IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3 of 2016

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Smt. Sushila Devi, wife of Dhurendra Prasad, resident of village- Parasi, P.S.- Parasi, District- Arwal.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Director, Social Welfare Department, Government of Bihar, Patna.
4. The Commissioner, Magadh DIvision, Gaya.
5. The District Magistrate, Arwal.
6. The Child Development Project Officer, Arwal.
7. The Panchayat Secretary, Gram Panchayat, Parasi, Block- Arwal, District- Arwal.
8. The Mukhiya, Gram Panchayat, Parasi, Block- Arwal, District- Arwal.
9. Smt. Manju Kumar, wife of Mithilesh Thakur, resident of village- Parasi, P.S.- Parasi, District- Arwal.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 23606 of 2012

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Sarita Devi, Wife of Vijay Paswan. Resident of Village- Rampur, Police Station- Rampur Chauram, District- Arwal.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Director, Social Welfare Department, Bihar, Patna.
4. The Commissioner, Magadh Division, Gaya.
5. The District Magistrate, Arwal.
6. The Child Development Project Officer, Arwal.
7. Dharmendra Kumar Sinha, Ex-Mukhiya, Gram Panchayat, Sarouti, Resident of Village- Rampur, Police Station- Rampur Chauram, District- Arwal.
8. The Panchayat Secretary, Gram Panchayat Sarouti, Arwal.
9. Sunita Devi, Mukhiya, Gram Panchayat Sarouti, Resident of Village- Rampur, Police Station- Rampur Chauram, District- Arwal.
10. Vimal Devi, Wife of Ramjanam Sao, Resident of Village- Rampur, Police Station- Rampur Chauram, District- Arwal.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 19682 of 2015

==========

Tanuja Kumari, wife of Pramod Kumar, resident of Village- Laxmi Bigha, Parasi, P.S.- Parasi, District- Arwal.

.... Petitioner/s

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Versus

1. The State of Bihar.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Director, Social Welfare Department, Government of Bihar, Patna.
4. The Commissioner, Magadh Division, Gaya.
5. The District Magistrate, Arwal.
6. The Child Development Project Officer, Arwal.
7. The Panchayat Secretary, Gram Panchayat, Parasi, Block- Arwal, District- Arwal.
8. The Mukhiya Gram Panchayat, Parasi, Block- Arwal, District- Arwal.
9. Jyoti Kumari, wife of Rajesh Kumar Anand, resident of Village- Parasi, P.S.- Parasi, District- Arwal.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 19721 of 2015

==========

Meena Kumari. wife of Sri Shanker Singh, resident of village - Mirja Bigha, P.S. - Parasi, District - Arwal.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Director, Social Welfare Department, Government of Bihar, Patna.
4. The Commissioner, Magadh Division, Gaya.
5. The District Magistrate, Arwal.
6. The Child Development Project Officer, Arwal.
7. The Panchayat Secretary, Gram Panchayat, Parasi, Block - Arwal, District - Arwal.
8. The Mukhiya, Gram Panchayat, Parasi, Block - Arwal, District - Arwal.
9. Smt. Madhu Kumari wife of Sri Jai Prakash Keshari, resident of Village - Chakiya, P.S. - Parasi, District - Arwal.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 23616 of 2012

==========

Dharamsheela Devi, Wife of Ravindra Gupta, Resident of Village- Bakeya Nisarpura, P.S.- Rampur Chauram, District- Arwal.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Director, Social Welfare Department, Government of Bihar, Patna.
4. The Commissioner, Magadh Division, Gaya.
5. The District Magistrate, Arwal.
6. The Child Development Project Officer, Arwal.
7. Dharmendra Kumar Sinha, Ex-Mukhiya, Gram Panchayat, Sarouti, Resident of

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Village- Rampur, Police Station- Rampur Chauram, District- Arwal.
8. The Panchayat Secretary, Gram Panchayat. Sarouti, Arwal.
9. Sunita Devi, Mukhiya, Gram Panchayat. Sarouti, Resident of Village- Rampur, Police Station- Rampur Chauram, District Arwal.
10. Manorma Kumari. Wife of Umesh Kumar, Resident of Village- Bakeya, Police-Station- Rampur Chauram, District- Arwal.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 23630 of 2012

