

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14256 of 2008

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Smt.Kumari Sweta, W/o Sri Pawan Kumar, Resident of Mohalla Shivpuri, Naga Road at P.O. & P.S. Raxaul, Dist. East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Commsisioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate, East Champaran, Motihari.
4. The District Welfare Officer, Motihari, District East Champaran.
5. The S.D.O. Raxaul, Dist. East Champaran.
6. The Child Development Project Officer, (C.D.P.O.) of Raxaul, District East Champaran.
7. The Ward Commissioner, Ward No. 14/22, Raxaul Nagar Parishad, Raxaul, Dist. East Champaran.
8. The Sadasya Sachiwa, Selection Committee, Ward No. 14/22, Raxaul, Dist. East Champaran.
9. Smt. Sangeeta Kumari, W/o Sri Sanjay Kumar Singh, Advocate, Residence of Mohalla Shivpuri Nagar Road at P.O. & P.S. Raxaul, Dist. East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manojeshwar Pd. Sinha, Adv.
For the State : Mr. Apurva Kumar, AC to GA-4
For the Resp. No.9 : Mr. Anil Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 07-11-2017

Heard learned counsel for the petitioner and counsel for the State as also counsel for the private respondent.

It is a matter relates to appointment of Anganbari Sevika for Ward No. 22 of Raxaul Nagar Parishad.

In the present writ application, the positive stand has been taken by the petitioner that she is the resident of Ward No.22, she was selected properly. The sole question has been raised that the



Commissioner has passed the impugned order without giving hearing to the petitioner.

The short fact of this case is that the petitioner and respondent no.9 have applied for the engagement as Anganbari Sevika for the Ward No.22, the merit list was prepared of all candidates who applied for the post, the petitioner was shown at the top of the list though kept at serial no.2, the candidate of serial no.1 was of another ward of ward no.12, on that account, she could not be appointed for ward no.14 now ward no.22. The resident of Ward No.14 (22) only could have applied for being engaged as Anganbari Sevika. In the merit list, the petitioner has got 52% marks in Matric whereas private respondent no.9 has got 51% marks whereas the average marking of the petitioner was 57% whereas the average marking of the respondent no.9 was 51%. The General Body conducted its meeting on 9.4.2007 and the petitioner was not selected rather respondent no.9 was selected as Anganbari Sevika. The petitioner had filed an objection on 12.4.2007 to the District Welfare Officer, Motihari with copy to the Chief Minister, Bihar, District Magistrate, Motihari and the S.D.O. Raxaul and she has also raised objection of irregular and illegal appointment. The complaint had given result that the S.D.O., Raxaul, respondent no.5, was directed to hold an enquiry with respect to objection which he had received. The objection of the petitioner



was that her name was at the top of the merit list but, the person whose name was at 4th place was appointed only on the ground that the father-in-law of the petitioner was an employee as Ward Jamadar in Nagar Panchayat, Raxaul. As per claim of the petitioner, she has along with her husband and family members were/are living separately from the father-in-law since five years and she has also filed an affidavit. Further alleged that the husband of the respondent no.9, namely, Sanjay Kumar Singh was also working in Baria Ramgarawaha Co-operative College and at the same time, he was also practicing as an advocate in the Sub-Divisional Court, Raxaul. The name of the Sangeeta Kumari, respondent no.9, is standing in the list of Nagar Parishad Raxaul and also the Gram Panchayat Baria, claim was made that if the name of any person is recorded in the Nagar Panchayat voter list, his or her name cannot be recorded in the Panchayat voter list and vice versa. Though the Selection Committee had recommended the selection of respondent no.9, namely, Smt. Sangeeta Kumari be cancelled and the petitioner be appointed but, the petitioner filed an objection on 4.6.2007 to District Magistrate, respondent no.3, annexing the report of the S.D.O. (Annexure-3) and requested justice be done because without resolving the dispute, the C.D.P.O. has sent Sangeeta Devi for departmental training. The District Welfare Officer vide letter dated 22.5.2007 wrote to



C.D.P.O., Raxaul that he has received a report from the S.D.O., Raxaul directed him to send his opinion within three days along with the relevant documents so that the matter be disposed of. The District Welfare Officer again wrote a letter dated 18.1.2008 to the C.D.P.O. that some irregularities have been committed during selection process, so the District Magistrate will hear the matter on 25.1.2008 directed him to remain present on the appointed day, both parties should be informed to attend the office of the District Magistrate along with respective papers and the C.D.P.O., in turn, had informed accordingly to both sides. The District Magistrate heard the parties and passed order against the respondent no.9. The order of the District Magistrate was not carried out and, later on, the petitioner could know the respondent no.9 had filed an appeal before the Commissioner, Tirhut Division against the order passed by the Collector. In the appeal the petitioner was not party and adverse order has been passed against the present petitioner. As the petitioner was not made party to the appeal, no opportunity of hearing was given to her and the Commissioner has passed the final order illegally which violates the natural justice.

Learned counsel for the respondent no.9 and the State did not respond or contradict the statement that has been made in the writ application and it is well known principle that if any adverse order is to be passed, either it is an administrative, judicial or quasi



judicial order having civil consequences, prior hearing to the person is sine qua non before passing the impugned order. If this minimal procedure and safeguard is not adopted, the order cannot be allowed to sustain and it requires interference.

In that view of the matter, the order of the Divisional Commissioner, Tirhut Division dated 30.6.2008 passed in Record No. 111 of 2008 is set aside and the matter is remanded back to the Commissioner, Tirhut Division who will direct the respondent no.9 to implead the petitioner as a party and, after giving hearing to both the sides, will pass orders in accordance with law.

Till disposal of the revision application, the respondent no.9 will not be disturbed from her work.

With the aforementioned observation and direction, this writ application is disposed of.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.11.2017
Transmission Date	NA

