

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10660 of 2014

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Suman Kumari @ Suman Devi wife of Shri Ishwar Chandar Sah, resident of
village- Sawan Bahar, P.S. and Block- Karahgar, District- Rohtas

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department,
Secretariat, Patna
2. The Director, Integrated Child Development Scheme, Indira Bhawan Boring
Canal Road, Patna
3. Divisional Commissioner, Patna
4. The District Magistrate, Rohtas at Sasaram
5. District Programme Officer, Rohtas at Sasaram
6. Child Development Project Officer, Karahgar, District- Rohtas
7. Mukhia, Barahari Gram Panchayat Block and P.S. Karahgar, District Rohtas
8. Secretary (Panchayat Sewak) Barhari Gram Panchayat, P.S. Karahgar, District-
Rohtas
9. Anaja Kumari wife of Shri Rajesh Rai, resident of Village- Khairhi Panchayat
Barhari, P.S. Karahgar, District- Rohtas

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kishore Kumar Thakur, Advocate
For the Respondent/s : Mr. Abbas Haider, SC 16

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

Date: 13-12-2017

By filing the instant writ petition the petitioner has challenged the orders dated 22.10.2013/30.01.2014, Annexure 1 of the writ petition i.e., the order passed by the Divisional Commissioner, Patna in Miscellaneous Appeal No. 213 of 2011 whereby and where under the petitioner has been directed to file a show cause as to under what circumstances she had been making her claim for appointment as Angan Bari Sevika at Centre Sawan Bahar, by suppressing the fact



regarding creation of the Centre Savan Bahar in the year, 2007 and by misrepresenting that earlier in 2004 she had been selected for being appointed as Angan Bari Sevika to this Centre when actually she had been selected for Barhari Centre.

2. During pendency of the writ petition an I.A bearing I.A. No. 4533 of 2014 was filed praying for amendment of the writ petition in view of the developments subsequent to filing of the writ petition. The same was allowed and the petitioner vide order dated 24.07.2014 was permitted to assail the validity and correctness of the order dated 18.06.2014 (Annexure 11) passed by the Child Development Project Officer, (hereinafter referred to as 'the CDPO') Kargahar, Rohtas directing the petitioner to hand over charge to Respondent no. 9 and also to submit her show cause in compliance of the said Annexure 1.

3. The petitioner was selected for appointment as Angan Bari Sevika to Barhari, Centre in the year, 2004. The Child Development Project Officer did not accept the joining of the petitioner. Petitioner thereafter, preferred an appeal bearing no. Appeal Case No. 8 of 2004 before the District Magistrate which led to filing of C.W.J.C No. 12016 of 2006 by the petitioner. The same was finally disposed of by a common order along with other cases vide order dated 05.11.2007, Annexure 4 of the writ petition with a



direction to finally decide the appeal within a time frame indicated therein.

4. Be it noted here that while the said writ petition was pending before this Court, the State Government, considering the increase in population had created a new centre by the name of Savan Bahar out of Barhari Centre to which the petitioner had earlier been recommended for appointment. One Anjana Kumari (respondent no. 9) was thereafter, appointed as Angan Bari Sevika in respect of the newly created Sawan Bahar Centre. The creation of Savan Bahar Centre is evident from Annexure- D of the counter affidavit filed by the State. Annexure-E of the said counter affidavit discloses the proceedings of the Aam Sabha dated 21.05.2007 leading to appointment of the said respondent no. 9. From the said proceedings it is quite obvious that the petitioner had also participated in the selection process for the newly created Centre Savan Bahar.

5. This fact was not considered in the proceeding arising out of C.W.J.C. No. 12016 of 2006 as the same had been suppressed by the petitioner. The Appeal no. 8 of 2004 was finally decided on 25.06.2009 in terms of the said order dated 05.11.2007 passed in C.W.J.C No 12016 of 2006. The same is Annexure 5 of the writ petition. Since the fact of new Centre Savan Bahar was suppressed in the earlier proceedings, the District Magistrate while disposing of the



said appeal cancelled the appointment of respondent no. 9, under the impression that she too had been appointed as Angan Bari Sevika for Barhari Centre where the petitioner had been recommended for appointment in 2004.

5. When the said order was not implemented, the petitioner again approached this Court by filing C.W.J.C. No. 8529 of 2010 wherein she raised a grievance that the order of the Collector passed in Appeal No. 8 of 2004 was not being implemented by the District Programme Officer. The matter was once again disposed off with direction to the Collector, Sasaram to look into the matter and take appropriate steps immediately in accordance with law vide order dated 17.03.2011.

