

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12719 of 2016

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Yasmin Parween, Wife of Abdul Rasheed, resident of village - Asandapur, P.O. Jagarnatha, P.S. Uchakagaon, District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Social Welfare, Government of Bihar, Patna.
2. District Magistrate cum Collector, Gopalganj.
3. Deputy Director, Welfare, Saran Division, Chapra.
4. The District Programme Officer, Child Development Project, Collectorate, Gopalganj.
5. Child Development Project Officer, Uchakagaon, Gopalganj.
6. Tamanna Parween, Wife of Md. Ali, resident of village - Asandapur, P.O. Jagarnatha, P.S. Uchakagaon, District- Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Advocate Mr. Pranav Kumar, Advocate
For the Respondent-State	:	Mr. Krishna Chandra Jha, AC to AAG-8
For the Respondent No.6	:	Mr. Rana Pratap Singh, Advocate Mr. Dharamveer, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 22-06-2017

Heard Mr. Ashish Giri, learned counsel appearing for the petitioner, Mr. Krishna Chandra Jha, learned Assisting Counsel to Additional Advocate General No.8 for the State and Mr. Rana Pratap Singh, learned counsel appearing for the private respondent no.6.

The petitioner is aggrieved by the order dated 8.7.2016 passed by the Collector, Gopalganj in Anganbari Appeal No.2 of 2016, whereby the appeal filed by the private respondent has been allowed and her disqualification for appointment on the post of



Anganbari Sevika, Anganbari Kendra No.52, Uchakagaon in the district of Gopalganj under Clause-4.8 of the Anganbari Sevika/Sahayika Guidelines, 2011 (hereinafter referred to as 'the Guidelines') has been removed consequently making her eligible for appointment.

Facts of the case lie in a very narrow compass. Both the petitioner and the private respondent are contestants for the post and although the private respondent was put at serial no.1 of the merit list but she was disqualified by the selection committee by resorting to Clause 4.8 of 'the Guidelines' which disqualifies the applicant for appointment in case any of her close relative is holding public representative post. The petitioner thus who was at serial no.2 was provided with an appointment.

Feeling aggrieved the private respondent filed the statutory appeal and which was allowed but since the petitioner was not given hearing by the statutory authority that she moved before this Court in CWJC No.3795 of 2015 and vide judgment and order dated 28.3.2016 placed at Annexure-8 the writ petition was allowed, inter alia, on grounds that the petitioner had been denied opportunity of defending her case. The Bench remitted the matter to the authority concerned for consideration of the matter afresh and its disposal in accordance with law. It is thereafter that the matter has



again been considered by the Collector, Gopalganj and has resulted in the impugned order dated 8.7.2016 which restores the claim of the private respondents to the post by bringing her out of the disqualification clause present at Clause 4.8 of 'the Guidelines'. Feeling aggrieved the petitioner is before this Court.

Mr. Giri, learned counsel appearing for the petitioner has referred to the provisions underlying Clause 4.8 of 'the Guidelines' to submit that the list of close relatives, mentioned at Clause 4.8 are by way of mere illustration and are not exhaustive. According to Mr. Giri, since it is not in dispute that the brother of the father-in-law of the private respondent is a public representative, he would well qualify under the term 'close relative' and is sufficient to disqualify the private respondent for the appointment in view of the stipulation present at clause 4.8 of 'the Guidelines'. According to Mr. Giri, the term 'close relative' has to be given a purposeful construction and any person who in any manner is related to an applicant and holds a public representative post, it should be treated as a disqualification for the applicant. In substance it is the argument of Mr. Giri that since it is an admitted position that the brother of the father-in-law of the private respondent is holding public representative post he would well qualify as a close relative to disqualify the private respondent.



The argument of learned counsel for the petitioner is contested by counsel appearing for the State as well as the private respondent to submit that since the provision does not disqualify the daughter-in-law of the brother of a public representative, the private respondent cannot be disqualified and the error committed by the selection committee has been corrected by the impugned order.

I have heard learned counsel for the parties and I have perused the records. The only provision which requires consideration is Clause 4.8, 4.8(A) and 4.8(B) of 'the Guidelines' which, inter alia, provides for the categories of public representatives as well as the relative of an applicant who would fall within the term 'close relative' and reads as under:

“4.8 संबंधित जिले के पुरुष जनप्रतिनिधियों की पत्नी/बहू/अन्य रिश्तेदार इस पद के लिये अयोग्य होगी।

[रिश्तेदार से अर्थ है— माँ (सौतेला/दत्तक पुत्र एवं पुत्री) भाभी (अर्थात् बड़े एवं छोटे भाई की पत्नी) तथा इसके साथ महिला जनप्रतिनिधि के मामले में उनके पति के सहादर भाई की पत्नी, बहु और ननद]।

जन प्रतिनिधि (पुरुष एवं महिला के मामले में) पुत्री एवं बहन संबंधित प्रखण्ड में सेविका/सहायिका पद पर चयन हेतु अयोग्य होगी।

4.8(A) जनप्रतिनिधि (जैसे— मुखिया, वार्ड सदस्य, सदस्य पंचायत समिति, पंच, सरपंच, प्रमुख, उपप्रमुख, वार्ड कमिश्नर इत्यादि) सेविका/सहायिका पद के लिए अयोग्य होगी।

4.8 (B) अभ्यर्थी के संबंधी अथवा स्वयं अभ्यर्थी का जन प्रतिनिधि के पद से आम सभा में लिए गये अंतिम निर्णय के



उपरान्त 15 दिनों के भीतर सक्षम प्राधिकार द्वारा स्वीकृत त्याग पत्र बाल विकास परियोजना कार्यालय में जमा करना मान्य होगा। इसके पश्चात ही चयन पत्र निर्गत किया जायेगा। यदि 15 दिनों के बाद भी स्वीकृत त्याग पत्र प्राप्त नहीं होता है तो मेधा सूची पैनल से दूसरे नम्बर के अभ्यर्थी का चयन किया जाए।”

It is manifest that while Clause 4.8 ad 4.8(A) mentions the names of the relatives who, if holding a public representative post, would be held a disqualification for such appointment, Clause 4.8(B) grants time to any applicant to submit a resignation letter from such holder of post for avoiding the disqualification. A plain reading of different categories of the relatives discussed in Clause 4.8 and 4.8(A) would clearly show that the brother of the father-in-law of an applicant is not classified as a close relative. Thus even if such relation is holding a public representative post, it would not be held a disqualification. Although the sister-in-law as well as the adopted son and daughters have been held close relative but the brother of the father-in-law has been kept out of such disqualification. In other words ‘the Guidelines’ do not disqualify an applicant in case the brother of father-in-law holds a public representative post.

Mr. Giri has though strenuously argued that the classification is not exhaustive rather is by way of illustration but where ‘the Guidelines’ itself does not include a particular relative, any expansion of the term ‘close relative’ by this Court would



amount to legislating and which is clearly beyond the powers under extraordinary writ jurisdiction.

For the reasons aforementioned I am not persuaded to interfere with the opinion of the Collector, Gopalganj in removing the disqualification of the private respondent in consideration of Clause-4.8 of ‘the Guidelines’.

The writ petition is disposed of.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06-07-2017
Transmission Date	NA