==========

Punam Kumari, Wife of Sujeet Kumar, Resident of Village- Ardali Bagha, P.S.- Kaler, District- Arwal.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Director, Social Welfare Department, Government of Bihar, Patna.
4. The Commissioner, Magadh Division, Gaya.
5. The District Magistrate, Arwal.
6. The Child Development Project Officer, Kaler, Arwal.
7. The Panchayat Secretary, Gram Panchayat, North Kaler, District- Arwal.
8. The Mukhiya, Gram Panchayat, North Kaler Block, District- Arwal.
9. Smt. Sultana Begum, Wife of Sazzad Haider, Resident of Village- Kaler, P.S.- Kaler, District- Arwal.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 23878 of 2012

==========

Savita Devi, W/O Baijnath Singh, R/O Village- Sarauti, Police Station- Rampur Chauram, District- Arwal.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Director, Social Welfare Department, Bihar, Patna.
4. The Commissioner, Magadh Division, Gaya.
5. The District Magistrate, Arwal.
6. The Child Development Project Officer, Arwal.
7. Dharmendra Kumar Sinha, Ex-Mukhiya, Gram Panchayat, Sarouti, R/O Village- Rampur, Police Station- Rampur Chauram, District- Arwal.
8. The Panchayat Secretary, Gram Panchayat, Sarouti, Arwal.
9. Sunita Devi, Mukhiya Gram Panchayat Sarouti, R/O Village- Rampur, Police Station- Rampur Chauram, District- Arwal
10. Smt. Resham Kumari, W/O Rajkamal Vishwakarma, R/O Village- Sarauti, Police Station- Rampur, Chauram, District- Arwal.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 23717 of 2012

==========

Rita Devi, W/O Vijay Kumar, R/O Vill- Rampur Chauram, P.S.-Rampur Chauram, District-Arwal.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Director, Social Welfare Department, Government of Bihar, Patna.
4. The Commissioner, Magadh Division, Gaya.
5. The District Magistrate, Arwal.
6. The Child Development Project Officer, Arwal.
7. Dharmendra Kumar Sinha, Ex-Mukhiya, Gram Panchayat, Sarouti, R/O Vill-Rampur, P.S.-Rampur Chauram, Disrict-Arwal.
8. The Panchayat Secretary, Gram Panchayat, Sarouti, Arwal.
9. Sunita Devi, Mukhiya, Gram Panchayat Sarouti, R/O Vill-Rampur, P.S.-Rampur Chauram, Disrict-Arwal.
10. Sabita Kumari, W/O Parmesh Kumar, R/O Vill-Rampur Chauram, P.S.-Rampur Chauram, District-Arwal.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 142 of 2013

==========

Phulkumari Devi, wife of Dinesh Kumar Singh, Resident of Village- Kaler, PS-Kaler, District- Arwal.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Director, Social Welfare Department, Government of Bihar, Patna.
4. The Commissioner, Magadh Division, Gaya.
5. The District Magistrate, Arwal.
6. The Child Development Project Officer, Kaler.
7. The Panchayat Secretary, Gram Panchayat, North Kaler, District- Arwal.
8. The Mukhiya, Gram Panchayat, North Kaler Block, District- Arwal.
9. Smt. Gita Devi, wife of Upendra Kumar, Resident of Village- Kaler, PS- Kaler, District- Arwal.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 19610 of 2015

==========

Arti Devi, wife of Sanjay Paswan, resident of village- Sumera, P.S.- Parasi, District- Arwal.

