IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1598 of 2014

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1. Smt. Kumkum Devi Wife Of Shri Pramod Kumar Singh Resident Of Village + P.O. + P.S. Nawanagar, District - Buxar, At Present Aanganbari Sevika, Yadav/Koeri Tola, Centre No.2, Nawanagar, Panchayat + Block + P.S. Nawanagar, District – Buxar .... Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Social Welfare Department, Govt. Of Bihar, Bikas Bhawan, Patna
3. The Director, Integrated Child Development Scheme (I.C.D.S.) Bihar, Vikash Bhawan, Patna
4. The Divisional Commissioner Patna Division Patna - Cum - Appellate Authority, Patna
5. The District Magistrate, Buxar
6. The District Programme Officer, Buxar
7. The Sub Divisional Officer, Dumraon, District - Buxar
8. The Child Development Project Officer, Nawanagar, District - Buxar
9. The Gram Panchayat Raj, Nawanagar through Its Panchayat Secretary
10. The Mukhiya, Gram Panchayat Raj, Nawanagar, District - Buxar
11. Gram Panchayat Secretary, District - Buxar
12. Smt. Gangotri Devi, Wife Of Om Prakash Singh Resident Of Village + P.O. + P.S. Nawanagar, District – Buxar .... Respondents

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Appearance :
For the Petitioner : Mr. Bishnu Kant Dubey, Adv.
For the Respondents : Mr. Ravish Chandra, AC to SC XVI

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 11-09-2017

Prabhat Kumar Jha, Heard Mr. Bishnu Kant Dubey, learned counsel appearing for the petitioner, and Mr. Ravish Chandra, learned counsel appearing for the State. No one appears on behalf of respondent no. 12.

2. The petitioner has filed this writ petition for quashing the order, dated 11.10.2011, contained in Memo No. 881, by which the District Magistrate, Buxar, cancelled the selection of the petitioner from the post of Agan Bari Sevika. The petitioner, further, prayed to quash the order, dated 08.08.2013/23.10.2013, passed by the Divisional Commissioner, Patna Division, in Miscellaneous Appeal No. 288 of 2012, by which the Divisional Commissioner dismissed the appeal of the petitioner, preferred against the cancellation of her

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selection as passed by the District Magistrate, Buxar.

3. The facts, in brief, are that the petitioner was appointed on the post of Agan Bari Sevika for Center no. 12, Yadav Koeri Tola.

4. Respondent no. 12, Gangotri Devi, filed a petition that the petitioner got lesser marks than her, but, the petitioner was illegally appointed. On such complaint petition, the District Programme Officer, Buxar, respondent no. 6, held an enquiry and found that the petitioner admittedly got 463 marks in the matriculation examination held by the Bihar Sanskrit Siksha Board in the year 1991, but, respondent no. 12, Gangotri Devi, got 506 marks in the matriculation examination held by the Bihar School Examination Board. The District Programme Officer, Buxar, besides other illegality and irregularity committed by Aam Sabha in selection of the petitioner on the post of Agan Bari Sevika found that the petitioner, admittedly, got lesser marks and, accordingly, cancelled the appointment of the petitioner, vide order, dated 03.02.2010.

5. The petitioner filed C.W.J.C. No. 5290 of 2010. This Court by order, dated 18.11.2010, remitted the case to the Collector, Buxar, with a direction to dispose off the case of the petitioner after hearing the petitioner in accordance with law. The Collector, firstly, found that the petitioner was not noticed before her termination, accordingly, restored the service of the petitioner and after hearing the petitioner and Gangotri Devi, respondent no. 12, passed the order on 11.10.2011 holding that the appointment of the petitioner on the post of Agan Bari Sevika is illegal and petitioner got lesser marks than Gangotri Devi and ordered for appointment of Gangotri Devi on the post of Agan Bari Sevika.

6. The petitioner, again, filed C.W.J.C. No. 11586 of 2012 against the order, dated 11.10.2011, as contained in Memo No. 881, Annexure 16, but, this Court remitted the case to the appellate authority,

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the Divisional Commissioner Patna Division, and in pursuance thereof the Divisional Commissioner, after hearing both sides, dismissed the appeal of the petitioner.

