

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1054 of 2016
IN
Civil Writ Jurisdiction Case No. 2339 of 2013**

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1. Sunita Kumari wife of Sri Ram Nayan Sharma, Resident of Village & P.O.-
Banwaria, P.S.- Hulasganj, District- Jehanabad.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Secretary, Department of Welfare, Government of Bihar, Patna.
3. The Commissioner, Magadh Division, Gaya.
4. The District Magistrate, Jehanabad.
5. The Deputy Development Commissioner, Jehanabad.
6. The Block Development Officer, Hulasganj Block, Jehanabad.
7. The Child Development Project Officer, Hulasganj Block, Jehanabad.
8. Mukhiya Tira Gram Panchayat under Hulasganj Block, District Jehanabad
namely Arvind Sharma, son of Sri Jamnua Sharma resident of Village- Bira,
P.O. Dhawalbigha, P.S.- Hulasganj, District- Jehanabad.
9. Usha Kumari daughter of Sri Ramjee Sharma, wife of Sri Ramanand Sharma,
resident of Village- Banwaria, P.S.- Hulasganj, District- Jehanabad.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Lakshmi Kant Sharma, Advocate
For the Respondent/s : Mr. Anil Kumar Sinha- GA9

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 11-05-2017

Seeking exception to an order dated 23.2.2016 passed
by the learned Writ Court in C.W.J.C. No.2339 of 2013, this appeal
has been filed under Clause 10 of the Letters Patent.

The matter pertains to appointment of the Anganwari
Sevika to the centre in question. Records indicate that when the
process of appointment of Anganwari Sevikas for centre No.201,



village Banwaria of Gram Panchayt Tira, district Jehanabad was undertaken, the appellant herein, Sunati Kumari, and the respondent Usha Kumari submitted their applications. Applicant Usha Kumari had obtained 1st division in Madhyama examination which was equivalent to Matriculation and Intermediate and had secured 550 marks whereas the appellant Sunita Kumari passed the Intermediate examination in 3rd division. The Aam Sabha prepared a merit list and Usha Kumari was first in the merit. However, ignoring her claim, the Aam Sabha recommended for appointment of appellant Sunita Kumari, a less meritorious candidate. This resulted in the respondent Usha Kumari filing a writ petition before this Court being C.W.J.C. No.14603 of 2006 and on 19.11.2009, the writ petition was disposed of directing the Collector of Jehanabad to cause an enquiry and decide the issue in question. The District Magistrate, Jehanabad, caused an enquiry into the matter and found that there is illegality in the selection of Anganwari Sevika as the Aam Sabha while making selection has not selected a more meritorious candidate, but a person with lower marks was selected.

In view of the aforesaid, when Usha Kumari was not granted appointment, the matter came to this Court in a contempt case and when the appointment of respondent No.7 was cancelled, she being the less meritorious candidate, again approached this Court



in C.W.J.C. No.21414 of 2011 and she was directed to take recourse to the remedy of filing an appeal before the Commissioner, Magadh Division. Commissioner, Magadh Division having allowed her appeal and having set aside the order of the Collector, the matter again came to this Court in the writ petition in question at the instance of respondent Usha Kumari and this Court, after examining various aspects of the matter, came to the conclusion that a less meritorious candidate has been appointed in preference to the more meritorious candidate and the discretion in this regard exercised by the Aam Sabha was found to be illegal and, therefore, the writ petition was allowed and challenging the finding of the learned Writ Court this appeal has been filed.

Learned counsel for the appellant took us through the following judgments: Malti Kumari vs. The State of Bihar & Ors., 2007 (2) P.L.J.R. 325, Gyan Mala Devi & Ors. vs. The State of Bihar & Ors., 2006(2) P.L.J.R. 241, to primarily argue that under the scheme and Circulars applicable at the relevant time, the power of appointment was vested with the Aam Sabha of the concerned Gram Panchayat and once the Aam Sabha has exercised its power for appointment, the District Magistrate or other authorities should not have interfered into the matter. The following judgments were also cited in support thereof to say that the executive instructions in this



regard should be followed:

Nirmala Kuwar @ Nirmala Kumari vs. The State of Bihar & Ors., 2006 (3) P.L.J.R. 162 and Devanti Devi vs. The State of Bihar & Ors., 2006(4) P.L.J.R. 44.

Learned counsel appearing for the appellant submitted that in this case the Aam Sabha, which is authorized to make the appointment as per the policy, having taken a decision by recording specific reasons to say as to why it is selecting the appellant, the learned Writ Court should not have interfered into the matter. Accordingly, contending that the learned Writ Court has exceeded in its jurisdiction and has interfered with the rights available to the Aam Sabha for granting appointment, this appeal has been filed.

Learned counsel for the respondents refuted the aforesaid contention and argued that under normal circumstances preference should be given for appointment to a more meritorious candidate, but for reasons to be recorded, which should show justification, the Aam Sabha may deviate from the merit policy, but in this case, the learned Writ Court having found the decision of the Aam Sabha to be contrary to the requirement of law, in interfering has not committed any error.

We have heard learned counsel for the parties at length and we find that the contention of the appellant with regard to the



right of the Aam Sabha to take a decision and make appointment is not disputed and all the judgments relied upon by the learned counsel for the appellants have been considered by the learned Division Bench in the detailed order passed. However, after evaluating various aspects of the matter the learned Writ Court found that even if the Aam Sabha has the power to select an Anganwari Sevika, when a more meritorious candidate with better marks is left out and preference is given to a less meritorious candidate, then the decision taken by the Aam Sabha should reflect application of mind, recording of reasons and the special consideration that weighed with the Aam Sabha for deviating from the normal Rule. Merely because the Aam Sabha is clothed with the power to make selection, it does not mean that the Aam Sabha by ignoring the merit and without recording any cogent or justifiable reason, can deviate and take a decision. In detail this aspect of the matter has been dealt with by the learned Writ Court and after examining the reason given by the Aam Sabha, it has found that the Aam Sabha has not discharged its duties properly in selecting a less meritorious candidate in preference to a more meritorious candidate and the Aam Sabha has not given cogent and justifiable reason. The resolution of the Aam Sabha, Annexure 5, goes to show that after considering all the applications, the Aam Sabha came to the conclusion that of the three applicants, as per



merit, the appellant herein has to be appointed and a decision was taken to appoint her. The reason given is that the applicant is the daughter-in-law (Bahu) of the village; the answer given by her to the question posed is more satisfactory and she should be appointed. However, no reason is given as to why the more meritorious candidate as recommended by the Selection Committee is being ignored in preference to a less meritorious candidate.

Taking note of all these aspects of the matter, the learned Writ Court has directed for appointment of a more meritorious candidate. The order passed by the learned Writ Court is after due consideration of the legal principles involved in the matter and we see no error or illegality in the same warranting reconsideration.

The appeal is, therefore, dismissed.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

K.C.jha/-

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