

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20215 of 2014

Arshadi Begam wife of Ajmal Hussain, residents of village- Ruhia, P.S.-
Kochadhaman, District- Kishanganj

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department, Govt. of Bihar, Patna
2. The Director, I.C.D.S., Govt. of Bihar, Patna
3. The Divisional Commissioner, Purnia Division, Purnia
4. The District Magistrate, Kishanganj
5. The District Programme Officer Kishanganj
6. The Child Development Project Officer, Kochadhaman Block, District- Kishanganj
7. The Mukhia, Barijan Gram Panchayat, Block Kochadhaman, District Kishanganja
8. The Panchayat Secretary, Barijan Gram Panchayat, Block Kochadhaman, District Kishanganja
9. Shahnaz Begam, wife of Md. Arif Alam residents of village- Ruhia, P.S.- Kochadhaman, District- Kishanganj

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Zaki Haider, Advocate
For the State	:	Mr. D. K. Verma, AC to SC11
For the Respondent/s	:	Mr. Naushaduzzoha, Advocate

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 25-04-2018

Heard learned counsel for the petitioner, learned counsel
for the State as well as learned counsel for Respondent no. 9.

This writ petition under Article 226 of the Constitution of India has been filed for issuance of writ of certiorari for quashing the order dated 23.7.2014 passed by the Divisional Commissioner, Purnia Division, Purnia, by which appeal filed by Respondent no. 9 has been allowed and direction has been issued to appoint Respondent no. 9 as Aanganwari Sevika in place of



petitioner at Aanganwari Center No. 251, ward no.14 in Barijan Block Kochadhaman, District Kishanganj as well as Memo dated 09.08.2014 issued by Child Development Project Officer, Kochadhaman, appointing Respondent no.9 on the post of Aanganwari Sevika.

Briefly stated case of the petitioner is that an Aam sabha was held on 17.09.2013 of the selection of Aanganwari Sevika for Aanganwari Center no. 251, ward no.14 in the Lalmiantola of village- Rohia, Panchayat- Barijan under Kochadhaman Block. Petitioner being Matriculate and Intermediate has been selected to be appointed as Aanganwari Sevika in the said Aam Sabha by the decision taken in Aam Sabha dated 17.09.2013 and petitioner was appointed by the Child Development Project Officer Kochadhaman by Memo dated 21.11.2013.

Respondent no.9 Shahnaz Begam filed a complaint before the District Programme Officer, Kishanganj that in spite of her being within the Poshahar Kshetra of ward no.14 and having higher marks than petitioner has not been selected by the Aam Sabha and petitioner has been illegally selected. The District Programme Officer, Kishanganj after taking cognizance of a complaint and after hearing all the parties rejected the claim of Respondent no.9 vide Memo dated 24.10.2013 with observation



that she does not belong to Poshahar Khestra, as such Aam Sabha did not appoint her.

Aggrieved by the order of District Programme Officer, Kishanganj, Respondent no.9 preferred an appeal before the Divisional Commissioner, Purnia, being Miscellaneous Case no.154 of 2013 who after hearing parties allowed the appeal and set aside the order dated 24.10.2013 passed by the District Programme Officer, Kishanganj, and directed the Child Development Project Officer, Kochadhaman to appoint Respondent no.9 on the said post after removing the petitioner and in compliance of the said order Respondent no.9 was appointed as Anganwari Sevika vide Memo dated 09.08.2014.

It has been submitted on behalf of petitioner that in order to get appointed on the post of Anganwari Sevika a candidate must be resident of Poshahar Khestra of Anganwari Center and also she should belong to the dominant community residing within Poshahar Khestra and after these two conditions are satisfied appointment is made as per merit list prepared on the basis of academic qualification.

Respondent no.9 had also applied for her appointment in the Anganwari Center but her candidature was rejected by the Aam Sabha as she was not resident of Poshahar Khestra and



petitioner being next in the merit list was appointed as she was resident of Poshahar Khestra.

It has further been submitted by learned counsel for the petitioner that on the complaint made by Respondent no.9 a thorough enquiry was made by the District Programme Officer, and a spot enquiry was also made in which Respondent no.9 was found to be resident of ward no.13 whereas petitioner was found to be resident of ward no.14 and ignoring the vital document the appellant authority has ignored it and on the basis of documents produced by Respondent no.9 at appellate stage hearing was done on 24.10.2013 in which all the parties appeared and represented their cases. Respondent no.9 stated that she is a permanent resident of ward no.14 and having the higher marks, she ought to have been appointed on the post of Aanganwari Sevika.