7. Mr. Bishnu Kant Dubey, the learned counsel for the petitioner, submits that the petitioner was admittedly selected for the post of Agan Bari Sevika in the year 2002, but, after six years, on otherwise political pressure, the District Programme Officer, Buxar, cancelled the selection of the petitioner.

8. In pursuance of the order of this Court, passed in C.W.J.C. No. 5290 of 2010, the petitioner was reinstated, but, after hearing both sides, again, the Collector found the appointment of the petitioner illegal. It is submitted that the ground for cancellation of the appointment of the petitioner is that the petitioner got lesser marks than Gangotri Devi, but, Clause 13 of the Circular No. 1129, dated 13.06.1998, prescribes the qualification of a candidate for appointment of Agan Bari Sevika/Sahayika. It is submitted that Clause 5 of the Agan Bari Parvekshika/Sevika/Sahayika Appointment Resolution prescribes the minimum qualification as matriculation passed, but, ultimate authority is vested in Aam Sabha to select a candidate having minimum qualification as suitable for the post. There is other criterion also and the authority of Gram Sabha can not be looked into the writ jurisdiction. The learned counsel for the petitioner has placed reliance on a single Bench judgment of this Court reported in **2006(4) PLJR 44 (Dewanti Devi Vrs. The State of Bihar & Ors.)** that minimum qualification does not mean that a person having better qualification is placed above the person who has got minimum qualification, but, otherwise found fit by Aam Sabha and selection of Agan Bari Sevika the criteria is that besides the person having better education, Aam Sabha for any other reason may look into the personality of the person who can impart appropriate education to tiny toddlers of the village and apart from education, many

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other things are required such as kindness, zeal, humanitarian approach etc. of the candidates should also to be taken into consideration and after consideration of all these facts, the Gram Sabha selected the petitioner and, therefore, this Court should not interfere and hold that the appointment is illegal on the sole ground of educational quelification. It is, further, submitted that the Collector while cancelling the selection of the petitioner should not have ordered for appointment of respondent no. 12 as the power of appointment is vested in Gram Sabha. The Collector should have remitted the matter to Gram Sabha for appointment in accordance with law on the post of Agan Bari Sevika.

9. On the contrary, the learned counsel for the State submitted that the order cancelling the appointment of the petitioner does not require any interference as there is no illegality.

10. Having considered the submission, I find that if is admitted fact that the petitioner and respondent no. 12 applied for appointment on the post of Agan Bari Sevika. The petitioner was appointed although she got 463 marks in matriculation/equivalent to matriculation examination, conducted by Bihar Sanskrit Siksha Board. The respondent no. 12 got 506 marks in matriculation examination, conducted by the Bihar School Examination Board. Respondent no. 12 also fulfilled all the minimum criterion for appointment on the post of Agan Bari Sevika. Sub Clause I of Clause 5 prescribes that the persons having better educational qualification shall be preferred for appointment on the post of Agan Bari Sevika and Sahayika.

11. From perusal of the judgment, of Dewanti Devi reported in **2006(4) PLJR 44**, (supra) on which the learned counsel for the petitioner placed reliance, I find that no law has been laid down. The Aam Sabha can not be vested with unbridled power to appointment any person of it’s own choice. The Directorate of Integrated Child Development Scheme has time to time issued directions and guidelines

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for appointment on the post of Agan Bari Sevika/Sahayika/Parcharika. The directives are very much clear that a person having better qualification should be appointed on the post of Agan Bari Sevika. There is no dispute with regard to this fact that the petitioner got lesser marks than respondent no. 12, but, she was appointed by Aam Sabha without assigning any reason of her finding suitable for post of Agan Bari Sevika in comparison to respondent no. 12.

12. Having regard to the facts, aforesaid, I do not find any illegality with the order of the Collector, Buxar, and Commissioner, Patna Division. Thus, this writ petition is **dismissed** as devoid of any merit.

(Prabhat Kumar Jha, J)

SA/-

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