

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.292 of 2016

IN

LPA No. 1575 of 2012

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Rekha Kumari (Sevika), Wife of Kamaldeo Prasad, Resident of Village- Anarpur,
P.S. Hisua, District - Nawadah.

.... Petitioner

Versus

1. The State of Bihar through Secretary, Welfare Department, Government of Bihar, Secretariat, Patna.
2. The Director, Directorate of I.C.D.S. Patna.
3. The Commissioner, Magadh Division, Gaya.
4. The District Magistrate, Nawadah.
5. The District Programme Officer, Nawadah.
6. The Child Development Project Officer, Nardiganj, Nawadah.
7. The Block Development Officer, Nardiganj Block, Nawadah.
8. The Mukhiya, Gram Panchayat Raj, Ichukaran under Nardiganj Block, District Nawadah.
9. Rita Choudhary Wife of Raj Kumar Prasad Choudhary, Resident of Village- Anarpur, P.S. Hisua, District - Nawadah.
10. Meena Devi, Wife of Suresh Paswan, Resident of Villge- Anarpur Tola Panchi Bagha, P.S. Hisua, District Nawada.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. T.N. Matin, Sr. Advocate Mr. Pramod Kumar Verma, Advocate
For the State	:	Mr. Chittaranjan Sinha, PAAG-2 Mr. Shailendra Kumar, AC to PAAG-2
For Respondent Nos. 9 & 10 :	:	Mr. Banwari Sharma, Advocate Mr. Sanjay Kumar Sinha, Advocate Mr. Pankaj Kumar Sinha, Advocate Mr. Santosh Kumar Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 15-02-2017

Heard Sri Banwari Sharma for the two private
contesting respondents and Sri T.N. Matin, learned Senior Counsel for
the review petitioner.

The facts are not in dispute. The two private



respondents in this review petition had been selected as Anganwari Sevika and Anganwari Sahaika respectively. After their selection there was an inspection conducted at their centres and certain alleged derelictions were found. Matter was reported to the District Programme Officer. He considered this serious matter for taking action. Accordingly, he issued notice to them. After hearing them he passed orders for cancellation of their engagement as Anganwari Sevika and Anganwari Sahaika respectively. This having been done, a writ petition was filed by both of them. Before the writ Court, it appears they urged that the District Programme Officer had no jurisdiction to cancel their engagement. This was negatived and the writ petition was dismissed. They filed the Letters Patent Appeal, in respect of which the present review application has been filed. The Letters Patent Appeal was allowed holding that the jurisdiction to cancel the engagement was that of the Collector and not the District Programme Officer. The review petitioner was respondent no. 9 in the Letters Patent Appeal having been appointed as Anganwari Sevika on the vacancy caused by removal of the original writ petitioner. The Division Bench in the intra-court appeal accepted the plea and allowed the Letters Patent Appeal setting aside not only the judgment of the learned Single Judge dismissing the writ petition but also the order of the District Programme Officer cancelling the engagement of the two writ petitioners.



By this review petition, respondent no. 9 to the Letters Patent Appeal, submits that there was an error apparent on the face of the record, inasmuch as, in the Letters Patent Appeal itself the circular of the Government as well as earlier Division Bench judgment on the issue was annexed. The earlier Division Bench judgment dated 16.02.2010, passed in L.P.A. No. 863 of 2009 (Prabha Kumari Devi Vs. The State of Bihar and others) clearly stated that the jurisdiction of the Collector and District Programme Officer was different. The said judgment pointed out that so far as complaints with regard to selection process is concerned, the complaints lay to the Collector of the District, who had the jurisdiction to look into irregularities in selection and appointment process, but when it came to functioning of the centres after selection the jurisdiction was of the District Programme Officer. If this be so, then the Letters Patent Court did not refer to the said circular and this lead to the mistaken judgment. It is clearly an error apparent on the face of the record.

We have perused the said circular dated 25.07.2008 and the judgment and we agree with the submission of Sri Matin. In that view of the matter, the judgment and order dated 12.02.2016, passed in L.P.A. No. 1575 of 2012 stands recalled.

Sri Matin submits that as this was the only ground taken in appeal and the only ground in which the writ petition was dismissed, the Letters Patent Appeal ought to be dismissed.



Sri Banwari Sharma, on the other hand, submits that once the Letters Patent Appeal is to be reheard, the party may be entitled to urge other issues if available. Be that as it may, but the fact remains that the judgment and order passed in the said Letters Patent Appeal being judgment and order dated 12.02.2016 stands vacated as also the fact that the impugned order in the writ petition being order of cancellation continues to be effected. The functioning of the review petitioner, who was respondent no. 9 in the letters patent appeal, would not be interfered in any manner till the final decision in the said Letters Patent Appeal. This review application, thus, stands disposed of in the aforesaid terms.

Consequently, the Letters Patent Appeal aforesaid would be listed before the appropriate Bench for admission.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	
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