.... Petitioner/s

Versus

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1. The State of Bihar.
2. The Principal Secretary, Social Welfare, Department, Government of Bihar, Patna
3. The Director, Social Welfare Department, Government of Bihar, Patna.
4. The Commissioner, Magadh Division, Gaya.
5. The District Magistrate, Arwal.
6. The Child Development Project Officer, Arwal.
7. The Panchayat Secretary, Gram Panchayat, Parasi, Block- Arwal, District- Arwal.
8. The Mukhiya, Gram Panchayat, Parasi, Block- Arwal, District- Arwal.
9. Guddi Kumari, wife of Akhilesh Kumar, resident of village- Sumera, P.S.- Parasi, District- Arwal.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 19655 of 2015

==========

Arti Kumari, wife of Anandi Prasad, Resident of Village-Parasi, P.S- Parasi, District- Arwal.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Director, Social Welfare Department, Government of Bihar, Patna.
4. The Commissioner, Magadh Division, Gaya.
5. The District Magistrate, Arwal.
6. The Child Development Project Officer, Arwal.
7. The Panchayat Secretary, Gram Panchayat, Parasi, Block Arwal, District Arwal.
8. The Mukhiya, Gram Panchayat Parasi, Block- Arwal, District- Arwal.
9. Anupama Kumari, Wife of Shyam Amrit Raj, Resident of Village- Parasai, P.S, Parasi, District - Arwal.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 19666 of 2015

==========

Sunita Kumari, Wife of Sanjay Singh, Resident of village- Ramlagan Bigha, P.S.- Parasi, District- Arwal.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Director, Social Welfare Department, Government of Bihar, Patna.
4. The Divisional Commissioner, Magadh Division, Gaya.
5. The District Magistrate, Arwal.
6. The Child Development Project Officer,Arwal
7. The Panchayat Secretary, Gram Panchayat, Parasi, Block- Arwal, District- Arwal.

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8. The Mukhiya, Gram Panchayat, Parasi, Block- Arwal, District- Arwal.
9. Renu kumari, Wife of Prakash Kumar, Resident of village- Ramlagan Bigha, P.S- Parasi, District- Arwal.

.... Respondent/s

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Appearance :
(In CWJC No.3 of 2016)
For the Petitioner/s : Mr. Birendra Kumar, Adv.
For the Respondent/s : Mr. Gautam Kumar Yadav, GP-26
For Private Respondent : Mr. Rashid Izhar, Adv.
(In CWJC No.23606 of 2012)
For the Petitioner/s : Mr. Birendra Kumar, Adv.
For the Respondent/s : Mr. Rakesh Kr. Shrivastava, AC to GP-15
For the Private Respondent: Mr. Rashid Izhar, Adv.
(In CWJC No.19682 of 2015)
For the Petitioner/s : Mr. Birendra Kumar, Adv.
For the Respondent/s : Mr. Madhav Pd. Yadav, GP-23
Mr. Sanjay Kumar, AC to GP-23
For Private Respondent : Mr. Rashid Izhar, Adv.
(In CWJC No.19721 of 2015)
For the Petitioner/s : Mr. Birendra Kumar, Adv.
For the Respondent/s : Mr. Prashant Pratap, GP-6
For Private Respondent : Mr. Rashid Izhar, Adv.
(In CWJC No.23616 of 2012)
For the Petitioner/s : Mr. Birendra Kumar, Adv.
For the Respondent/s : Ms. Shilpa Singh, GA-12
Ms. Abhanjalli, AC to GA-12
For Private Respondent : Mr. Rashid Izhar, Adv.
(In CWJC No.23630 of 2012)
For the Petitioner/s : Mr. Birendra Kumar, Adv.
For the Respondent/s : Mr. Binita Singh, SC-28
For Private Respondent : Mr. Rashid Izhar, Adv.
(In CWJC No.23878 of 2012)
For the Petitioner/s : Mr. Birendra Kumar, Adv.
For the Respondent/s : Mr. S.D. Yadav, AAG-9
For Private Respondent : Mr. Rashid Izhar, Adv.
(In CWJC No.23717 of 2012)
For the Petitioner/s : Mr. Birendra Kumar, Adv.
For the Respondent/s : Mr.
For Private Respondent : Mr. Rashid Izhar, Adv.

