

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15802 of 2009

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Sakila Kumari W/O Arbind Kumar Singh R/O Vill.- Dadhapi, P.O. Goh,
P.S. Goh, Block- Goh, Distt.- Aurangabad

.... Petitioner

Versus

1. The State Of Bihar Represented Through The Principal Secretary,
Social Welfare Deptt., Govt. Of Bihar, Patna
2. The Secretary, Social Welfare Deptt., Govt. Of Bihar, Patna
3. The Director, Integrated Child Development Scheme, Social Welfare
Deptt., Govt. Of Bihar, Patna
4. The Commissioner, Patna Division, Patna
5. The District Magistrate, Aurangabad
6. The Deputy Development Commissioner, Aurangabad
7. The District Programme Officer, Aurangabad
8. The Sub Divisional Officer, Aurangabad
9. The Child Development Project Officer, Goh Block, Aurangabad
10. Smt. Nirmala Kuwar @ Nirmala Kumari W/O Late Ajeet Singh R/O
Vill.- Dadhapi, P.S. Goh, Distt.- Aurangabad
11. The Mukhiya, Gram Panchayat Dadhapi, P.S. Goh, Distt.-
Aurangabad
12. The Panchayat Sachiv, Gram Panchayat Dadhapi, P.S. Goh, Distt.-
Aurangabad

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Mrigank Mauli, Advocate Mr. Prince Kumar Mishra, Advocate Mr. Sanjay Kumar, Advocate
For the State	:	Mr. Nishant Kumar Jha, A.C. to S.C.28
For the Private Respondent:	:	Mr. Kamendra Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 07-02-2018

Heard learned counsel for the petitioner, learned
counsel representing the State as well as learned counsel
representing the private respondent no. 10.



2. The petitioner, in the present case, is aggrieved by the order as contained in Memo No. 418 dated 31.10.2009 (Annexure-11) issued by the Child Development Project Officer, Goh, Aurangabad (respondent no. 9) by which the appointment of this petitioner on the post of Anganwari Sewika has been cancelled by giving reference to the letter no. 967 dated 30.10.2009 (Annexure-10) issued by the District Programme Officer, Aurangabad, which is in the nature of an order issued in compliance of the order passed by a co-ordinate Bench of this Court on 08.05.2006 passed in CWJC No. 16074/2004 (*Nirmala Kuwar @ Nirmala Kumari vs. State of Bihar and others*), during pendency of the contempt application being MJC No. 906/2007 the order, as contained in Annexure 10, has been issued.

3. The petitioner has prayed for quashing of order (Annexure-10) as well. The brief facts which emerged from the materials available on the record would show that this petitioner and respondent no. 10 were the applicants for the post of Anganwari Sewika, Dadhapi Centre of Dadhapi Gram Panchayat, P.S. Goh, Block – Goh, District – Aurangabad. The selection process for the appointment on the post of Anganwari Sewika was started sometime when the Government's



guideline, as contained in Circular Letter No. 1129 dated 13.06.1998 issued by the Secretary, Welfare Department, Government of Bihar, was in existence, and admittedly the said guideline was to be followed in the matter of selection of Anganwari Sewika for the said Centre. In terms of condition no. 5 of the said Circular/letter of Government, where the qualification of the two candidates were the same then the widow/abandoned women of the same category was to be given preference. It is not in dispute that petitioner and respondent no. 10 both are matriculate and the respondent no. 10 is in addition a widow, and therefore, in terms of the said condition no. 5 of the circular guideline of the Government she had to be given a preference. This was however not done and the present petitioner, who had though a better percentage of marks in the matriculation but was not having higher qualification, was given preference over the respondent no. 10.

4. Being aggrieved by selection of the present petitioner, the respondent no. 10 moved this Court in CWJC No. 16074/2004. She alleged that the present petitioner has been favoured because she happens to be the daughter-in-law of brother of the then Mukhiya of the said Panchayat. The case of



the present respondent no. 10 was that in the Aam Sabha held on 10.03.2003, the recommendations made was contrary to the Circular guideline of the Government whereunder the present respondent no. 10 had to be given preference.

5. It was submitted that according to the conditions for eligibility and preference, only a candidate having higher qualification could have been considered for appointment as Anganwari Sewika over and above the present respondent no. 10, if she would have come in the same category. But so far as the present petitioner Sakila Kumari is concerned, she did not have a higher qualification, therefore, the respondent no. 10 in the present case, being a widow, was required to be given preference in the matter of appointment as Anganwari Sewika.

