

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22815 of 2013

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Kumari Lalita Mahto, W/o Vishwa Nath Prasad, Resident of Village- Vegraspur,
P.O.- Jeori Tola, P.S.- Pakri Barawan, District- Nawada

.... Petitioner

Versus

1. The State of Bihar
2. The District Magistrate, Nawada
3. The Child Development Project Officer, Nawada
4. The Mukhiya, Gram Panchayat Ras Jeori, Pakri Barawan, District- Nawada
5. Ruchi Bharti, W/o Anil Kumar, Resident Of Village- Vegraspur, P.O.- Jeori,
P.S.- Pakri Barawan, District- Nawada

.... Respondents

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Appearance:

For the Petitioner : Mr. Birendra Kumar, Advocate

For the Respondents : Ms. Shilpi Keshri, AC to AAG 10

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 10-07-2017

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The present writ petition has been filed for quashing the order dated 06.08.2013 issued by the Deputy Director, Welfare, Magadh Division, Gaya passed in Anganbari Appeal No. 78 of 2012 (Annexure-1) dismissing the appeal against the order of the District Magistrate-cum-Collector by which selection of the petitioner on the post of *Anganbari Sevika* was cancelled; and for connected reliefs.

3. The facts of the case, according to the petitioner, are that the petitioner was selected on the post of *Anganbari Sevika*, pursuant to the decision taken in the Aam Sabha in its meeting held on 16.12.2009 and successful training completed thereafter, in terms of



letter dated 23.02.2011 (Annexure-5). On subsequent complaint filed by one Ruchi Bharti before the District Magistrate-cum-Collector, Nawada, an order dated 20/28.03.2012 came to be passed after hearing the parties in which it was held that the petitioner had accepted that her mother Chameli was working in Bhagabandh Colliery in Dhanbad being a Government colliery. In view of the prohibition contained in Clause 3(*anga*) of the Departmental Guidelines vide letter no. 2783 dated 31.10.2006 (Annexure-8), the petitioner's selection was cancelled. The appeal filed against the order of the District Magistrate-cum-Collector was also dismissed by the Deputy Director, Welfare, Magadh Division, Gaya for the same reason that paragraph 3(*anga*) of the 2006 Guidelines applicable had been contravened.

4. Learned counsel for the petitioner makes a short submission to the effect that paragraph 3(*anga*) of the 2006 Guidelines has been struck down as unconstitutional by order dated 21.05.2010 passed in CWJC No. 3981 of 2008 (*Anita Kumari vs. The State of Bihar & others*) (Annexure-9), which has attained finality as no appeal was preferred by the State. It is therefore, submitted that the impugned orders cancelling the petitioner's selection as *Anganbari Sevika* is not sustainable in law.

5. Learned counsel for the State appears and has been heard. She relies upon the statements made in the counter affidavit of the Respondent No. 3 to submit that the petitioner's selection has



rightly been cancelled by the authorities in accordance with the Guidelines. It is stated that the petitioner had concealed the fact that her mother was posted in the Government Colliery which disentitles her from being considered for selection as *Anganbari Sevika* in terms of paragraph 3(*anga*) the 2006 Guidelines.

6. Having heard learned counsel for the parties and on careful consideration of the materials on record, this Court finds merit in the writ petition. It is not disputed on behalf of the State that the petitioner's selection was cancelled by the order of the District Magistrate with reference to paragraph 3(*anga*) of the 2006 Guidelines, which prohibited selection of a person who is closely related with the family members of the Government servants. The appellate order dismissing the petitioner's appeal was also passed on the same ground. However, paragraph 3(*anga*) of the 2006 Guidelines has been struck down as unconstitutional in CWJC No. 3981 of 2008 (*Anita Kumari vs. The State of Bihar & others*). As such, the very basis and foundation for passing the impugned orders cancelling the petitioner's selection must be treated as invalid. It is not in dispute that both the impugned orders have been passed after the relevant provisions of 2006 Guidelines have already been struck down, but the authorities have proceeded without having regard to this aspect of the matter. The submission on behalf of the State that the petitioner had concealed the relevant fact in this regard is also of little consequence for two reasons – firstly, even if a



disclosure of the fact had been made, it would have made a little difference inasmuch as the prohibition in the 2006 Guidelines itself was found invalid and set aside; and secondly, that the impugned orders of the authorities have not been passed on the ground that the petitioner had suppressed material information. It is well settled that the validity of an order has to be tested on the grounds contained in it, and the reasons cannot be subsequently supplemented by means of filing a counter affidavit after an order has been challenged.

8. In the above circumstances, the impugned order dated 20/28.03.2012 passed by the District Magistrate-cum-Collector, Nawada (Annexure-10) and the appellate order dated 06.08.2013 passed by the Deputy Director, Welfare, Magadh Division, Gaya in Anganbari Appeal No. 78 of 2012 (Annexure-1) are hereby set aside. The authorities shall proceed in the matter in terms of selection letter dated 23.02.2011 (Annexure-5) in accordance with law. The writ petition stands allowed.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
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