

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13161 of 2010

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Ritu Kumari W/O Shashi Bhushan Yadav R/O Vill.- Dhushar, P.O. Tikapatti
Via Kursela, P.S.- Tikapatti, Distt.- Purnia

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Social Welfare Department Govt. of Bihar, Patna
3. The Director I.C.D.S. (INTEGRATED Child Development Scheme)
Directorate, Social Welfare Department, Bihar, Patna
4. The Commissioner, Purnia Division, Purnia
5. The District Magistrate, Purnia
6. The District Programme Officer, Purnia
7. The Child Development Project Officer (C.D.P.O.), Rupauli, Purnia
8. Phool Kumari Devi, W/o Yadunandan Mandal, R/o Vill. Dhusar, P.S.
Tikapatti, P.O. Tikapatti, Dist. Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailesh Kumar, Adv.

For the Respondent/s : Mr. Rajeev Shekhar, AC to GA-13

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 03-04-2018

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

In this case, the petitioner is challenging the order of the
District Magistrate contained in Memo No. 711 dated 15.7.2010,
whereby and whereunder, the appointment of the petitioner has
been set aside and, in her place, Smt. Phool Kumari Devi having
been directed for appointment as Anganbari Sevika for Center
Dhusar Kalisthan under the Gram Panchayat Laxmipur
Chharapatti, Purnea and further the petitioner has challenged the
order of the Divisional Commissioner, Purnea dated 16.8.2010 by



which he has affirmed the order of the District Magistrate, Purnea and rejected the appeal of the petitioner.

The short fact of this case is that the petitioner and the respondent no.8 had applied for the post of Anganbari Sevika for Dhusar Kalisthan Center, Gram Panchayat Laxmipur Chharapatti, Purnea. The Aam Sabha conducted its meeting on 18.10.2002 and people of different communities were present and the present petitioner was selected on recording the fact that there was no candidate from the Most Backward Caste and in paragraph no.5 of the writ application, the petitioner has given the demography of the area mentioning the population as 1000, the caste configuration being Gongota-450, Dhanuk-300, Bania-50, Bind-50 and yadav 150. So no person from the Gongota and Dhanuk was present who are from most backward class. The petitioner was from the backward caste, was selected by the Aam Sabha. Accordingly, the appointment letter was issued by the C.D.P.O., Purnea in favour of the petitioner dated 16.9.2004, whereafter, she took training at the training center and successfully completed the same and, thereafter, she started discharging her duty as Anganbari Sevika. In the meantime, the respondent no.8 filed a complaint before the District Magistrate raising a plea that she is from the caste of Kabrat which is the most backward caste and is also resident of that area having been ignored by the Aam Sabha i.e. the selection



committee. The notices were issued to the petitioner who appeared and participated in the proceeding. The District Magistrate vide his order dated 15.7.2010 has recorded that the most backward caste are majority in that center and, as such, as per guideline, vide letter no. 1129 dated 13.6.1998 and 1900 dated 28.2.2002, the selection has to be made of the candidate from the majority community. As the petitioner is the member of backward caste whereas Phool Kumari Devi is the member of most backward caste and that area was dominated by the most backward caste and, accordingly, the direction was given for her appointment and the selection of the petitioner was canceled. The same was affirmed by the Divisional Commissioner wherein he has recorded that in the survey register, the respondent no.8 has been recorded as the resident of that feeder area as she belongs to the Most Backward Caste and, as such, she cannot be deprived of her appointment.

Learned counsel for the petitioner has raised following points, firstly that the respondent no.8 approached to the authority after five years, secondly the point has been raised that the classification should be made on the basis of caste not on the basis of class, class in the sense that backward caste and most backward caste and it should be seen which caste is the higher population as Kabrat has not been shown in the mapping register, though by mistake her name has been recorded in the survey



register as well as the plea has been taken that she is not the resident of that ward rather she is resident of ward no.14. In this case, before dealing with the objection of delay, it is to be recorded that the findings has been arrived by the Divisional Commissioner that the register prepared by the Panchayat Samiti does not reflect the people of Kabrat caste reside in that area but, survey register and proceeding of Aam Sabha, reflects population of Kabrat in that area and, on the basis of survey register, it has been recorded that Phool Kumari Devi is the resident of Dhusar Kalisthan Kendra.

Learned counsel for the petitioner has not brought any material such as the Voter Card or the Voter list which could have substantiated the claim of the petitioner that the respondent no.8 is not the resident of that area but, the petitioner has not brought any material indicating the finding recorded by the Commissioner is illegal. A rightful claim of marginal class belonging to Most Backward Category should not be rejected on the ground of delay when justice has been done with her.

In the judicial review, the Court cannot act as an appellate court, would interfere when there is no plea that certain materials which were required to be looked into has not been taken into consideration or the material which should not have been taken into consideration have been taken into consideration or the



findings are perverse and against the weight of evidence. Applying this principle, when the District Magistrate as well as the Divisional Commissioner has specifically mentioned that her name is standing in the survey register which has not been challenged by any party. So this Court holds the view that the findings recorded by the Commissioner and Collector cannot be set aside with regard to residence of the respondent no.8. So far the delay part is concerned, of-course there is a delay but that cannot defeat the right. Learned counsel for the petitioner has submitted that she is still working as Anganbari Sevika, but it was the duty of the C.D.P.O. to see that when an order was passed by the District Magistrate and affirmed by the Divisional Commissioner, that order should have been implemented but, still the order is hanging without its implementation.

In that view of the matter, this Court does not find any merit in the present writ application and the same is dismissed with a direction to the C.D.P.O. to implement the order of the District Magistrate as well as the Divisional Commissioner.

(Shivaji Pandey, J)

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