(In CWJC No.142 of 2013)
For the Petitioner/s : Mr. Birendra Kumar, Adv.
For the Respondent/s : Mr. Md. Nadim Seraj, GP-5
(In CWJC No.19610 of 2015)
For the Petitioner/s : Mr. Birendra Kumar, Adv.
For the Respondent/s : Mr. Rajiv Roy, GP-5
For Private Respondent : Mr. Rashid Izhar, Adv.
(In CWJC No.19655 of 2015)
For the Petitioner/s : Mr. Birendra Kumar, Adv.
For the Respondent/s : Mr. Hari Mohan Mishra, AC to GP-27
For Private Respondent : Mr. Rashid Izhar, Adv.
(In CWJC No.19666 of 2015)

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For the Petitioner/s : Mr. Birendra Kumar, Adv.
For the Respondent/s : Mr. Mujtabaul Haque, GP-12

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 14-09-2017

Heard Mr. Birendra Kumar, learned counsel appearing for the petitioners in this batch of writ petitions, learned counsel appearing for the State in the respective writ petitions and Mr. Rashid Izhar, learned counsel appearing for the private respondents in this batch of writ petitions.

The petitioner in CWJC No.3 of 2016 is aggrieved by the order dated 16.6.2012 passed in Misc. Anganwari Case No.03/DM/2011, whereby the appointment of the petitioner on the post of Anganwari Sevika has been cancelled and the private respondent has been directed to resume her work.

Similar orders of cancellation of appointment are put to challenge in the other writ petitions with similar direction to the private respondent(s) in the respective writ petitions, to resume her work.

Since identical orders are put to challenge in all the writ petitions that they have been heard analogous and are being disposed of by a common judgment.

This Court would be referring to the pleadings and Annexures made in CWJC No.3 of 2016 for the sake of convenience until clarified with specific reference to any other

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matter.

The petitioners in this batch of cases were appointed as Anganbari Sevika in one of the 257 centres operating in the district of Arwal. The appointments were made in the year 2004. Some dispute arose as regarding the selection process adopted by the authorities under guidelines. The District Magistrate, Arwal vide his order bearing Memo No.7 dated 27.7.2007 present at Annexure 1 found statutory violations in the appointments of Anganwari Sevika in 80 centres within Arwal block and 36 centres within Kaler Block in the district of Arwal. According to the District Magistrate, Arwal the appointment suffered from the following infirmities:

(a) The appointing authority himself has raised doubts on appointment letters;

(b) No evidence was produced as regarding the approval of the centres;

(c) No evidence was produced as regarding holding of *Aam Sabha*;

(d) The appointments were in excess of vacancies;

(e) No exercise was carried out to determine the majority class; and

(f) Some of the appointment letters did not bear the signature and date of Assistant.

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It is being dissatisfied on such counts that the District Magistrate, Arwal recommended for cancellation of 80 appointment of Arwal Block and 36 appointment in Kaler Block. Feeling aggrieved the Anganwari Sevika(s) inclusive of the petitioners came before this Court by filing separate writ petitions which were considered and disposed of by a coordinate Bench vide common order placed at Annexure-2 remitting the matter to the District Magistrate, Arwal with a direction to afford opportunity to the Anganwari Sevika(s) to present their case with grant of personal hearing. On the other hand the Anganwari Sevikas were directed to file their replies on the infirmities noticed in the order of the District Magistrate, Arwal, treating it as show cause.

On remand, the matter was re-considered by the District Magistrate, Arwal who vide an exhaustive order passed on 15.9.2008 present at Annexure-3, upheld the appointment of Anganwari Sevika whose names figures in the order which is inclusive of these petitioners. The District Magistrate, Arwal while upholding the appointment of the petitioners also restored them to their respective position and as a consequence the newly appointed Anganwari Sevikas i.e. the private respondents herein, were relieved of their duties.

