

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7713 of 2010

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1. Kumari Sangeeta W/O Sri Rakesh Kumar R/O Vill.- Khanpura, P.S.- Giriyak,
Distt.- Nalanda

.... Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Nalanda
3. The Child Development Project Officer, Giriyak, Distt.- Nalanda

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Badari Narain Singh
Ms. Renu Jha

For Respondent No.4 : Mr. Durga Nand Jha

For the State : Ms. Nutan Kumari Sharma, AC to GA 1

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 14-03-2018

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

2. The petitioner is permitted to incorporate Article 226 of
the Constitution of India in I.A. No.3929 of 2017.

3. In the present case, the petitioner is challenging the
order dated 23.2.2010 passed by the Collector, Nalanda at
Biharsharif in Misc. Case No.6 of 2010 in which he has directed
to appoint Puja Prabha Sinha , wife of Jitendra Kumar holding
that she has a better marks then any of the candidate applied for
the post of Anganwari Sevika and the Committee has wrongly
rejected the application of the petitioner and refused to declare



successful candidate when she has secured highest marks in all of the persons who have applied for the post of Anganwari Sevika . This order has been challenged by I.A. 3929 of 2017 and at the initial stage the petitioner has made a prayer to give direction to the District Magistrate and Mukhiya Gram Panchayat Puraini, Giriyak to immediacy appoint the petitioner in view of the order dated 15.12.2009 passed in C.W.J.C. No.15645 of 2009 in which the Court has directed to pass an appropriate order in the matter of this petitioner within a period of two months from the date of receipt of this order but in spite of lapse of three months, the District Magistrate failed to pass any order even though the petitioner was sole candidate remained in fray for appointment as Anganwari Sevika. Against the advertisement for appointment of Anganwari Sevika for village Khanpura under Puraini Panchayat in Giriyak Block in the District of Nalanda candidates have filed their respective applications, namely, Rina Devi, wife of Sharban Paswan, Kumari Sangeeta, wife of Rakesh Kumar, Kumari Puja Prabha, wife of Jitendra Kumar and Most. Rita Devi, wife of late Ram Sagar Singh. The application of Rina Devi was not entertained on account of the fact that Sharban Paswan husband of Rina Devi was ward member and the application of Kumari Puja Prabha was rejected



as she failed to attach the voter list and voter identity card nor he has filled up his sl.no. mentioned in the voter list as well as she failed to attach the residential certificate which are essential element and necessary document as per clause 3 Gha of the Guideline and as such her application was rejected. Only two persons were in the field, namely, Kumari Sangita and Rita Devi. Aam Sabha had taken a decision for selection of Rita Devi on account of being a widow and she requires sympathetic consideration as per guideline. Admittedly Kumari Sangita has better marks than Rita Devi. She made a complaint. The District Magistrate could see the illegality committed by Aam Sabha and cancelled her selection. Rita Devi being dissatisfied with the order of the Collector has filed writ petition vide C.W.J.C. No. 16053 of 2007. Case of Rita Devi was heard along with 67 analogous cases and all cases were disposed by a common order dated 14.12.2007 in which the Court directed the District Magistrate to see that in case some order is passed relating to selection/ removal or complaint relating to the selection of Anganwari Sevikas a fresh selection process must be completed within a period of four weeks from the date of passing of order of the District Magistrate. The Aam Sabha will complete the selection process within a period of four weeks from date of



passing of such order of the District Magistrate following the procedure as provided under 2006 of the Guideline.

4. In pursuance thereof a fresh case was instituted before the Collector as Anganwari Case No. 9 of 2009 which was brought by Rita Devi and the Collector vide order dated 31.8.2009 has recorded that appointment of Rita Devi was completely wrong as she has lesser mark than Kumari Sangita and instead of giving direction for appointment of rest candidates selected by the Aam Sabha in which direction was given for fresh selection and in operative portion the District Magistrate has recorded that in view of the instruction issued from time to time and in view of the order passed by this Court it requires fresh selection should be done and that should be completed within a period of one month.

5. Against this order Kumari Sangita has approached this Court vide C.W.J.C. No.15645 of 2009 which was disposed of 15.12.2009 and in the order, the Court stated that before the life of panel could have been completed, Kumari Sangita raised a grievance, so direction was given for selection from the panel. It will be relevant to quote the following:

“The life of a panel for appointment on the post of Anganbari Sevika under the Rules is normally for one year. The



petitioner appears to have agitated the matter within the same. The institution of a First Information Report against the Mukhiya and the Panchayat Secretary with regard to the illegal appointment made ignoring the case of the petitioner satisfies this Court that such an appointment of a person at serial no.2 of the panel cannot be classified as a irregular appointment to uphold the order of the District Magistrate.”

6. After the remand Kumari Sangita approached the Collector along with the order and in view of that direction the Collector has passed the impugned order directed the appointment of Puja Prabha as Anganwari Sevika holding that she has secured highest marks.