In support of her case she produced an affidavit sworn by the ward member of ward no.13 in which ward member has stated that name of husband of Respondent no.9 is Md. Arif Alam, son of Asahuddin and which has wrongly been included in the voter list of ward no.13 whereas it should be ward no.14. Ward member of ward no.14 Shri. Mahadeo Pandit has also filed an affidavit that name of husband of Respondent no.9 is Md. Arif



Alam, son of Asahuddin which has wrongly been entered in the voter list of ward no.13 and it ought to be in ward no.14.

The District Programme Officer, in his order has further stated that in order to resolve the dispute spot/physical verification was made by Smt. Devi Kumari, Supervisor. She made spot/physical enquiry of the Poshahar Khestra and examined 27 witnesses and submitted her report to the District Programme Officer, in which she has found that Respondent no.9 is resident of ward no.13, house no.7 and in the voter list she is at serial no.61 and as such she is a member of ward no.13. She has also reported that Respondent no.9 is working a Sahayika in Aanganwari Center no.79 within ward no.13 and she has been removed from said post because of her continued absence. She has reported that Respondent no.9 is not resident of ward no.14 as such she is not eligible for her appointment as Aanganwari Sevika.

The District Programme Officer, has further observed in his order that in the merit list of proceeding of ward no.14 was produced by the CDPO, Kochadhaman which has total population of 1103 and minority is the dominant class and name of Respondent no.9 does not find place in the Mapping Panji of the Area. The persons in the merit list prepared during Aam Sabha



which has been shown as residents residing out of Poshahar Khestra which includes Respondent no. 9.

Out of eleven applicants considered for appointment for by Aam Sabha, only three were from dominant class and within Poshahar Khestra, Zakera Khatun was top in the merit list but she couldn't be appointed as her husband was school teacher and after considering all the relevant materials available on records the District Programme Officer dismissed the objection of Respondent no.9 and found that selection of petitioner on the post Aanganwari Sevika was valid and she was eligible whereas Respondent no.9 did not belong to Poshahar Khestra, as such her complaint was dismissed an order was passed on 24.10.2013 by the District Programme Officer to give effect to the proceedings dated 17.09.2013 of Aam Sabha which appointed the petitioner.

Against the rejection of her complaint Respondent no.9 filed an appeal before the Appellate Authority, Divisional Commissioner, Purnia, who after noticing all the parties heard the matter and by order dated 23.07.2014 allowed the appeal of Respondent no.9 and directed her appointment. Respondent no.9 had submitted new documents before the Appellate Court in support of her case that she is resident of ward no.14 whereas petitioner was not resident of ward no.14.



However, these documents were not produced before the Original Authority, District Programme Officer, and as such fresh grounds and fresh materials would not have been entertained by the Commissioner at the appellate stage and if there was any material supporting the case of Respondent no.9, which was not produce before the Original Authority, the District Programme Officer, the appeal could have been remanded for fresh consideration to the District Programme Officer on the basis of new materials and new grounds which could not be produced by Respondent no.9 when the dispute was being heard by the Original Authority, the District Programme Officer, Kishanganj.

The Appellate Authority, the Divisional Commissioner, Purnia, on the basis of fresh materials, fresh documents and fresh grounds has found that there are sufficient documentary evidence from the side of Respondent no.9 regarding her being resident of ward no.14 and allowed her appeal.

However, the Appellate Authority appears to have overlooked the case of Respondent no.9 before the Original Authority that her name in the voter list of ward no.14 has been wrongly included although she belongs to ward no.13 and also ignored the on the spot enquiry made by Lady Supervisor and finding recorded by her after examining resident and witnesses of



ward no.13 and found that Respondent no.9 was not resident of Poshahar Khestra of Aangwari Center Rather she was residing in ward no.14 outside the Poshahar Khestra of present Aanganwari Center. The Appellate Court also ignored the fact that Responent no.9 was appointed as Aanganwari Sahayika in ward no.14 and as such her claim that she is resident of ward no.13 was not acceptable.

In view of the discussions as made above, the order passed by the Divisional Commissioner, the Appellate Authority, suffers from many contradictions and he has taken new consideration, new materials, new facts and new grounds for allowing the appeal which was not placed before to the District Programme Officer and as such the order passed by the Divisional Commissioner dated 24.10.2013 is not sustainable in the eye of law and is accordingly set aside.

The matter is remitted to the District Programme Officer, Kishanganj, to decide the eligibility on the basis of materials available on record at the time of first consideration dated 24.10.2013 as well as materials brought before the Appellate Court by Respondent no.9 in accordance with law within a period of three months from the date of receipt/production of a copy of



the order and shall issue appointment letter in favour of whom
order is passed.

The writ petition is allowed to the extent indicated
above.

(S. Kumar, J)

sudip/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