For completing the chain of events, it is mentioned that it is following the termination of the Anganwari Sevika(s) vide order

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impugned at Annexure 1 that a selection process had been initiated in the 2007 resulting in the appointment of the private respondents. Now since these private respondents were not heard by the District Magistrate, Arwal while considering and upholding the case of these petitioners vide Annexure 3 that some of them came before this Court in CWJC No.7094 of 2009 **(Guddi Kumari & Ors. Vs. The State of Bihar)** while some others moved the Commissioner, Magadh Division, Gaya under the guidelines. This Court while considering the case of the Anganwari Sevika(s) in CWJC No.7094 of 2009 disposed of the matter vide order passed on 29.6.2009 placed at Annexure-6 with direction to the Commissioner to dispose of the appeal in accordance with law. The Commissioner, Magadh Division, Gaya on his part, vide order dated 15.4.2010 passed in Anganwari Appeal No.28 of 2009, remitted the matter to the District Magistrate for its disposal in accordance with law after considering the grievance of the ousted Anganwari Sevikas who had complained of denial of hearing by the District Magistrate, Arwal at the time of passing of the order dated 15.9.2008.

It is on remand of the matter that the District Magistrate – cum- Collector, Arwal by the order impugned in the respective writ petitions has literally reviewed his earlier order and this time while again upholding the illegalities complained in the selection process as noted in the order placed at Annexure 1, the District Magistrate,

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Arwal, has held that the selection process which resulted in the appointment of the private respondent(s) was in accordance with the rules. In consequence the appointment of the petitioners in the respective writ petitions was set aside. It is feeling aggrieved by the order of cancellation that the petitioner(s) are before this Court and when the parties have been heard.

It is the argument of Mr. Birendra Kumar, learned counsel appearing for the petitioner(s) in this batch of writ petitions that once the District Magistrate, Arwal has re-considered the matter on the order of remand passed by this Court present at Annexure-2 upholding the appointment of these petitioner(s) in consideration of the records of the selection process, he cannot be permitted to review his own order in the same set of circumstances especially in absence of any power of review vested in him under the guidelines.

It is also the argument of Mr. Birendra Kumar that even though the selection of Anganbari Sevikas in the district of Arwal, was put under scanner following a direction of the Supreme Court in a public interest litigation but since the appointment of the petitioners in the year 2004 was never put to question nor there was any complaint by any participants in the selection process or by the private respondents, there was no occasion to review the selection process.

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It is the argument of Mr. Birendra Kumar that the private respondents were inducted as a consequence of ouster of the writ petitioners and since the District Magistrate, Arwal vide order passed on 15.9.2008 has upheld the selection of these petitioners on examination of records, it was a natural consequence that the services of the private respondents who had been appointed during the interregnum period, had to be dispensed with and which could not have been given a cause of action to the private respondents especially when they were not competitors with the petitioners in the selection held in the year 2004. It is also the argument of Mr. Birendra Kumar that the order upholding appointment of the petitioners passed by the District Magistrate, Arwal on 15.9.2008 at Annexure 3 was never interfered with, either by this Court in consideration of the grievance of the private respondents even when liberty was granted to them to pursue their matter before the Commissioner nor the order was interfered by the Commissioner while remitting the matter to the District Magistrate, Arwal for consideration of the grievance of the private respondents regarding denial of hearing.

It is further argued that even by the order impugned in the writ petition(s), the earlier order dated 15.9.2008, has not been recalled by the District Magistrate rather it is on a comparative study of the 2 selection processes that an opinion is expressed by

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him that the selection process in which the appointment of the private respondent was carried out was more in accordance with the rules but that could not be a ground to upset the appointment of the petitioners.

Leaned counsel refers to the statement made by the State in paragraph 16 of the counter affidavit to submit that even before this Court, the respondents agree that there is no infirmity in the order dated 15.9.2008 affirming the appointment of these petitioners.

The argument of Mr. Birendra Kumar besides being contested by learned State Counsel who have simply supported the action of the District Magistrate, Arwal as being in compliance of the direction of the Commissioner requiring no interference but the main charge has been set up by Mr. Rashid Izhar supporting the case of the private respondents.

