

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2110 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 11134 of 2013**

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1. Kalawati Devi, W/o Sri Sanjay Mishra
2. Nitu Devi, W/o Sri Raj Kumar Sharma, Both residents of Village - Parahan, P.O.
- Akbarpur, P.S. - Kinger, District - Arwal.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Social Welfare Department, Government of Bihar,
Patna.
3. The Director, ICDS, Government of Bihar, Patna.
4. The District Magistrate, Arwal.
5. The District Programme Officer, Arwal.
6. The Child Development Officer, Karpi Block, District - Arwal.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar Sinha, Advocate
Mr. Arvind Kumar Sinha, Advocate
For the Respondent/s : Mr. Amish Kumar, A.C. to AAG-8

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 12-05-2017

Seeking exception to an order dated 04.10.2016 passed



by the learned Writ Court in C.W.J.C. No. 11134 of 2013 this appeal has been filed under Clause 10 of the Letters Patent.

2. Facts in brief go to show that for appointment on the post of Anganwari Sevika and Anganwari Sahayika in Centre No. 160 of Parha-II in the district of Arwal, an advertisement was published in the daily newspaper on 01.02.2013 and in pursuance to the said advertisement only one candidate i.e. the Appellant No. 1 Kalawati Devi submitted her candidature. Appellant No. 2 had applied for the post of Anganwari Sahayika. According to the State Government as the guidelines issued contemplate that if only one application is received, selection cannot be made, it has to be readvertised. Action was taken for readvertisement and in the process after the readvertisement when a merit-list was prepared, challenging the second process initiated the writ petition in question was filed and the first ground canvassed was that once the advertisement was issued and the appellants were the only candidate, their application should have been considered and a decision taken.

3. The contention of the State Government is that Rule 8.2 contemplates for undertaking fresh selection if only one application is received, was rebutted by referring to various circulars. Be it as it may be, the selection process continued and based on the merit when the respondent was recommended for selection, further



supplementary affidavits were filed and it was tried to be indicated that the respondent intervenor has filed various fabricated documents to show that the petitioner appellant herein Smt. Kalawati Devi had also applied and as she was less meritorious, she was not appointed. It was the case of the appellant that in the second advertisement she had never applied and by means of forged documents, a merit-list has been prepared.

4. The learned Writ Court directed the State Government to clarify this position and by filing a supplementary affidavit, it was stated that the appellant did apply. She had received only 58.76 per cent marks in comparison to the respondent Sunita Devi who received 73.6 per cent marks in the merit. Be it as it may be, the learned Writ Court finding that the second selection to be permissible and in the second selection appellant being less meritorious, dismissed the writ petition and challenging the same, this appeal has been filed.

5. In this appeal, primarily the ground raised was that in the second selection process, an advertisement issued, the appellant had not applied and, therefore, based on the forged document if the selection was conducted, the same is unsustainable.

6. Even though this contention was refuted by the State Government by filing a detailed affidavit, we are of the considered



view that if that was the position, this was a disputed question of fact and it could not be resolved in the Writ Court. The appellants should have taken recourse to the statutory remedy available of filing an appeal before the contempt Appellate Authority where on inquiry into facts these issues could be decided. The learned Writ Court also by merely taking note of the affidavit without there being any supporting evidence should not have gone into the merit of the matter instead, should have relegated the parties to take recourse to the remedy available of filing an appeal before the competent authority. In the peculiar facts and circumstances of the present case, we are not inclined to interfere into the matter directly, instead, we grant liberty to the appellants to challenge the selection by approaching the Appellate Authority in accordance with the scheme for appointment and it would be for the Appellate Authority to take a decision on the matter. The findings recorded with regard to the merit- list prepared and the application submitted by the appellant for the second selection having been recorded by the learned Writ Court without proper inquiry, in case an appeal is filed, the Appellate Authority shall be at liberty to reassess the matter afresh in accordance with law without being influenced by any observations in this regard made by the Writ Court. In rejecting the claim of the appellants by holding that if only one application was received, fresh selection could be ordered,



the learned Writ Court has not committed any error and to that effect, the writ petition filed has been rightly dismissed, however, the finding recorded to the effect that the appellant submitted her application in pursuance to the second advertisement be enquired by the appellate authority and a decision taken independently without being influenced by the finding recorded by the Writ Court in this regard.

7. With the aforesaid liberty to the appellants, we dismiss this appeal finding no case made out for intervention at this stage.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

P.K.P.

AFR/NAFR	N.A.F.R.
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