6. When the matter was finally taken up by the Divisional Commissioner in Miscellaneous Appeal No. 213 of 2011 filed by the said Anjana Kumari (respondent no. 9), the Divisional Commissioner finally realized that the petitioner had obtained orders in the earlier writ proceedings in respect of her claim for appointment as Angan Bari Sevika as against respondent no. 9 without disclosing the fact that respondent no. 9 had been appointed on the newly created Centre Savan Bahar and not for the Centre Barahari on which the petitioner had been selected for appointment in the year, 2004. When the same was discovered, the claim of the petitioner for appointment



as Angan Bari Sevika was kept pending by the Divisional Commissioner, Patna and considering the fact that the petitioner had indulged in suppression of material facts as noticed above, the petitioner was called upon to submit her explanation as to why criminal proceedings may not be initiated against her for filing false affidavit and for indulging in the act of willfull and deliberate suppression and misrepresentation of fact in respect of her claim for appointment as Angan Bari Sevika.

7. The order dated 18.06.2014 passed by the CDPO, Rohtas (Annexure 11) was issued as a consequence of the said order passed by the Divisional Commissioner, Patna in Miscellaneous Case No. 213 of 2011 dated 22.10.2013/30.01.2014. By the same, the petitioner has been directed to hand over the charge of Angan Bari Sevika at Centre, Savan Bahar (newly created) to the said Anjana Kumari respondent no. 9 and also submit the explanation in compliance of the said order passed by the Divisional Commissioner in Miscellaneous Appeal No. 213 of 2011.

8. In the meantime, the respondent no. 9 had also approached this Court by filing a writ petition bearing the C.W.J.C. No. 14906 of 2011 challenging the order of the District Magistrate passed in Appeal Case No. 8 of 2004 whereby her appointment as Angan Bari Sevika for newly created Savan Bahar Centre was



cancelled. It was in this proceeding that this Court considered for the first time that the said Anjana Kumari had been appointed for the different Centre and that the instant petitioner, who had been made a private respondent in C.W.J.C No. 14906 of 2011 had in fact been selected for Barhari Centre and that there was no conflict of interest between the two as they were not appointed on the post of Angan Bari Sevika on the same Centre. C.W.J.C. No. 14096 of 2011 was finally disposed off vide order dated 20.10.2011 remanding the matter to the Divisional Commissioner to hear all the parties and to decide the issue on merits as there was no material available before the Court with regard to such points having been urged.

9. The impugned orders passed in Misc. Appeal No. 213 of 2011 by the Divisional Commissioner, Patna as well as the order dated 18.06.2014 passed by the CDPO have been issued after considering the orders passed on the earlier writ petitions bearing C.W.J.C. No. 12016 of 2006, C.W.J.C. No. 8529 of 2010 as also the order dated 20.10.2011 passed in C.W.J.C. No. 14906 of 2011(Annexure R) to the counter affidavit filed on behalf of the respondent no. 9.

10. From perusal of the said order dated 20.10.2011 passed in C.W.J.C. No. 14906 of 2011 it is quite apparent that the same has finally concluded the issue that the petitioner had no



subsisting claim against the selection of respondent no. 9 Anjana Kumari, at Savan Bahar Centre as the petitioner had earlier been selected for appointment as Angan Bari Sevika for Barhara Centre.

11. Till date the petitioner has not responded or filed her explanation in response to the order of the Divisional Commissioner in Misc. Appeal No. 213 of 2011 or in compliance of the letter dated 18.06.2014 issued by the CDPO. Without responding to the explanation she has again approached this Court and sought quashing of the notice asking for explanation, pending consideration of her claim for appointment as Angan Bari Sevika to Barhari Centre Rohtas. She has once again raised the issue regarding the appointment of the said respondent no. 9 in place of the petitioner.

12. In view of the specific findings recorded in the order dated 20.10.2011 passed in C.W.J.C. No. 14906 of 2011 regarding there being no conflict of interest between the petitioner and the respondent no. 9 as they were not appointed on the post of Angan Bari Sevika to the same Centre, and the fact that till date the said order has not been challenged by the petitioner even though she was party to the proceedings, the writ petition as framed is misconceived. The said findings have attained finality between the parties to the instant writ petition and therefore, the prayer no. 1 (ii) of the writ petition again claiming relief against the same Anjana Kumari, Respondent no. 9 is



not maintainable. Further the prayer made by the petitioner for quashing the order of the Divisional Commissioner in Appeal No. 213 of 2011 directing her to file show cause, is also not maintainable as no prejudice has been occasioned to the petitioner by the said order as the same merely seeks her explanation. She has not availed of the opportunity granted by the Divisional Commissioner in Misc. Appeal No. 213 of 2011. Since she has chosen not to file her explanation pursuant to the same, such prayer is premature for invoking the jurisdiction in favour of the petitioner under Article 226 of the Constitution.

13. In view of the facts noticed above the writ petition is therefore, dismissed. The petitioner however, would be at liberty to file an explanation in response to the said order passed in Misc. Case Appeal No. 213 of 2011 as also the order dated 18.06.2014 issued by the CDPO, Rohtas reiterating the direction of the Divisional Commissioner in Misc. Appeal No. 213 of 2011 for submitting her explanation. It goes without saying that the authorities would be obliged to consider the same in accordance with law.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	23.12.2017
Transmission Date	