It is the argument of Mr. Izhar learned counsel for the private respondent(s) in the respective writ petition(s) that the District Magistrate, Arwal was not only dissatisfied by the statutory violations in the appointment of the writ petitioner(s) but he has also confirmed that there was no infirmity in the selection of the private respondent(s) and which by itself is sufficient to dismiss the writ petitions for persons who have been appointed without following the guidelines, cannot be permitted to continue on their post. He has referred to an order of this Court passed in **CWJC**

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No.23431 of 2011 (Sarita Devi & ors. Vs. The State of Bihar) placed on record vide Annexure R9/13 to the counter affidavit filed in the case to submit that though the order of the Commissioner was questioned by the petitioners before this Court but was not interfered with. It is the submission of Mr. Izhar that the enquiry was set up following the observations of the Supreme Court on the statutory violations committed in appointment of Anganwari Sevikas which resulted in ouster of the writ petitioners and by the impugned order the position has been confirmed. The argument of Mr. Izhar is that since admittedly the respondents are satisfied with the selection of the private respondents while raising doubts on the appointment of the writ petitioners, the private respondents have a better claim to the post.

Mr. Birendra Kumar, learned counsel appearing for the petitioner(s) in rejoinder has invited the attention of this Court to an order passed by the Deputy Director on an application filed by one of the Anganwari Sevika who had been appointed in place of the petitioners but removed under the order dated 15.9.2008 to submit that the order dated 15.9.2008 has been confirmed by the Deputy Director, Welfare while considering the grievance of the said applicant vide order passed on 27.3.2014 at Annexure 11 to the writ petition.

I have heard learned counsel for the parties and I have

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perused the records.

The sequence of events is already explained and requires no reiteration. The only issue which requires consideration is whether the order of the District Magistrate, Arwal impugned in the respective writ petitions is sustainable. It is not in dispute that the Anganwari Sevika Guidelines confer no power of review on any of the statutory authority to re-examine its order.

The present contest relates to the year 2007 and thus it is the guidelines framed in the year 2006 which would govern the issue. The guidelines in force at the relevant time vested jurisdiction in the District Magistrate, to examine any selection process and pass appropriate order which was appealable before the Divisional Commissioner. This position continued even under the 2010 guidelines but has been amended under the 2011 guidelines. Nonetheless since during the relevant period it is the District Magistrate who was vested with the jurisdiction to examine any selection process with the appellate powers vested in the Divisional Commissioner, there is no error in the exercise of jurisdiction.

The main issue which falls for consideration in this batch of cases is, whether the District Magistrate is vested with review jurisdiction under the guidelines. Undisputedly they are not. The arguments advanced by the learned State Counsel and Mr. Izhar is, that the District Magistrate, Arwal was only discharging the

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obligation cast upon him by the Appellate Authority and which cannot be termed as exercise of a review jurisdiction. It is thus to be seen as to what is the nature of jurisdiction cast upon the District Magistrate by the order of remand passed by the Commissioner in appellate jurisdiction and whether it empowers him to recall his earlier order. The other issue is, whether there was any change in circumstances with supportive materials for exercise of such power.

It is not in dispute rather admittedly the private respondents were not contestants in the selection process held in the year 2004 or thereafter when these petitioners had been appointed. It is again not in dispute that no complaint of any nature was filed questioning the selection process in general and the appointment of the petitioners in particular, by any of the contestants. In fact it is simply following the observation of the Supreme Court in a public interest litigation that the appointment of the Anganwari Sevikas in the district of Arwal was taken up for consideration and which resulted in the order dated 27.7.2007 passed by the District Magistrate -cum- Collector, Arwal disqualifying 80 appointees in Arwal Block and 36 in Kaler Block on violation of statutory procedures. There is no individual infirmity pointed out in reference to the appointment of the petitioners in particular rather in a generalized manner the appointments have been interfered with on six counts.

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The order aggrieved the appointees inclusive of these petitioners and which led to the filing of the writ petition. Since the order of cancellation of appointment at Annexure 1 was passed ex-parte and without opportunity of hearing to those petitioners, it was set aside by this Court vide judgment and order present at Annexure-2. The matter was remitted to the District Magistrate and while asking the petitioners to treat the violations mentioned in the order as a show cause notice and while asking them to file their response in respect thereto, the District Magistrate, Arwal was asked to dispose of the matter afresh and in accordance with law.

