

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1156 of 2014
IN
Civil Writ Jurisdiction Case No. 23671 of 2012**

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Kumari Sachchi W/o Sri Mundeshwar Thakur, resident of village - Barahsher, P.S. Bihra, District - Saharsa

.... Appellant/s

Versus

1. The State of Bihar through the Secretary, Department of Social Welfare, Government of Bihar, Patna
2. Divisional Commissioner, Koshi Division, Saharsa
3. District Magistrate, Saharsa
4. District Programme Officer, Saharsa
5. Child Development Project officer, Sattar Katiaya, District - Saharsa
6. Mukhiya, Gram Panchayat, Barahsher, P.S. Bihra, District - Saharsa
7. Rupam Kumari W/o Sri Shankar Kumar Khan resident of village - Brahsher, P.S. Bihra, District - Saharsa

.... Respondent/s

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Appearance :

For the Appellant/s : Mr.D.K.Sinha, Sr. Advocate
Mr. Girish Chandra Jha, Advocate
Mr. Kumar Goutam, Advocate

For the Respondent/s : Mr. Prabhat Kumar, AC to GA-XI

For Respondent No. 7 : Mr. Nikunj Shekhar, Advocate.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 25-07-2017

The appellant has filed the instant Letters Patent Appeal against the judgment and order dated 25.4.2014 passed in CWJC No. 23671 of 2012 whereby the learned Single Judge dismissed the writ application and declined to interfere with the order passed by the Divisional Commissioner dated 12.11.2012 passed in Anganwari Revision Case No. 128 of 2012.



The brief facts relevant for deciding the present Letters Patent Appeal lies in a narrow compass. On 10.11.2004 Aam Sabha was convened for selection of Anganwari Sevika/Sahaika at Aanganwari Centre, Matihari under Saharsa district. In the meeting 44 persons were present and they have put their signature or thumb impression in the Proceeding Register. The name of the appellant figures at Sl. No. 45, i.e. the last in the Proceeding Book whereas the respondent no. 7 signature figures at Sl. No. 24.

From the pleadings it appears that the appellant who was working as Instructor at Dhamdaha School at the relevant time resigned from the said post on 5.12.2004, i.e. after the meeting of the Aam Sabha dated 10.11.2004.

The appellant was issued appointment letter by the Child Development Project Officer on 9.12.2004. After the appointment of the appellant a controversy was raised as to the legality of selection and appointment of the appellant and the appellant's appointment was set aside by the District Programme Officer vide order dated 29.01.2010. The appellant challenged the order of termination in Appeal Case No. 35/2010 before the District Magistrate, Saharsa who set aside the order of the District Programme Officer and thereafter the respondent No. 7 filed Revision Case No. 50/2011 before the Divisional Commissioner. The Divisional Commissioner set aside the order of the District



Magistrate, Saharsa passed in Appeal Case No. 35 of 2012 vide order dated 4.1.2012. The appellant thereafter filed CWJC No. 1782 of 2012. The said writ petition was disposed of vide order dated 26.3.2012 and the matter was remanded back to the Commissioner. The appellant thereafter filed Anganwari Revision Case No. 128 of 2012 before the Divisional Commissioner, Koshi Division after the order of remand dated 26.3.2012. The Divisional Commissioner, Koshi Division, after hearing the parties and on perusal of the documents noted the following facts:

1. The Aam Sabha for selection of Anganwari Sevika/Sahaika at Anganwari centre No. 5, Matihani Harijan Tola, Panchayat Barhser was held on 10.11.2004.

2. In the merit list the name of respondent No. 7 herein Rupam Kumari was at Sl. No. 1 and the appellant was at Sl. No. 2.

3. The qualification of Rupam Kumari was mentioned as Madhyama 2nd Division whereas the qualification column of Kumari Sachchi, appellant was blank.

