

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.802 of 2016

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Asha Kumari Rai, wife of Shri Pramod Kumar Rai, resident of village - Parsa,
P.O. - Amardah, District - Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Social Welfare, Government of Bihar, Patna.
2. The Commissioner, Saran Division, Chapra.
3. The District Magistrate, Saran at Chapra.
4. First Appellate Authority cum District Programme Officer, Saran, Chapra.
5. Phool Kumari Devi, wife of Dashrath Rai, resident of village - Parsa, P.O. - Amardah, District - Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raju Giri, Advocate. Mr. Santosh Kumar Mishra, Advocate.
For the State	:	Mr. Vivek Prasad, GP-18
For the Private Resp.	:	Mr. Ranjan Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 28-11-2018

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the Respondent
No. 5.

2. The petitioner has challenged the order dated
30.10.2015 passed by the District Programme Officer, Saran at
Chapra by which the selection of the petitioner, on the post of
Anganbari Sevika at Aaganbari Centre No. 2, Parsa Paschim in
Gram Panchayat Raj, Kerwa, Block- Isuapur, District- Saran,
has been declared to be bad and has been terminated from
service.



3. An advertisement was published in the year 2007 for the recruitment of Anganbari Sevika under Gram Panchayat Raj, Kerwa, Block- Isuapur, District- Saran in the District of Saran. Petitioner along with the respondent no. 5 applied for their respective recruitment. The petitioner position is that she has secured 66% marks whereas respondent no. 5 was 3rd divisioner in her matriculation examination and later on, as per the petitioner, respondent no. 5 procured the degree/certificate from Hindi Sahitya Sammelan, Allahabad and to have claimed the highest marks and that led to her selection as Anganbari Sevika.

4. Being aggrieved with selection of respondent no. 5, petitioner filed a complain to the District Magistrate, Saran. On the direction of the District Magistrate, Saran, the Deputy Collector Land Reforms, Marhowrah, Saran enquired into the matter and arrived to a finding that respondent no. 5 had failed to appear in counselling along with her certificate and without verifying the certificate her appointment had been made. The matter was heard by the District Magistrate and the District Magistrate, vide order dated 01.11.2008, set aside the selection of respondent no. 5 and directed for the appointment of petitioner. The District Magistrate also held that the certificate



issued by the Hindi Sahitya Sammelan Allahabad is not a recognized certificate and also pointed out towards interpolation in the date of birth of the respondent no. 5. Accordingly, the District Programme Officer, Saran, Chapra, vide Memo No. 1144 dated 01.02.2008, removed the respondent no. 5 from the post of Anganbari Sevika having held that appointment of respondent no. 5 was illegal and against to the guideline. In pursuance of the direction of the District Programme Officer, petitioner occupied the seat of Anganbari Sevika, but respondent no. 5, Phool Kumari Devi, being aggrieved by the order of the Collector, Saran, filed an appeal being Anganbari Appeal No. 39 of 2010 before the Commissioner, Saran Division and accordingly, the appeal was allowed by order dated 08.12.2010 with rider to hold enquiry following the principle of natural justice and again the matter went to the office of the Collector, Saran and he, as per the instruction of the Social Welfare Department, Government of Bihar, transferred the matter to the District Programme Officer, Saran, Chapra and the District Programme Officer, vide order dated 30.10.2015, set aside the appointment of the petitioner restoring the appointment of the respondent no. 5, Phool Kumari Devi, which is under challenge before this Court.



5. At the initial stage of argument, learned counsel for the respondent no. 5 has raised plea that instead of approaching this Court directly, there is a provision of appeal and as alternative remedy of appeal is available, petitioner should be asked to exhaust the alternative remedy and if the order goes against her then she may approach this Court. As this Court could have relegated the matter to the appellate authority but in the present case, the issue has been raised by the petitioner that the certificate issued by the Hindi Sahitya Sammelan Allahabad is not a proper certificate as such it has no value in the eye of law and cannot arm the respondent no. 5 in any manner on that basis she could be appointed to the post of Anganbari Sevika and in support of submission, learned counsel placed reliance on several judgment reported in Rajasthan Pradesh Vaidya Samiti, Sardarshahar and Anr. vs. Union of India & Ors.; 2010(12)SCC page 609 paragraph no. 51, The State of Bihar & Ors. vs. Mamta Kumari; 2010(4) PLJR 318 paragraph nos. 16, 27, 38; Chandra Shekhar Mahto vs. The State of Bihar & Ors.; 2013(2) PLJR page 908 and also placed reliance on an unreported judgment of this Court in LPA No. 654 of 2009 dated 04.12.2009 (Surendra Prasad Sahi vs. The State of Bihar & Ors.). In all judgments, it has been held that the certificate



issued by the Hindi Sahitya Sammelan Allahabad has no academic value and on that basis, any person can not be appointed on the post of Panchayat Teacher or Anganbari Sevika.

6. Learned counsel for the respondent, in contrary, has submitted that the authority to recognize a certificate or to refuse to recognize a certificate lies with the executive primarily is function of the State, having stated that the State recognizes that certificate up to recently, in his support placed reliance on the memorandum issued vide Memo No. 3152 dated 25.08.2008 wherein the list of institution has been attached with the memorandum, wherein the institution as well as the notification corresponding certificate having been not recognized for the purpose of selection and in that list, the name of Hindi Sahitya Sammelan Allahabad has been mentioned, so his plea is that only after 25.08.2008, any certificate issued by that institution will not carry any weight as well as he has placed reliance on the judgment reported in Radha Devi @ Rekha Devi vs. Punay Pratap Mandal; 2015(4) PLJR page 17 paragraph nos. 10 and 11. On that strength, learned counsel for the respondent no. 5 submits that the certificate, which she is possessing, cannot be ignored for the purposes of selection as Anganbari Sevika.



7. Learned counsel for the State has not opposed the contention of learned counsel for the respondent no. 5 and submitted that the certificate issued by the Hindi Sahitya Sammelan Allahabad has value and the respondent no. 5 can make a claim for being appointed as Anganbari Sevika.

8. Having considered the rival contention of the parties, the efficacy of the certificate issued by the Hindi Sahitya Sammelan Allahabad has no value as it is neither a university/deemed university nor an educational board. It is only a society registered under Societies Registration Act. It is not an educational institution imparting education any subject and Hindi Sahitya Sammelan has got no recognition from any statutory authority after 1967. Only it conducts the examination without verifying as to whether the candidate had some elementary basic education or has attended the classes of any recognized college and the same view has been taken in the cases of Rajasthan Pradesh Vaidya Samiti, Mamta Kumari (supra) at Paragraph Nos. 16, 27, 38 and an unreported judgment passed in LPA No. 654 of 2009 and the judgment, which has been cited by the respondent no. 5, has not been taken into consideration the aforesaid cases. The judgment passed by the Supreme Court as well as by this Court, it can conveniently be



said that the judgment is *per incurium* as those judgments were not brought to the notice of the Hon'ble Judge for deciding the issue about the status of the certification of Hindi Sahitya Sammelan Allahabad.

9. In such view of the matter, it can conveniently be said that respondent no. 5 does not possess requisite qualification for being appointed as Anganbari Sevika and accordingly, the order of the District Programme Officer, Saran, Chapra dated 30.10.2015 is quashed and the point raised for alternative remedy is also rejected as well as when the respondent no. 5 does not possess the basic qualification in such circumstances, asking the petitioner to approach the appellate authority will not be justified exercise of power of judicial review. In such view of the matter, the writ application is allowed and order is quashed.

(Shivaji Pandey, J)

sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