As I have already mentioned, the matter was considered afresh by the District Magistrate –cum- Collector, Arwal who by an exhaustive order dated 15.9.2008 running into 20 pages, passed after examining the records threadbare, has upheld the appointment of the petitioners. In fact the District Magistrate, Arwal has considered the representations of the petitioners on each count and after hearing the petitioners, the official respondents as well as the Mukhiya concerned, the District Magistrate, Arwal has upheld the appointments. The opinion of the District Magistrate is recorded after testing the case of the petitioners on each of the six objections raised in the earlier termination order and it is only after being satisfied from the records, that he has proceeded to uphold the selection process as well as the appointment of the petitioners and

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consequentially relieved the private respondents who had been appointed in the meanwhile, in a separate selection process. In my opinion the order of the District Magistrate at Annexure-3 should have put a quietus to the entire challenge because the private respondents were not appointed on grounds of being better candidate than the petitioners from the same selection process rather the appointment of the private respondent was by virtue of the vacancy caused by the ouster of these petitioners. There is no inter-party contest in between the writ petitioners and the private respondents rather it is due to ouster of the petitioners vide order passed on 27.7.2007 that a selection process was held in which the private respondents were appointed. It is but obvious that since the private respondents have stepped into the shoes of the petitioners on their ouster, the moment the ouster is held invalid, the private respondents would have to make way. May be, the District Magistrate –cum- Collector, Arwal ought to have heard the private respondents before he passed the order dated 15.9.2008 upholding the appointment of the petitioners and while relieving the private respondents of the duty but then it would be only a completion of formality to hear the private respondents because they were a product of a separate selection process held in consequence of the ouster of the writ petitioners and the ouster was already put to challenge and in consideration before the statutory authorities.

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In my opinion, the respondent Commissioner as well as the District Magistrate, have got thoroughly confused in their discharge. The Commissioner while considering the appeal of the private respondents has ordered a remand for opportunity of hearing to private respondent(s) without appreciating that once the selection and appointment of the writ petitioners had been upheld by the District Magistrate, Arwal on examination of records, the cause of the private respondents has paled into insignificance because their appointment was a consequence of the ouster of the petitioners.

The compliance of natural justice is not an empty formality rather it is only if the body exercising quasi-judicial function is of the opinion that a remand may result in different opinion that any such order can be passed. In the present case the Commissioner has taken note of the order dated 15.9.2008 passed by the District Magistrate which confirmed that the appointment of the private respondent(s) was on account of a consequential selection process following the ouster of the petitioners and thus their stay on the post was subject to the challenge made by the writ petitioners against their ouster. Perhaps it is realizing this position that the Commissioner even while upholding the grievance of the private respondents of denial of opportunity by the District Magistrate, Arwal, while remitting the matter to him for providing an opportunity of hearing to the private respondents, did not choose to interfere with the order dated

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15.9.2008 which continued to hold the field. The District Magistrate cum Collector, Arwal completely misconstruing the remand order has proceeded to give his opinion on the comparative selection process undergone by the petitioners qua the private respondents which is confirmed from the observations present at running page 71 of the proceedings which reads thus:

"आयुक्त मगध प्रमण्डल, गया के आदेश दिनांक 15.04.2010 के अनुरुप दोनो अभ्यर्थियों मे से सरकारी मार्गदर्शिका के अनुसार सबसे योग्य एवं उपयुक्त अभ्यर्थी कौन है, पर निर्णय लिया जाना है। अतः दोनो पक्ष के द्वारा उनके लिखित बहस के साथ संलग्न कागजात का विवरण देना समीचीन होगा।

क्र0	प्रथम पक्ष द्वारा समर्पित कागजात	द्वितीय पक्ष द्वारा समर्पित कागजात
1	2	3
1.	मैपिंग की छाया प्रति।	चयन पत्र की छाया प्रति।
2.	जति बाहुलता का सर्वेक्षण छाया प्रति।	प्रशिक्षण प्रमाण–पत्र की छाया प्रति।
3.	चयन समिति की कार्यवाही की छाया प्रति।	
4.	चयन पत्र की छाया प्रति।	सुशीला देवी
5.	प्रशिक्षण प्रमाण–पत्र की छाया प्रति।	योग्यताः– मैट्रिक
6.	मंजु कुमारी योग्यताः– मैट्रिक, प्राप्तांकः– 420 प्रतिशतः– 60, श्रेणीः– प्रथम इण्टरमिडीएटः– प्राप्तांकः– 452 प्रतिशतः– 50.22 श्रेणीः– द्वितीय चयन पत्र निर्गत की तिथि :– 11.12.2007	प्राप्तांक–367 प्रतिशतः– 40.77 श्रेणीः– तृतीय चयन पत्र निर्गत की तिथिः– 11.12.2004