6. In the said writ application, the present petitioner was respondent no. 6 and had occasion to contest the writ application which she did with all vehemence but a co-ordinate Bench of his Court finally came to a conclusion that the decision taken by the Gram Sabha on 10.03.2003 was not based on relevant consideration, it was also held that the decision of the Gram Sabha was illegal and unjustified,



therefore, this Court quashed the selection of respondent no. 6 (the present petitioner) made by the Aam Sabha in its meeting on 10.03.2003 and the consequential order dated 31.03.2003. The matter was remanded to the authorities to reconsider the case of the private respondent no. 10 who was petitioner there in the light of the observations and principles of law as laid down in the order.

7. Here, it would be just and proper to facilitate the judgment with the operative part of the order passed by learned co-ordinate Bench in CWJC No. 16074/2004 which reads as such:

“ The admitted position is that both the petitioner and respondent no. 6 belong to backward class, both are matriculates and both have almost the same income. In the said circumstances it can hardly be doubted that the petitioner would be entitled to preference as laid down in condition no. 5. In fact from the minutes of the Amsabha dated 10.3.2003 as contained in Annexure-A to the counter affidavit of the State Government it is evident that the said aspect of the matter has not at all been taken into consideration by the Gram Sabha while considering the candidates for selection. Hence, the decision has to be held as illegal and unjustified since a relevant material has not been taken into consideration while reaching the decision. For the reasons aforesaid the writ petitioner is allowed. The selection of respondent no. 6 made by the Amsabha at its meeting dated 10.3.2003 as contained in Annexure-A and the consequential order dated 31.3.2003 as contained in



Annexure-B to the counter affidavit of the respondents no. 1 to 5 is quashed and the matter is remanded to the authorities to reconsider the case of the petitioner in accordance with the aforesaid observations/principles of law as laid down in this order. The authorities are directed to reconsider the case of the petitioner within four months from the date of receipt/production of a copy of this order. However, in the facts and circumstances of the case there shall be no order as to cost."

8. It appears that after the aforesaid judgment/order of this court, Aam Sabha was held on 11.04.2007. In the said Aam Sabha, once again this petitioner has been selected taking note of her higher marks (62.88%). Operative part of the minutes of Aam Sabha held on 11.04.2007 reads as under:

"चूँकि सेन्द्र पिछड़ा बाहुल्य है। इसलिये पिछड़ी जाति के सर्वोच्च मेंधा अंक प्राप्त करनेवाली आवेदिका सकीला कुमारी पति श्री अरविन्द कुमार सिंह ग्राम दधापि को सेविका पद पर चयन की घोषण कर दी गई। जिसे आम सभा में उपस्थित लोगो ने ताली बजाकर सर्व सम्मति से पास किया।"

9. It further appears that petitioner in the present case had challenged the order passed by the learned co-ordinate Bench of this Court in CWJC No. 16074/2004 by filing a Letters Patent Appeal bearing No. 631/2006, but the said L.P.A. was withdrawn vide order dated 23.11.2007. A copy of which has been brought on record by way of Annexure-9 to the writ



application. A reading of the order would show that a statement was made at the bar that the appellant has already joined the post during pendency of the appeal and therefore the appeal was not being pressed. Copies of the letters dated 18.04.2007 and 12.07.2007 are marked as Annexure – 7 & 8 respectively showing communication to the present petitioner by the then Mukhiya and the Panchayat Sachiv communicating her the decision of the Aam Sabha regarding her selection and then directing her to go for training.

10. It appears that the present respondent no. 10 had filed a contempt application being MJC No. 906/2007 against the said respondents and others alleging willful disobedience and disregard to the order dated 08.05.2006 passed by this court in CWJC No. 16074/2004. During pendency of the said contempt application, the District Programme Officer, Aurangabad passed order dated 30.10.2009 (Annexure-10) in compliance of the order of this court passed in CWJC No. 16074/2004. This time the District Programme Officer, Aurangabad held that the subsequent consideration of the case of respondent no. 10 by the Aam Sabha in its meeting dated 11.04.2007 was not in accordance with the direction of the



Hon'ble High Court and that the guidelines of 2006 has been considered which ought not to have been applied in the case in view of specific direction and interpretation given by the Hon'ble court and the consequent direction to reconsider the case of the present respondent no. 10. The District Programme Officer held that the re-selection of Sakila Kumari (present petitioner) by the Aam Sabha and the consequent issuance of letter of training etc. are contrary to the Hon'ble High court's direction, which were required to be rectified, and therefore, those are rectified accordingly by quashing of selection/appointment of Sakila Kumari (present petitioner) and by issuing a direction to take immediate steps for appointment of Nirmala Kuwar @ Nirmala Kumari (respondent no. 10) in view of the Hon'ble High Court's direction without any further delay. Once the District Programme Officer issued the order dated 30.10.2009, as contained in Annexure-10, the then Child Development Project Officer, Goh, Aurangabad came out with the consequential order as contained in memo no. 418 dated 31.10.2009 (Annexure-11) by which the petitioner was removed and her selection was cancelled. The cancellation led to filing of the present writ application.



