

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 15476 of 2008

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Sunita Devi wife of Dharmendra Kumar, Resident of village Dayalpur, Block Hajipur, District – Vaishali.

.... Petitioner

Versus

1. The State of Bihar through its Secretary, Social Welfare Department, Bihar, Patna.
2. The Secretary, Social Welfare Department, Bihar, Patna.
3. The Commissioner, Tirhut Division, Muzaffarpur.
4. The District Officer, Vaishali at Hajipur.
5. The Child Development Project Officer, Hajipur, District – Vaishali.
6. The Panchayat Secretary, Dayalpur Panchayat, P.S. Raja Pakad, District – Vaishali.
7. The Mukhia, Dayalpur Panchayat, P.S. Raja Pakad, District – Vaishali.
8. Sandhya Devi wife of Vinay Kumar, Resident of village – Dayalpur, Block Hajipur, District – Vaishali.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ram Shankar Prasad
For the State	:	Mr. Rajeev Shekhar AC to GA - 13
For the Res. No. 8	:	Mr. Ashutosh Kumar

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 02-03-2017

Heard Sri Ram Shankar Prasad, learned counsel for the petitioner, learned A.C. to Govt. Advocate – 13 as well as learned counsel for respondent no. 8.

2. The petitioner has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India, with a prayer to quash an order dated 04-08-2008 passed in Anganbari Appeal No. 4-261 of 2008 passed by the Commissioner, Tirhut



Division, Muzaffarpur (hereinafter referred to as the 'Commissioner'). By the said order, the learned Commissioner has set aside the order passed by the District Officer, Vaishali in Misc. Case No. 3 of 2007-08.

3. Short fact of the case is that petitioner had participated in selection process in respect of appointment of Anganbari Sevika in Anganbari Centre No. 71, Dhamauli, Panchayat – Dayalpur in the District of Vaishali at Hajipur. Alongwith the petitioner, others had also participated including respondent no. 8. In the Aam Sabha, considering the fact that respondent no. 8 had obtained total 58.42 % of marks, she was selected as Anganbari Sevika.

4. Aggrieved with the selection of respondent no. 8, as Anganbari Sevika, the petitioner raised an objection. Thereafter, a case, vide Miscellaneous Case No. 3 of 2007-08 was registered. In the said proceeding, several reports were sought for and proceeding continued on several dates and finally, by order dated 23-02-2008, the learned District Officer cancelled the selection of respondent no. 8, as Anganbari Sevika, and directed for initiating fresh selection process in respect of Anganbari Centre No. 71.

5. Being aggrieved with the order of the learned District



Officer, the respondent no. 8, who had already joined after selection as Anganbari Sevika, filed an appeal, in view of provision contained in Anganbari Sevika/Sahayika Guideline of 2006, before the Commissioner and the learned Commissioner by its order dated 04-08-2008 i.e. **Annexure – 6** set aside the order of the District Officer and restored the selection of respondent no. 8, as Anganbari Sevika, for Anganbari Centre No. 71.

6. Learned counsel for the petitioner, assailing the selection of respondent no. 8, has primarily argued that in considering marks, double standard was adopted by the selection authority. It has been argued that percentage of marks was awarded to the petitioner after excluding the number of optional subject, whereas, the marks obtained in the optional subject by the respondent no. 8 was considered for granting marks. He tried to persuade the Court that the selection authority has committed serious illegality in ignoring the marks of optional paper obtained by the petitioner, whereas, the selection authority has accepted the marks of optional paper obtained by respondent no. 8. On aforesaid ground, a prayer was made to set aside the order of the appellate authority.

7. Learned State counsel as well as learned counsel for



respondent no. 8 have vehemently opposed the prayer of the petitioner. By way of referring to the merit list, which has been brought on record vide **Annexure 3/i** to the present petition, it was highlighted by the learned State counsel that marks obtained by both the parties were taken into consideration out of total marks of 700. So far the petitioner is concerned, in matriculation, out of 700, she had got 395 marks, which comes to 56.42%, whereas, respondent no. 8 had got 374 marks out of 700 and percentage of marks comes to 53.42%. Learned State counsel has drawn my attention to page 21 i.e. part of **Annexure – 3/i** to highlight that besides marks of the matriculation, the additional 5 marks was granted to the private respondent, since she was intermediate. So, after counting marks of matriculation as well as bonus marks granted as intermediate i.e. 5 additional marks, it comes to 58.42 % and as such, there is no reason to entertain the prayer of the petitioner that marks of optional subject was not considered in respect of the petitioner. He submits that earlier error was committed by the District Officer, which has been corrected by the appellate authority i.e. Commissioner by its order dated 04-08-2008.

8. Besides hearing, I have also perused the materials available on record. After going through the materials on record, the



Court is satisfied that petitioner was granted 5 (five) bonus marks due to the reason that besides matriculation, she was also Intermediate pass and as such, total marks has rightly been considered by the selection authority.

9. In view of facts and circumstances, I do not find any error in the order of the learned Commissioner.

10. The writ petition stands dismissed.

(Rakesh Kumar, J.)

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AFR/NAFR	NAFR
CAV DATE	N/A
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