

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.866 of 2015

In

Civil Writ Jurisdiction Case No.904 of 2014

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Ragini Srivastava, wife of Sri Sushil Kumar, Resident of Ward No. 5, Bhabhua, P.S.+District- Bhabhua, Presently posted as Lady Supervisor in the C.D.P.O. office of Bhabhua Block, Disrict- Kaimur (Bhabhua).

... .. Appellant/Respondent

Versus

1. The State of Bihar through the Principal Secretary, Department of Social Welfare, Government of Bihar, Patna
2. The Director, Integrated Child Development Service (I.C.D.S), Government of Bihar, Patna
3. The Commissioner, Patna Division, Patna
4. The District Magistrate, Kaimur (Bhabhua).
5. The District Level Selection Committee, through its Chairman-Cum-District Maigstrate Kaimur. (Bhabhua)
6. The District Programme Officer, Kaimur
7. Kumari Neesha, wife of Birendra Singh, Resident of village - Pihara, P.O- Ora, P.S.-Bhagwanpur, District- Kaimur (Bhabhua)
8. Kiran Bala, w/o Saket Bihari Singh, Resident of village- Ramgarh, District- Kaimur(Bhabhua)
9. Rinju Kumari, Wife of Vikash Kumar Singh, Resident of village- Ramgarh, P.O. & P.S. Ramgarh, District Kaimur(Bhabhua)

Respondents-Respondents 1st set

10. Sangeeta Kumari, wife of Sri Piyush Kumar, Resident of village- Chainpur, P.O.- Chainpur, P.S.Chainpur, District -Kaimur

... .. Respondents/Respondent 2nd set

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Appearance :

For the Appellant/s	:	Mr. Rajesh Kumar Mishra
		Mr. Sourendra Pandey
For the State		Mr. Amaresh Kumar Sinha, AC to GA 1
For Respondent no.10		Mr. Arup Kr. Chongdar
		Mr. Md. Nazir Ansari
		Mr. Ganesh Singh

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 18-08-2018

This intra Court appeal arises from a judgment

and order passed by a learned Single Judge on 05.02.2015 in



CWJC No. 904 of 2014, whereby, while allowing the claim of the writ petitioner for appointment as a Supervisor under the guidelines issued by the Department of Social Welfare for regulating the Anganbari Centres across the State, the learned Single Judge has questioned the appointment of the respondent no. 8 Ragini Srivastava, who is the appellant herein, as according to the learned Single Judge, the appellant has to make way for the appointment of the writ petitioner Sangeeta Kumari. It is because of this observation of the learned Single Judge which has led to filing of the present appeal.

This appeal was heard on 12.05.2015 when a coordinate bench while issuing notice directed for maintenance of Status quo as regarding the appellant and as a consequence she continues on her post. The appeal was admitted for hearing on 31.07.2015 and it is pursuant to the notice issued that the respondent-writ petitioner has appeared through her counsel.

This matter was heard on 18.06.2018 and when the learned counsel for the appellant fairly conceded that there is no infirmity in the order of the learned Single Judge, insofar as it upholds the claim of the writ petitioner, and



thus even if a direction was to be issued in favour of the respondent-writ petitioner for her appointment as a Supervisor and someone had to make way for her, it had to be the last candidate appointed and not the appellant who was much above in the merit list. It was the submission of the learned counsel for the appellant that the order in favour of the respondent-writ petitioner could not adversely affect the appointment of the appellant-respondent because she was much above in the merit list. It was also the argument of learned counsel for the appellant that by virtue of the status-quo order as directed by this Court on 12.05.2015, even though the respondent-writ petitioner has been appointed as a Supervisor, none of the appointees, including the appellant-respondent, have been disturbed from their respective appointment as a Supervisor.

It is bearing note of the submission so advanced by learned counsel for the appellant that the respondent-State was allowed time to verify the position as to whether the respondent-appellant needs to be disturbed when she was not at the bottom of the merit list. Counsel for the State was also directed to inform whether the appointees could be accommodated on their respective posts.



It is following our direction that a counter affidavit is filed on behalf of the respondents through the Child Development Project Officer. It is informed, vide statement made in paragraph 11, that the respondent no. 10, who was the writ petitioner before the Single Judge, has been appointed as a Lady Supervisor which appointment is subject to the outcome of this appeal. It is also informed that as many as 13 posts of Lady Supervisor are yet lying vacant. It is admitted that while the respondent no. 10, who was the writ petitioner before the learned Single Judge, has been appointed as a Lady Supervisor pursuant to the order passed by the Writ Court, none of the appointees including the appellant, have been disturbed from their appointment and yet there are 13 posts of Supervisor in general category lying vacant.

In the circumstances noted, we are persuaded to hold that there was no occasion for the learned Single Judge to hold the appointment of the appellant who was respondent no. 8 in writ proceeding, vulnerable, while directing the appointment of the writ petitioner. We accordingly modify that part of the order of the learned Single Judge in so far as it comments upon the appointment



of the appellant on the post of Supervisor as vulnerable, and the reason is three-fold:

(a) It is undisputed that the appellant is not at the bottom of the merit list, rather the other private respondents in the writ petition were much below the appellant in the merit list, yet not disturbed; and

(b) There are indisputably 13 posts in the general category yet lying vacant.

(c) The respondent/writ petitioner has been appointed on a vacant post without disturbing the appointment of either the appellant or the other respondents.

Mr. Amaresh Kumar Sinha learned AC to GA-1 has been very fair to inform this Court, on instruction, that while the appellant has been appointed as Supervisor at Bhagwanpur, the respondent no. 10, who was the writ petitioner, has been appointed following the order of the Writ Court at Bhabhua, both the posts lying within the district of Kaimur. In other words, the appointment of the writ petitioner as a Supervisor has caused no disturbance with the appointment of the appellant or the other appointees. The claim of respondent no. 10, as the writ petitioner, has been upheld on merits and since this direction



is not questioned by the appellant, we find no reason to disturb the opinion expressed by the learned Single Judge in upholding the claim of the writ petitioner.

Having considered the rival submissions in the backdrop of the circumstances noted above, we are persuaded with the argument of leaned counsel for the appellant to modify the order of the learned Single Judge passed on the writ petition to the extent it has held the appointment of the appellant 'vulnerable' consequent upon upholding the claim of respondent no. 10 (writ petitioner) which observation of the learned Single Judge, in our opinion, was unwarranted because the appellant who was the respondent no. 8 before the Writ Court, not being at the bottom of the merit list, there was no occasion for the learned Single Judge to comment on her appointment.

For the reasons so discussed, while upholding the judgment and order of the learned Single Judge upholding the claim of the writ petitioner, we are persuaded to modify the order to the extent it comments upon the appointment of the appellant-respondent no. 8, Ragini Srivastava as 'vulnerable' which cannot be upheld and is, accordingly, set aside. That there is no conflict of interest in between the



appellant and respondent no. 10, the status-quo order passed by this Court on 12.05.2015 in appeal is hereby confirmed and as a consequence the appointment of the appellant and respondent no.10 on their respective post at Bhagwanpur and Bhabhua is hereby confirmed.

At this Juncture, Mr. Arup Kumar Chongdar informs that despite the appointment, respondent no.10 is not being paid his salary.

Let the appropriate authority consider the grievance of the respondent-writ petitioner of non payment of salary and dispose of the same in accordance with law within six weeks of filing of representation.

The appeal is allowed with the modification above.

No order as to cost(s).

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	01.09.2018
Transmission Date	

