissioner, Tirhut Division, Muzaffarpur.

5. On the other hand, the learned counsel for the respondent no.9 submits that the respondent no.9 is a married daughter and her matrimonial home is in the District of Muzaffarpur, whereas her parental home is situated in the District of Vaishali. The learned counsel for the respondent no.9 further submits that her father was posted somewhere in the District of Vaishali, therefore, the Sub-Clause (Anga) of Clause 3 of the guidelines for appointment of Aanganwari Sevika is not applicable



in the case of respondent no.9 and the same does not make her disqualified.

6. From the rival contention of the parties, the only issue emerges for our consideration that the provisions underlying in Sub-clause (Anga) of Clause 3 of the guidelines for appointment of Aanganwari Sevika, makes the respondent no.9 ineligible for appointment on the post of Aanganwari Sevika, as her father was in government servant holding a post of Teacher in a Government School.

7. From the records of the case, it appears that respondent no.9 got married in the year 1992 and thereafter she has been permanently residing their at her matrimonial home in the District of Muzaffarpur, whereas her father was a government teacher posted in the District of Vaishali.

8. The fact is not in dispute that the respondent no.9 got married in the year 1992 and the present dispute is of the year 2006 and her father was not serving his job in the District of Muzaffarpur, where her appointment on the post of 'Anganwari Sevika' had been made.

9. At this juncture, we would like to agree with the view expressed in LPA No. 1710 of 2016 (Manju Kumari –Vs- Kumud Kumari & Ors.), wherein the Division Bench of this court



expressed as under:

“We are of the view of the from bare reading of sub-clause (Anga) of Clause 3 of the prevalent guidelines framed by the Social Welfare Department, Government of Bihar, dated 30.10.2006, it appears that daughter has been put together with wife and daughter-in-law, of the government servant or Semi government servant, as to disqualify them from being selected on the post of ‘Aanganwari Sevika’ and ‘Sahaika’, which necessarily means only such unmarried daughter, who being part of the family of the government servant or Semi government servant, at the relevant time of appointment, was not eligible to be appointed on the post of ‘Aanganwari Sevika’ in terms of I.C.D.S. (D), guidelines dated 30.10.2006.”

10. The learned Single Judge while quashing the order of the Collector, Muzaffarpur, as also the order of the Commissioner, Tirhut Division, Muzaffarpur has allowed the writ petition by restoring the respondent no.9 to the post of ‘Aanganwari Sevika’.

11. In view of the facts and discussions, made above, we find no valid reason to interfere in the order of learned Single



Bench.

12. The Letters Patent Appeal, thus stands dismissed.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

U.K./-

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