अधोहस्ताक्षरी द्वारा दोनो पक्षों के लिखित बहस एवं अभिलेख में संलग्न कागजातों का परिशीलन किया गया।"

The District Magistrate was certainly not required to have a comparative analysis of the two selection process to result in ouster of the petitioners because both were held in separate circumstances.

In my opinion the premise on which the District Magistrate, Arwal has proceeded to examine the contesting claim of the private

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respondents qua the writ petitioners itself is faulty. Firstly there is no statutory power of review vested in the District Magistrate. Secondly his order dated 15.9.2008 upholding the selection of the writ petitioner(s) was neither interfered by the Commissioner nor by the Court. Thirdly even if the appointment of the private respondents was in accordance with the guidelines, it could not be a ground to upset the appointment of the petitioners which was upheld by the District Magistrate, Arwal in his order dated 15.9.2008 on examination of the records and there is no change in circumstances nor any fresh material finds discussion in the order impugned dated 16.6.2016 put to challenge in the writ petition(s) to warrant a different opinion. The order(s) under challenge in the circumstances discussed, is patently illegal, without jurisdiction and is de hors the materials on record, resting on a whimsical exercise.

For the reasons so discussed, the order of the District Magistrate, Arwal bearing Memo No.47 dated 16.6.2012 passed in Misc. Anganwari Case No.3/DM/ 2011 impugned at Annexure-8 in CWJC No.3 of 2016;

the order bearing Memo No.54 dated 16.6.2012 passed in Anganwari Case No.10/DM/ 2011 impugned at Annexure-11 in CWJC No.23606 of 2012;

the order bearing Memo No.56 dated 16.6.2012 passed in Anganwari Case No.12/DM/ 2011 impugned at Annexure 8 in

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CWJC No.19682 of 2015;

the order bearing Memo No.57 dated 16.6.2012 passed in Anganwari Case No.13/DM/ 2011 impugned at Annexure 8 in CWJC No.19721 of 2015;

the order bearing Memo No.55 dated 16.6.2012 passed in in Anganwari Case No.11/DM/ 2011 impugned at Annexure-9 in CWJC No.23616 of 2012;

the order bearing Memo No.62 dated 16.6.2012 passed in Anganwari Case No.18/DM/ 2011 impugned at Annexure-10 in CWJC No.23630 of 2012;

the order bearing Memo No.51 dated 16.6.2012 passed in Anganwari Case No.07/DM/ 2011 impugned at Annexure 10 in CWJC No.23878 of 2012;

the order bearing Memo No.52 dated 16.6.2012 passed in Anganwari Case No.08/DM/ 2011 impugned at Annexure-9 in CWJC No.23717 of 2012;

the order bearing Memo No.61 dated 16.6.2012 passed in Anganwari Case No.17/DM/ 2011 impugned at Annexure-10 in CWJC No.142 of 2013;

the order bearing Memo No.45 dated 16.6.2012 passed in Anganwari Case No.13/DM/2011 impugned at Annexure-8 in CWJC No.19610 of 2015;

the order bearing Memo No.59 dated 16.6.2012 passed in

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Anganwari Case No.15/DM/ 2011 impugned at Annexure-8 in CWJC No.19655 of 2015; and

the order bearing Memo No.49 dated 16.6.2012 passed in Anganwari Case No.05/DM/ 2011 impugned at Annexure 8 in CWJC No.19666 of 2015, cannot be upheld and are accordingly quashed and set aside.

The writ petitions are allowed. The petitioners stand restored on their respective post(s).

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13-10-2017
Transmission Date	NA

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