4. The Child Development Project Officer in the remark column against Kumari Sachchi mentioned as selected.

5. The Child Development Project Officer issued appointment letter vide memo no. 242 dated 9.12.2012.

6. On 13.12.2004 the then Mukhiya send two letters, one addressed to the District Magistrate, Saharsa and the other to the



District Welfare Officer, Saharsa wherein, inter alia, he has mentioned that the Aam Sabha unanimously selected Rupam Kumari, respondent No. 7 and thereafter, the Mukhiya and Supervisor sent the said select list for approval of the Chief Development Project Officer but instead of approving the select list Sachchi Kumari, the appellant has been appointed by the Child Development Project Officer. In the aforesaid backdrop of the fact, the District Programme Officer vide memo no. 5 dated 29.1.2010 cancelled the selection of the appellant.

The Commissioner, Koshi Division after noticing the aforesaid fact, rejected the revision application filed by the appellant herein.

The decision of the Commissioner in Anganwari Revision Case No. 128 of 2012 was challenged by the appellant by filing CWJC No. 23671 of 2012. The writ Court dismissed the writ petition vide order dated 25.4.2014 after considering the entire facts and circumstances and the detailed discussions in the order of the learned Commissioner, Koshi Division. The Writ Court concurred with the finding of the Divisional Commissioner in Revision Case No. 128 of 2012 and held out that there are many reasons as to why the writ petitioner has not been selected or appointed.

The Writ Court in particular noted that there is no reflection of the educational qualification of the petitioner-appellant



herein in the so called entry after the Gram Sabha was held. The Writ Court also noted the fact that the petitioner-appellant is supposed to have two types of degrees one of Intermediate and another of Madhyama simultaneously which is a clear point of fraud.

In the instant Letters Patent Appeal the appellant has not disputed the fact that she has acquired two types of degree simultaneously, one of Intermediate and another of Madhyama. The appellant has also not disputed that in the entry after Aam Sabha there was no reflection of educational qualification of the petitioner-appellant. The appellant has also not disputed the fact that she was working as Instructor in Dhamdaha School on the date of Aam Sabha dated 10.11.2004 to the contrary she admitted in the writ petition that she resigned from the said post on 5.12.2004.

In the appeal the only issue canvassed by the senior counsel appearing on behalf of the appellant is that the letter no. 531 dated 25.2.2005 suggests that the Child Development Project Officer was competent to issue appointment letter and as such, the Divisional Commissioner as well as the Writ Court committed error in rejecting the Anganwari Revision Case No. 128 of 2012 and C.W.J.C. No. 23671/2012 ignoring the issue of competence of Child Development Project Officer in the matter of appointment of Anganwari Sevika/Sahaika.

Even assuming that the Child Development Project



Officer is competent to issue appointment letter, but the power of the Child Development Project Officer is circumscribed by certain conditions including adopting fair procedure in the matter of selection. The power to appoint does not confer arbitrary jurisdiction to the CDPO to issue appointment letter ignoring the minimum requirements of fair consideration of the candidature of the appellant and respondent, since in the Proceeding Book itself the column meant for educational qualification was blank against the appellant and as such the appellant could not have been appointed without assessing the respective merit of the appellant and the respondent No. 7.

We have heard the counsel for the appellant and respondents at length and on perusal of the entire materials on record, we are of the considered view that the appellant could not have been selected for the post of Anganwari Sevika in the absence of furnishing particulars as to educational qualification. The Proceeding Book manifest that the column as to educational qualification of the appellant was blank. The admission of the appellant that she resigned the earlier post of Instructor on 5.12.2004, i.e., after the meeting of Aam Sabha dated 10.11.2004, is also adverse circumstance which raises question mark on the selection of the appellant in the Aam Sabha coupled with the fact that the Mukhiya and Supervisor raised their objections about the



selection of the appellant by the Child Development Project Officer in a clandestine manner. The undisputed fact that the petitioner/appellant has acquired two types of degree simultaneously also renders the eligibility of appellant more vulnerable. The submissions of the appellant that she was selected on the basis of qualification of Intermediate and not on the basis of Madhyama does not merit consideration as the column meant for educational qualification itself was blank.

In the aforesaid backdrop of the facts and circumstances and on consideration of the detailed reasoning for rejecting the Anganwari Revision Case No. 128/2012 by the Divisional Commissioner and the discussions of the Writ Court in the order dated 25.4.2014, we are of the considered view that the writ Court has committed no illegality warranting interference in this intra-court appeal.

The appeal is, accordingly, dismissed.

(Rajendra Menon, CJ)

S.Pandey/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	NA
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