7. Learned counsel for the petitioner submits that application of Puja Prabha was rejected at the initial stage, which was never challenged she had never a fight with the petitioner or Rita Devi as her application along with Rina Devi was rejected at the threshold so only two candidates were in fray for appointment of the Anganwari Sevika, namely, petitioner and Rita Devi. Rita Devi was wrongly appointed and that appointment has been set aside. The petitioner was the sole candidate for consideration of appointment of Anganwari Sevika. It has further been argued that at no stage or no time



Puja Prabha had ever challenged the rejection of her application as she was knowing her weakness that her application was incomplete. Further it appears that the Collector while conducting the proceeding of Anganwari Case No.9 of 2009 in which on 31.8.2009 order was passed, there also, the Collector never considered the application of Puja Prabha but all on a sudden when the matter was remanded back a fresh application was filed by Puja Prabha and on that basis a purported committee was constituted, report was filed CDPO on 22.2.2010. He examined and reported the matter that Puja Prbaha was wrongly deprived for appointment as Anganwari Sevika. In the said report it has been mentioned that defect was rectified or the application was complete and as such refused to appoint Puja Prabha as Anganwari sevika at the outset, appears to be illegal as her application was never placed for consideration for appointment of Anganwari sevika though she was holding highest marks, accordingly Collector gave consideration by the Collector gave direction for appointment of Anganwari Sevika is under challenge. Respondent no.4 has submitted that admittedly petitioner is not a better better candidate as she has obtained 67.71% marks whereas Puja Prabha obtained 57.11% marks and her application was wrongly



rejected by the selection committee of Aam Sabha on the ground that application was not complete when she has filed proper application before the concerned authority. Further claim has been made by respondent no.4 that when Rita Devi or present petitioner approached this Court in early writ petition she was not even impleaded as a party which completely shows the attitude of the petitioner in what manner the respondent no.4 has been treated and the Court without hearing Puja Prabha has passed the order in C.W.J.C. No.15645 of 2009 and further submitted that the order dated 15.12.2009 passed in C.W.J.C. No.15645 of 2009 having been passed without taking into consideration earlier passed by this Court on 14.12.2007 in C.W.J.C. No.16033 of 2007. Had this order been brought to the notice of this Court in a proceeding in C.W.J.C. No.15645 of 2009 then the Court had refused to give direction for selection from the said panel as in the earlier proceeding the Court has passed the order for fresh selection and in pursuance thereof the Collector had directed fresh selection and this Court without taking cognizance of earlier order passed the order. Further submitted that after the order, passed by the Collector Puja Prabha (respondent no.4) was appointed by Aam Sabha as Anganwari Sevika, she was sent for training on completion she



gave her joining. Further submitted that petitioner did not challenge her (respondent no.4) appointment but for the first time I.A. 3929 of 2017 has been filed after delay of 7 years.

8. Having consider the rival contentions of the parties let us decide objection raised by respondent no.4 with delay and laches in challenging the order after 7 years. It is a fact that petitioner had approached this Court in C.W.J.C. No. 15654 of 2009 wherein the petitioner had made a prayer that as appointment of Rita Devi has been declared illegal the Collector should take appropriate step for her appointment the matter was remanded for fresh consideration and Collector passed the order dated 22.2.2010 during pendency of this writ petition and the said order has been brought by way of counter affidavit which was filed on 1.5.2017 and only then the petitioner could know about the order passed by the Collector and whereafter the petitioner has filed I.A. No.3929 of 2017.

9. In such view of the matter, the plea that has been taken by the respondent no.4 about laches and delay is not sustainable as for the first time the State has brought order though affidavit in the year 2017 and just thereafter I.A. has been filed.

10. Another point has been raised by the respondent no.4 that her application was wrongly rejected by the committee as



she had filed all the documents but wrongly held that application was not attached original document. The rejection of the application of respondent no.4 was never challenged by respondent no.4 and at no stage, subsequently, the claim of Puja Prabha was considered by the Collector and the Collector did never consider the application of respondent no.4 to be valid one and she never raised any grievances before any authority inasmuch as she never approached any authority nor before this Court but only when this Court passed the order of remand in C.W.J.C. 15645 of 2009 then Puja Prabha spring up and filed application to CDPO who submitted report that she has better marks but nowhere it appears that decision which was taken by Aam Sabha rejecting the application of Puja Prabha was ever set aside. At the threshold applications of two candidates were rejected, only Rita Devi and Kumari Sangita were in the fight and admittedly Kumari Sangita has better marks than Rita Devi. There was no question of making comparison of Megha Ank of petitioner vis-a-vis Puja Prabha as Puja Prabha was never in fray on account of rejection of the application.

11. In such view of the matter, this Court finds that the order of the Collector suffers from illegality and the same is set aside and consequently appointment of Puja Prabha is also set



aside and this Court gives direction to the Aam Sabha to take decision in accordance with law taking into consideration that Puja Prabha is not in fray and Rita Devi has already lost the game.

12. Accordingly this writ petition is allowed.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.3.2018
Transmission Date	NA

