

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.121 of 2018
IN
Civil Writ Jurisdiction Case No. 709 of 2016

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Kumari Sima Yadav, Wife of Mirtunjay Yadav, Resident of Village-
Nawalpur, Bhelisah Ka Tola, Police Station- Hussainganj, District-
Siwan.

.... Appellant

Versus

1. The State of Bihar through the Collector, Siwan.
2. The Deputy Director, Welfare Department, Saran Commissioner, Chapra.
3. The District Programme Officer, Siwan.
4. Bal Vikash Pariyojana Padadhikari (C.D.P.O.), Hussainganj, District-Siwan.
5. The Sarpanch, Gram Kachhari, East Harihans, P.S.- Hussainganj, Siwan.
6. Geeta Kumari, Wife of Sri Pyarelal Sah, Resident of Village-Nawalpur, Bhelisah Ka Tola, Police Station- Hussainganj, District-Siwan.

.... Respondents

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Appearance :

For the Appellant : Mr. Umesh Kumar Mishra, Advocate

For the Respondents : Mr. Gyan Prakash Ojha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 14-03-2018

Heard learned counsel for the appellant and

learned counsel for the respondents.

2. Challenge in the present appeal is to the



judgment dated 18.12.2017 passed by learned writ court in CWJC No. 709/2016 by which the learned writ court has been pleased to set aside the impugned orders passed by the District Programme Officer, Siwan in Case No. 49/2013 as affirmed by the Deputy Director, Welfare in Anganbari Appeal Case No. 13/2015 and restored the writ petitioner to the post of Anganbari Sevika. The learned writ court found that since the private respondents, who is in appeal before us, had filled up the post during vacancy so created by removal of the writ petitioner, the moment the writ petitioner is reinstated the private respondent would have to make way for the petitioner, and therefore, the learned writ court has been pleased to set aside the appointment of the private respondent.

3. Learned counsel representing the appellant who was private respondent no. 5 in the writ application submits that the selection of the writ petitioner on the post of Anganbari Sevika of Anganbari Kendra no. 16, Gram Panchayat Purvi Harihans, Nawalpur Bheli Shah Ka tola, in the district of Siwan was held to be bad by the District Programme Officer, Siwan, because the Gotni of the writ



petitioner (wife of the brother of the husband of the petitioner) was holding the post of Panch under the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the “Act, 2006”) which was a disqualification under Clause 4.8 of the amended guidelines regulating the services of Anganbari Sevika. Contention is that once her selection was cancelled and a fresh process was initiated leading to the appointment of private respondent-appellant, the fact that the Gotni of the writ petitioner had resigned within 15 days of the decision of the Aam Sabha would make no difference and the selection of the writ petitioner is bound to be held illegal and bad in law.

4. Learned counsel further submits that the private respondent-appellant had secured more marks than the writ petitioners and therefore even otherwise she would be entitled for appointment on the post of Anganbari Sevika.

5. On the other hand, learned Government Advocate No.7 appearing for the State has supported the impugned judgment whereunder the learned writ court found that in terms of para 4.8B of the guidelines the Gotni of the petitioner had already resigned and in absence of any order rejecting the resignation of the Gotni of the writ petitioner,



the resignation shall have a deemed acceptance in view of the provisions underlined Section 98 of the Bihar Panchayat Raj Act, on expiry of seven days time, thus removing the disqualification.

6. Learned counsel, therefore, submits that in view of the legal position, as appearing, the learned writ court has rightly taken a view holding that the disqualification in terms of para 4.8 of the guidelines was removed. So far as the submission of learned counsel representing the appellant that the appellant had secured more marks than the writ petitioner is concerned, learned counsel points out that from perusal of the impugned judgment and the pleadings available on the record in the original writ petition, it would appear that no such plea was raised before the learned writ court, and, therefore, for the purpose of assailing the impugned judgment, the appellant cannot be allowed to take a plea that too based on facts which were not pleaded before the learned writ court.

7. Having considered the rival submissions at the bar, on the face of admitted facts that Gotni of the petitioner had resigned within 15 days and by virtue of Section 98 of the



Bihar Panchayat Raj Act, on expiry of seven days the resignation will be deemed to have been accepted, we are of the considered opinion that the learned writ court has committed no error and the impugned judgment is not fit to be interfered with. We are also of the view that a fresh plea which has been advanced before us that the appellant has secured more marks than the petitioner of the writ application was not canvassed before the learned writ court and therefore we cannot entertain such pleas at the appellate stage.

8. The Letters Patent Appeal being devoid of merit is hereby dismissed.

(Rajendra Menon, CJ.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
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