Submission of the petitioner

11. Mr. Mrigank Mauli, learned counsel representing the petitioner has mainly put-forth three submissions for consideration before this Court. His first submission is that the vacancy in the present case stood exhausted with the appointment of the present petitioner. Second submission is that when the fresh selection process was initiated by the Aam Sabha holding its meeting on 11.04.2007, the Rule 2006, then in existence, was required to be followed and the Aam Sabha has rightly followed the Rule/guideline, 2006 whereunder the present petitioner having higher marks was required to be selected. His third and last submission is that the respondent no. 10 had also participated in the selection process when the Aam Sabha meeting was held on 11.04.2007, and, therefore, she cannot be allowed to question the selection process.

12. Elaborating the argument, learned counsel submits that as per the 2006 guidelines, there was no requirement to give preference to the widow and the only criteria which was required was the higher marks in a particular category of candidates who are in majority in the area. Learned



counsel submits that there was no illegality or infirmity in the selection process of this petitioner after the matter was remanded to the authorities concerned by the writ court, and therefore, the appointment of the present petitioner was wrongly cancelled that too without giving an opportunity of hearing.

13. On the other hand, learned counsel representing the State as well as respondent no. 10 have vehemently argued that this is nothing but a case of overreach as it demonstrates that how the judgment of this Court have been overreached and have been violated by the State respondents, the then Mukhiya and the Panchayat Sachiv to confer benefit of selection to the present petitioner.

14. Learned counsel submits that in fact the whole exercise of reappointment of this petitioner in the Aam Sabha held on 11.04.2007 was nothing but a willful disregard and disobedience to the order dated 08.05.2006 passed by this Court in CWJC No. 16074/2004. According to him, the case shows how the persons in power can violate the rule of law with impunity and can continue for years together in the garb of litigating the matter from one Court to another. This would



be a burning example of a mala fide exercise of power by the then Mukhiya who was related with the present petitioner.

15. The crux of the argument of learned counsel representing the private respondent is that in this case there was a specific direction by the learned Writ Court, wherein the authorities were directed to reconsider the case of the petitioner in accordance with the observations and principles of law which were clearly laid down in the order of the Hon'ble Court. The vacancy was initially filled up in the year 2003 when the 1998 guidelines of the Government was required to be followed. This Court categorically held that in 2003, meeting was held by the Gram Sabha, the relevant guidelines of the Government were not considered and the decision of the Gram Sabha was not just and proper. It further pointed out that, even in the 2006 guidelines, a copy of which is available on the record as Annexure-6, the said requirement of giving preference to the widows and abandoned women of the same cast, if they have equal qualification exists, and therefore, the submission of learned counsel for the petitioner that in 2006 guidelines there was no requirement to give preference to a widow is totally unfounded and baseless.



16. Learned counsel for the private respondents has also pointed out that there are minutes of the Aam Sabha held on 11.04.2007 which shows that the sole criteria for selection of the petitioner is her higher marks whereas this Court in the earlier round has made it very clear that higher marks does not mean higher qualification. Even though the petitioner had higher marks in matriculation, the uncontroverted fact that the respondent no. 10 happens to be a widow would bring her within the preferred class of the Government guidelines.

17. Learned counsel further submits that the petitioner rightly participated in the selection process as was required by the then Mukhiya an Panchayat Sachiv, but in the Aam Sabha held on 11.04.2007, consideration of the petitioner was totally mala fide and her appointment is a result of overreaching the judgment of this court which was crystal clear. It is, therefore, submitted that during pendency of the contempt application when these facts transpired and came to the notice of the District Programme Officer, he was justified in rectifying the mistakes which were committed by appointing the petitioner in total and willful disregard to the order passed



by the Writ Court. In such circumstances, if the District Programme Officer rectified the wrong and thereby passed order, as contained in Annexure-10, in consonance with the order of this Court in CWJC No. 16074/2004, no illegality or infirmity may be found with the same.

18. It is also submitted that so far as the argument that the petitioner was not given any chance of hearing before passing a order (Annexure-10) is concerned, the same is liable to be rejected at the outset, because the principles of natural justice as has been said and settled by law cannot be put in a straight jacket formula and in an appropriate case the principle of natural justice would be an empty formality, particularly when it comes to rectify a mistake and to bring the things in compliance to the order of the court of law.

