

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11654 of 2010

Priyadarshini Kumari, aged about 28 years, Wife of Surendra Kumar, Resident of Village- Mocharim, P.S. Bodh Gaya, Distt.- Gaya.

... .. Petitioners

Versus

1. The State of Bihar, through Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Department of Social Welfare, Govt. of Bihar, Patna.
3. The Director, Department of Social Welfare, I.C.D.S. Directorate, Government of Bihar, Patna
4. The Commissioner, Magadh Division, Gaya.
5. The Divisional Commissioner, Magadh Division, Gaya.
6. The District Magistrate, Gaya.
7. The District Programme Officer, Gaya.
8. The Block Development Officer, Bodh Gaya, Gaya.
9. The Child Development Project Officer, Bodh Gaya, Gaya.
10. The Mukhiya, Gram Panchayat Raj Mocharim, Gaya.
11. Mrs. Sarika Sinha, W/o Sashi Bhusan Kumar, R/o Village- Mocharim, P.O. Mocharim, P.S. Bodh Gaya, District- Gaya.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Rajendra Prasad Singh, Senior Advocate Mr. Rajeev Kumar Singh, Advocate Mr. Nirala Kumar Singh, Advocate
For the State	:	Mr. Gyan Prakash Ojha, G.A.-7(GP16) Mr. Gopal Krishna, A.C. to G.A.-7.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 19-03-2018

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

2. In this case, the petitioner is challenging the order vide memo no. 4318 dated 10.10.2009, passed by the District Magistrate, Gaya, whereby and where-under he has recorded that the selection of the petitioner was illegal as Aam Sabha was



not properly constituted nor acted as per the instruction for appointment of the Anganbari Sevika and the aforesaid order has been affirmed by the Commissioner, Magadh Division, Gaya, vide order dated 06.05.2010 in Angabari Appeal No.03 of 2010.

3. This matter relates to selection of Anganbari Sevika for centre of Mocharim. An advertisement was published in March, 2007 for the purposes of selection of Anganbari Sevika. The petitioner along with two candidates, namely, Samistha Shail Jaruhar and Anshu Verma applied for the said post. Samisthan Shail Jaruhar secured highest marks, was listed at Serial No.1 in the merit list followed by Anshu Verma and the petitioner was at Serial No.3. The petitioner filed a complaint against Samistha Shail Jaruhar, stating therein that she obtained a forged and fabricated certificate and on the basis of the same she secured her place at top of the merit list. Inquiry was conducted by the District Magistrate, Gaya, and it was found that she, on the basis of forged and fabricated certificate, has secured her place at the top and accordingly, vide order dated 18.07.2008 (Annexure-2) cancelled the selection of Samistha Shail Jaruhar and later on, the certificate of Anshu Verma, who was at serial no.2, was also found to be forged and fabricated.



The petitioner remained the sole candidate in the panel, but the life of the panel was for one year because she was the third one, she could have been appointed as Anganbari Sevika on account of efflux of time of one year she has not given the appointment letter. Where-after, the District Programme Officer, vide letter dated 17.12.2008 directed the Child Development Project Officer, Bodh Gaya, to complete the selection of Anganbari Sevika within three days. The Child Development Project Officer, in turn, vide letter dated 08.12.2008 directed the Mukhiya to complete the process of selection within two days and accordingly, Aam Sabha was held on 20.12.2008, in which the petitioner was selected and she was sent for training. But, while she was doing her training Sunita Kumari, Ward Member, filed a complaint that entire record of the Gram Sabha is forged, no Gram Sabha was ever called and by committing fraudulent act by the husband of the petitioner her signature has been obtained in the register as well as in the appointment letter.

4. In pursuance of this complaint, the District Magistrate, Gaya, handed over the matter to the District Panchayat Officer, to hold an inquiry, who after proper inquiry, submitted the report on 25.08.2009 to the District Magistrate, Gaya. Accordingly, the District Magistrate, vide order dated



10.10.2009 (Annexure-1) cancelled the appointment of the petitioner. Where-after, the petitioner filed a representation to the District Magistrate, but the same was not disposed of that compelled the petitioner to approach this Court in C.W.J.C. No.15890 of 2009. This Court instead of entertaining the application, directed the petitioner to approach the appropriate forum within 30 days, where her case will be considered and the same will be decided accordingly. In pursuance of the aforesaid order, the petitioner filed an appeal before the Appellate Authority in Anganbari Appeal No. 3 of 2010, who vide order dated 06.05.2010 rejected the appeal of the petitioner and affirmed the order of the District Magistrate, holding that the selection was suffered from illegality and her selection cannot be approved. After removal of the petitioner from Anganbari Sevika, on the direction of the District Magistrate, a fresh Aam Sabha was held, in which Sarika Sinha, respondent no.11, was appointed.

5. The point has been taken by the petitioner that before passing the order of removal from the post of Anganbari Sevika, admittedly, the petitioner was not heard as the order of the District Magistrate is based upon the report of the District Panchayat Officer, which was never handed over to the



petitioner nor she was ever given any hearing before passing the impugned order against her. The Commissioner also examined the merit part but nowhere he has discussed about the non-observation of the natural justice by the District Magistrate before removal from the post of Anganbari Sevika.

6. Though it is not a civil post, but it is minimum required that if any adverse order has to be visited, in such circumstance, it is a primary duty of the authority to ensure the fairness in his action, but the District Magistrate, while passing the order has not given any notice to hear the petitioner but merely, has passed the order against the petitioner recording that her husband has obtained the appointment letter fraudulently and there is no reply from the side of the State that before passing the order against the petitioner she was not handed over the report of the District Panchayat Officer nor any hearing was given to the petitioner.

7. In such view of the matter, the order of the District Magistrate, Gaya, dated 10.10.2009 is set aside. Consequently, the order of the Commissioner dated 06.05.2010 passed in Anganbari Appeal No. 03 of 2010 is also set aside. The matter is remanded back to the District Magistrate, Gaya, who will give hearing to the petitioner and pass a reasoned order in accordance



with law.

8. This Court is not disturbing the appointment of Sarika Sinha, respondent no.11, but the District Magistrate, Gaya, while considering the case of the petitioner will implead Sarika Sinha as party and she also be given hearing and after hearing all the sides, the District Magistrate, Gaya, will pass appropriate order in accordance with law. It is clarified that the appointment of Sarika Sinha on the post of Anganbari Sevika will be dependent on the outcome of the order passed by the District Magistrate. It is also clarified that this Court is not giving any opinion on the merit of the case.

9. With the aforesaid observations and directions, this writ petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
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