

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1327 of 2011
IN
Civil Writ Jurisdiction Case No. 3796 of 2009

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Smt.Sangeeta Kumari W/O Dharamveer Prasad R/O Mohalla - Pakartar, South,
Koeritola, P.O. + P.S. - Hilsa, District - Nalanda

.... Appellant/s

Versus

1. The State Of Bihar
2. The Divisonal Commissioner, Patna Division, Patna
3. The District Office Cum District Magistrate, Nalanda
4. The Sub - Divisional Officer, Hilsa, Nalanda
5. Nagar Panchayat, Hilsa, Nalanda Through Its Executive Officer
6. Smt. Sneha Lata Sinha W/O Nagina Prasad R/O Mohalla - Pakartar, South Koeri
Tola, P.O. + P.S. Hilsa, District Nalanda

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. R. K. RAJAN

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 07-09-2017

Seeking exception to an order dated
15.07.2011 passed by the learned Writ Court in Civil Writ
Jurisdiction Case No. 3796 of 2009, this appeal has been filed
under Clause-X of the Letters Patent.

In accordance to the guidelines issued by the
State Government in the year 2006, the selection process for
appointment to an Angan Bari Sevika under scheme was initiated



in the area in question. The appellant herein was appointed and respondent No. 6 raised an objection by holding that as per the guidelines, certain prohibitions are incorporated preventing near relatives of ward members and elected office bearers from applying for appointment to the post. It was averred by her that appellant's mother-in-law was an elected ward member of the *Parishad* in question and therefore the prohibition contained in the guidelines were attracted. The authorities concerned namely the District Magistrate on 07.12.2007 and thereafter the Commissioner on appeal on 09.12.2008 having allowed this objection and upheld the termination of the appellant. The matter came to the Writ Court and the Writ Court having approved the concurrent findings recorded by the District Magistrate and the Commissioner, this appeal under Clause-10 of the Letters Patent.

Learned counsel for the appellant invited our attention to the judgment of the Supreme Court in the case of ***Bharat Sanchar Nigam Limited and Another versus Bhupender Minhas and Others reported in (2008) 11 SCC-273*** and argued that merely because a relative was participated who was working in the establishment but until and unless the relative has not participated in the selection process, the selection cannot be vitiated. He further argues that on the date when the petitioner was appointed, her mother-in-law had already completed her tenure and her tenure lapsed on 16.06.2007 and the appointment was affected subsequent thereafter.



Even though the submissions look attractive, but if analyzed in the backdrop of the facts and circumstances of the case, it has to be rejected. As far as the Supreme Court judgment is concerned, that pertains to selection being initiated only on account of the fact that a close relative was also working in establishment. The Supreme Court held that until and unless the material available on record to show that the relative participated in the selection process, the selection cannot be vitiated. In this case, the position is entirely different. This is an appointment under scheme. The appointment is based on guidelines and in the guidelines, there is specific prohibition that no candidate can apply for appointment to the post if she happens to be the daughter,, daughter-in-law or close relatives of an elected ward member. In this case, admittedly petitioner's mother-in-law was an elected ward member and therefore the prohibition contained in the guidelines are attracted and the Supreme Court's judgment cannot be applied in this case. As far as the contention of the appellant that she was appointed after the tenure of her mother-in-law is concerned, the tenure of the mother-in-law was up to 16.06.2007, the advertisement was issued much before the said date and thereafter placed before the Aam Sabha on 04.04.2007. This meeting was adjourned for 11.04.2007. It was again adjourned on 04.07.2007 and it was finalized on 16.06.2016 which was the last date of holding of tenure of the mother-in-law of the petitioner. On the date when the selection list was finalized, the mother-in-law of



the petitioner was holding the office as a ward member and therefore, the learned Writ Court and the District Magistrate and the Commissioner have not committed any error in rejecting the candidature of the petitioner.

We see no error warranting reconsideration.

The appeal is, therefore, dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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