

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 9769 of 2015

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Kalpna Bhashkar W/o Sri Dani Lal Kunwar Resident of Village - Buchauli, Police Station - Kusheshwar Asthan, District - Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar represented through the Commissioner-cum-Secretary, Department of Social and Welfare, Government of Bihar, Patna.
2. The Director, Directorate of Integrated Child Development Scheme, Bihar, Patna.
3. The Deputy Director Welfare, Darbhanga Division, Darbhanga.
4. The District Magistrate, Darbhanga.
5. The District Programme Officer, Darbhanga.
6. The Child Development Project Officer, Kusheshwar Asthan, Darbhanga.
7. Neeka Devi W/o Sri Jitendra Kumar Rai Resident of Village - Gopalpur, P.O. Bargaon, Police Station - Kusheshwar Asthan, District - Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Raju Giri & Ranjit Kr Yadav, Advocates

For the S t a t e : Mr Arun Kumar Sinha, AC to GP XXI

For Private Respondent : Mr Amit Kumar Singh, Advocate

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 05-03-2018

Heard learned counsel for the petitioner, State and private respondent.

2 Petitioner has challenged the order dated 28.05.2015 passed in Appeal Case No 16 of 2014 whereby the petitioner has been removed as Angan Bari Sevika, for Centre No 86 in Ward No 7 in Panchayat – Bargaon, Village – Buchauli, District – Darbhanga.

3 Learned counsel for the petitioner submits that the main two grounds, which have been mentioned in the order for setting aside the selection of the petitioner, are that undue weightage has been



given for the disability certificate regarding her hearing impairment as she has given a certificate that the extent of her disability was 35%. She should not have been granted additional 5 marks on the ground of her hearing impairment as she did not have 40% disability.

4 It is submitted by the petitioner's counsel that as per the guidelines of 2011, 40% is the maximum of disability for award of additional 5 marks. Thus, he submits that even though the petitioner has 35% disability, she is entitled to 5 additional marks. As regards the other finding of the appellate authority regarding submission of a desertion certificate for availing additional 7 marks, it is submitted by the learned counsel for the petitioner that even if the 7 marks, which was given to the petitioner on the basis of desertion certificate, is reduced from the total marks then also she will prevail over respondent No 7 and still be first empanelled candidate and entitled to be appointed as Angan Bari Sevika for the Centre in question.

5 On going through the order of the appellate authority, it appears that the appellate authority has considered the fact that the Ex Mukhiya, who happens to be cousin brother of petitioner's husband, has given a certificate certifying her to be deserted wife and on basis of the same, she has been awarded additional 7 marks.

6 Counter affidavit has been filed on behalf of the State to which no rejoinder or reply has been filed by the learned counsel



for the petitioner though copy of the counter affidavit has been served on the petitioner's counsel in December, 2017. It is the stand of the State that the records reveal that the petitioner was not a deserted wife. The State has placed on record the certificate issued by the present Mukhiya Badal Singh wherein it has been stated that the earlier certificate certifying her desertion was issued by the Ex-Mukhiya, who was "*Bhainsur*" of the petitioner on extraneous consideration. The present Mukhiya has certified that the petitioner is still residing with her husband Dani Lal Kumar Rai in Ward No 6 in the house of the said Dani Lal Kumar Rai.

7 Since there is no rejoinder or reply to the counter affidavit and even in the order of the appellate authority, there is no specific denial of the said fact being made on behalf of the petitioner, there is nothing on record to disbelieve the said certificate issued by the present Mukhiya.

8 The petitioner has placed on record the desertion certificate, which is Annexure 3 of the writ petition. Even if the said certificate is issued by the competent authority, the contents therein do not conclusively certify any fact. Whether the petitioner is legally divorced or deserted is not born from the alleged desertion certificate which has been placed on record at Annexure 3 to the writ petition. Another additional fact discrediting the said desertion certificate is



that co-signatory to the said certificate i e Ward Member Mahendra Ram has sworn an affidavit on 22.02.2014 in which he has stated that he has not issued the desertion certificate dated 25.01.2010 which has been relied on by the petitioner.

9 The petitioner has succeeded in the selection on the basis of the desertion certificate which appears to be unreliable, misleading and obtained on extraneous consideration.

10 Having considered the aforesaid conduct of the petitioner, this Court is not inclined to interfere with the order of the appellate authority impugned in the instant writ petition.

11 The petitioner's counsel has further submitted that the appointment of respondent No 7 is also illegal as the same has been obtained on forged and fabricated matriculation certificate. If that be so, it would be open to the petitioner to raise the grievance before any competent authority who may examine the issue in accordance with law.

12 The writ petition is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.03.2018
Transmission Date	NA

