

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2007 of 2016

In
Civil Writ Jurisdiction Case No.8367 of 2014

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Sindhu Devi @ Sindhu Kumari, Wife of Manoj Kumar, Resident of Village -
Chakroja Samuddin, Police Station - Mehsi, District - East Champaran.

... .. Appellant/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Commissioner, Tirhut Division at Muzaffarpur.
3. The Collector-cum-District Magistrate, East Champaran at Motihari.
4. The Deputy Director of Welfare, Tirhut Division, Muzaffarpur.
5. The District Planning Officer, Mehsi, East Champaran.
6. The Child Development Project Officer, Mehsi, District - East Champaran.
7. The Mukhiya, Gram Panchayat Raj Bakhari Nazir, Mehasi, East Champaran.
8. Asha Devi, Wife of Rameshwar Thakur, Resident of Village - Chakroja Samuddin, Police Station - Mehsi, District - East Champaran.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Tej Bahadur Singh, Senior Advocate
		Mr. Brisketu Sharan Pandey, Advocate
For the State	:	Mr. Manish Kumar, AC to AAG 8
For Respondent No.7	:	Mr. Dhurendra Kumar, Advocate
For Respondent No.8	:	Mr. Mukesh Kumar Jha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-01-2018

Seeking exception to an order dated 07.09.2016 passed by the
learned Writ Court in CWJC No.8367 of 2014, this appeal has
been filed under Clause 10 of the Letters Patent.



Even though in the order passed by the learned Writ Court, it is indicated that concurrence finding recorded by the Collector and the Commissioner in the matter of appointment to the Anganwari Sevika need not be gone into and interfered with in a proceeding under Article 226 of the Constitution, but on scanning of the facts that have come on record, we find that the position is not as simple as indicated in the order passed by the learned Writ Court.

The facts, in brief, which are relevant for deciding of this appeal go to show that initially in the year 2004, a process of selection was undertaken for appointment of Anganwari Sevika for the centre in question. In the said selection process, the appellant herein Sindhu Devi @ Sindu Kumari was not a party. However, the respondent No.8 Asha Devi along with various other candidates participated in the process of selection and finally one Smt. Nibha Sinha was appointed to the said post. The appointment of the said Nibha Sinha was subject matter of adjudication and was pending before this Court at the instance of various persons, including respondent no.8 herein Asha Devi. While all these writ petitions were pending it is seen that Smt. Nibha Sinha was appointed as a Panchayat Teacher and, therefore, she resigned from the post, as a consequence thereof, all the writ petitions were



disposed of remanding the matter to the Collector for consideration.

In the meanwhile, after the post became vacant on resignation of Nibha Sinha, a fresh appointment process was initiated and in the said process, the present appellant Sindhu Devi @ Sindhu Kumari participated and respondent No.8 Asha Devi also participated. The Gram Sabha approved the appointment of the present appellant Sindhu Devi @ Sindhu Kumari, but in the remand order after resignation of Nibha Sinha, the Collector found various illegalities in the first selection process and directed for appointment of Anganwari Sevika, respondent no.8 herein as a successful candidate who was entitled to be appointed in the first selection that was held in the year 2004 wherein Nibha Sinha was appointed.

The grievance of the petitioner now in the present writ petition is that in the order passed by the Collector and affirmed by the Commissioner issue was considered with regard to first selection process conducted in the year 2004, the second selection process in which the petitioner was appointed was never in issue before the Collector and the Commissioner and even without taking note of the relevant fact, interference with the appointment



of the appellant which took place in the second selection process after resignation of Smt. Nibha Sinha was unsustainable.

Learned counsel for the State and the learned counsel appearing for respondent No.8 pointed out that as the first selection was conducted illegally and the respondent no.8 Asha Devi was kept out of selection because of improper consideration, interference made by the Collector and affirmed by the Commissioner was proper and no indulgence into the matter is called for. He invites our attention to certain judgments with regard to protection available to a person under Article 311 of the Constitution to canvass his contention to say that in a post created for appointment on honorarium basis, this cannot be gone into.

Having heard learned counsel for the parties at length, we find that two process of selections were held for appointment to the post in question. In the first process held, it was Nibha Sinha who was appointed and it was the appointment of Nibha Sinha and the selection process that was conducted which was subject matter of adjudication and once Nibha Sinha resigned from the post in question, the entire first selection process came to an end and after the post was vacated by Nibha Sinha, the second process of selection was conducted and the second process of selection was



never challenged before the Collector or the Commissioner which was impugned in the writ petition.

In fact, while upholding the order passed by the Collector and the Commissioner, the Writ Court completely lost sight of the fact that the appointment of the present appellant was in the second process of selection. It was not a subject matter of dispute or adjudication before the Collector and the Commissioner. The question as to whether respondent No.8 Asha Devi after having participated in the second process of selection and having failed in the selection could challenge the first selection process which came to an end after resignation of Nibha Sinha was an important question of law which should have been considered. In our view, once the second process was held and the same culminated in the appointment of the present appellant after respondent no.8 Asha Devi had participated in the second process of selection, she could only challenge the second process of selection and could not assail the first process of selection which was considered by the Collector.

Taking note of all these, we allow this appeal, quash the orders of the Collector, the Commissioner and the writ Court and upheld the appointment of the present appellant which was undertaken in the second process of selection and grant liberty to



the respondent no.8 or any aggrieved person to challenge the second process of selection afresh in accordance with law before the authority concerned. The appointing authority shall proceed to implement the recommendation of the second selection committee and grant jointing to the appellant if she was meritorious and recommended candidate.

The appeal is, accordingly, allowed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.01.2018
Transmission Date	

