

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4983 of 2014

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1. Manorama Kumari Wife Of Sanjay Yadav Resident Of Village Singpokhar,
Bhedwar, P.S. Dhobi, District Gaya

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner, Magadh Division, Gaya
3. The Collector, District Gaya
4. The Child Development Project Officer, Dobhi, District Gaya
5. Sri Sheo Ratan Yadav, Ex-Mukhiya, Grampanchayat Angara, P.S. Dobhi,
District Gaya
6. Secretary Grampanchayat Angara, P.S. Dobhi, District Gaya
7. Smt. Usha Kumari Wife Of Prabhu Yadav Resident Of Village Singpokhar, P.S.
Dobhi, District Gaya

.... Respondent/s

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Appearance :

For the Petitioner : Mr. R.K. Ranjan

For the Respondent no. 7 : Mr. N Kumar

Mr. B.K. Sinha

For the State : Mr. Dharendra Kumar AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 02-08-2017

Heard both sides.

2. The petitioner by filing this writ petition seeks quashing of the order dated 05.10.2013 passed in Anganbari Appeal No. 108 of 2012 (Annexure-5) by the Deputy Director Welfare, Magadh Division, Gaya whereby the Deputy Director dismissed the appeal confirming the order of the Collector passed in Case No. 49/11 on 05.05.2012 (Annexure-4).

3. The facts which are relevant for disposal of this writ petition in brief are that the petitioner was selected to work as



Anganbari Sevika on 30.05.2007 and the petitioner continued to work but in the year 2011 respondent no. 7 Srimati Usha Kumari filed CWJC No. 20935 of 2011. This Court vide order dated 20.12.2011 directed Srimati Usha Kumari to file representation before the Collector, Gaya pointing out the illegalities committed in selection of the petitioner for the post of Anganbari Sevika. In pursuance of the order aforesaid the respondent no. 7 Usha Kumari represented before the Collector, Gaya and the Collector, Gaya after hearing both the parties vide order dated 05.05.2012 found that no Aam Sabha was held in accordance with law nor any proceeding of Aam Sabha was drawn. The merit list was also not prepared in accordance with law. Accordingly, the selection of the petitioner was cancelled and it was ordered for taking fresh steps for selection of Anganbari Sevika. The petitioner preferred appeal being Anganbari Appeal No. 108 of 2012 and the appeal was also dismissed on 05.10.2013.

4. Learned counsel for the petitioner submits that there was meeting of Gram Sabha on 30.05.2007 but the proceeding was not drawn in accordance with law due to ill motive. The petitioner is resident of nutritional area and the candidates whose names appeared at serial no. 1 to 3 of the merit list are residents of outside of the nutritional area. Therefore, the petitioner was legally selected for the post of Anganbari Sevika but, at a very belated stage the respondent no.



7 filed petition for cancellation of selection of the petitioner. It is further submitted that the Collector, Gaya has ordered for fresh selection according to the directives of the year 2011 for selection and appointment of Anganbari Sevika and Sahayika but, the first selection was made according to the Directives issued in the year 2006. It is further submitted that the selection should be made in accordance with directives of the year 2006 and not the Directives issued in the year 2011. Learned counsel for the petitioner placed his reliance on paragraph-9 of the case of **Y.V. Rangaiah and others v. J. Sreenivasa Rao and others** reported in (1983) S.C. 855 whereas it is held as follows:

Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the Statewide basis and therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.

Learned counsel for the petitioner further placed his



reliance on paragraph-5 of the case of *P. Mahendran v. State of Karnataka* reported in (1990) S.C. 408 which reads as follows:

It is well settled rule of construction that every statute or statutory Rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the Rule must be held to be prospective. If a Rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rule of 1987 does not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the Rule with retrospective effect. Since the amending Rule was not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force. The amended Rule could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter.

5. Respondent No. 7 Smt. Usha Kumari filed representation before the Collector, Gaya in pursuance of the order dated 20.12.2011 passed in C.W.J.C. No. 20935 of 2011, alleging therein that the selection of the petitioner on the post of Anganbari Sevika is illegal. Respondent No. 7 Smt. Usha Kumari pointed out that the petitioner is resident of outside the nutritional area. The petitioner got 58.88%



marks and she is matriculate. Usha Kumari got 62.72% marks and she is intermediate passed. Usha Kumari was not appointed although she got highest marks and placed above the petitioner in the merit list and the petitioner was appointed although she got less marks and she is resident of outside the nutritional area of Anganbari Kendra. On such, the Collector, Gaya got the enquiry held and in the enquiry, it was found that the meeting of Aam Sabha was not held in accordance with law. The resolution of Aam Sabha was not written and the same does not bear the signature of the members of the Aam Sabha. The proceeding was not drawn up. The Collector, Gaya finding that no meeting of Aam Sabha was held in accordance with law and there was tampering in the preparation of merit list, cancelled the selection of the petitioner and ordered for fresh selection. The appointment of the petitioner was made in the year 2007 on the basis of directions issued by the Welfare Department, Government of Bihar meant for appointment of Anganbari Sevika, Anganbari Sahayika and Paricharika in the year 2006. The Welfare Department, Government of Bihar used to issue orders and direction for appointment of Anganbari Sevika, Anganbari Sahayika and Paricharika from time to time. The appointment of Anganbari Sevika is not on regular government post it is simply an engagement of a person to provide preliminary education and nutritious food among the children of the nutritional area of the



Anganbari Kendra. Therefore, the submission of the petitioner that fresh selection be made on the basis of the Directives of the Year 2006 is not acceptable. The Collector, Gaya has very categorically found that the selection of the petitioner is made on otherwise consideration as no meeting of Aam Sabha was held in accordance with law and there appears some interpolation in preparation of merit list.

6. Having considered the facts aforesaid and the discussions made above, I do not find any merit in this writ petition. Accordingly, the same is dismissed.

(Prabhat Kumar Jha, J)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.08.2017
Transmission Date	NA