19. In the facts and circumstances of this case, where, from the records, the mala fide efforts made by those who were helping the petitioner writ large, the contention of the petitioner that she could not have been heard before passing the order as contained in Annexure-10 is only another attempt to buy time and to continue with the litigations for her benefits.



Consideration

20. I have heard learned counsel for the parties and perused the records.

21. This Court is of the considered opinion that vide order dated 08.05.2006 passed in CWJC No. 16074/2004, a co-ordinate Bench of this Court had given specific direction to reconsider the case of the petitioner in accordance with the observations and principles of law as laid down in the order. It was not a case of initiation of a fresh selection process as has been contended by learned counsel for the petitioner. A fresh selection process could have been initiated only by way of fresh advertisement or notice calling upon the candidates eligible in terms of guidelines to participate or to apply for such selection. In this case, the selection process had started in the year 2003 or so when the guideline of the Government of the year 1998 was in existence and the said guideline was required to be followed. Since this Court came to a conclusion that the selection of this petitioner made in the year 2003 by the Aam Sabha was in complete violation of the 1998 Circular/guidelines of the Government and that the petitioner was not having a better qualification, rather she had only a higher marks in



matriculation which cannot be said to be a better qualification, the Court was of the opinion that the respondent no. 10 being a widow was required to be given preference, the case was remitted to the Aam Sabha only to reconsider the case of the petitioner and nothing more.

22. It was surprising that in the Aam Sabha held on 11.04.2007 in order to overreach the order of this Court, fresh candidates were called, their applications were taken on the record under a well-thought plan and then this petitioner was once again selected by taking note of her higher marks in the matriculation. This in the opinion of this Court was a clear case of violation of the order passed by the writ court and mala fide exercise of power in law, if not in fact. It is a case where this Court comes to a conclusion that the allegations of the respondent no. 10 that this petitioner was being helped because of her relationship with the then Mukhiya has got force.

23. The sole reason for petitioner's selection is that she had procured higher marks. This ground for selection is in direct contravention and violation of the order of this Court passed in CWJC No. 16074/2004.



24. This Court is also of the considered opinion that since the vacancy had occurred and the same was notified sometime in the year 2003, the subsequent guideline was not required to be followed and that was not the direction of the Court in its order dated 08.05.2006. A plea taken by and on behalf of the petitioner that it was because of the subsequent 2006 guidelines the petitioner came to qualify is nothing but a mere pretext to accommodate the petitioner in complete disregard to the mandamus of this Court.

25. Learned counsel for the respondent no. 10 is correct in saying that even in 2006 guidelines, the qualification remaining the same, a candidate who was widow was still required to be preferred and if that was the condition even in 2006 guidelines, which is evident from the annexure placed before this Court, this Court has a reason to record that a wrong plea has been taken by this petitioner that in 2006 guidelines there was no requirement to give preference to a widow.

26. This Court has noticed that how this petitioner has been helped at different stages of the proceedings and has continued so far by litigating the matter



despite there being a clear order of this court of the year 2006 in CWJC No. 16074/2004. The contention of learned counsel for the petitioner that the order as contained in Annexure-10 has been passed in violation of principles of natural justice does not impress upon this Court because this Court is inclined to accept the submission of learned counsel for the private respondent that the principles of natural justice cannot be put in a straight jacket formula, it is a case of overreaching and violation of the Court's order by which the petitioner was benefited, and therefore, if during pendency of the contempt application, the District Programme Officer found that the said mistake which was in fact a violation of the Court's order is required to be rectified and then he has passed the order (Annexure-10) with an intention to rectify the mistake, in view of the categorical finding of this Court that the selection of the petitioner taking into consideration her higher marks in matriculation was contrary to the order of the writ court. This Court is of the considered opinion that there was no requirement to give a notice to the petitioner at the stage of passing of the order Annexure-10.

27. I have given patient hearing to the petitioner



and only after such hearing and perusal of the records, I am of the opinion that no fruitful purpose would be served at this stage by setting aside the order as contained in Annexure-10 on the ground of the principles of natural justice as has been pleaded by the petitioner because such remittance of the matter despite the aforesaid finding would only be an empty formality and will amount to permit the petitioner in continuing this litigation further. This has to come to an end. This writ application is thus devoid of merit, and is, accordingly, dismissed.

28. The interim order passed on 17.12.2009 stands vacated. The District Programme Officer as well as the District Magistrate concerned are directed to ensure that the order as contained in Annexure-10 is given full effect within a period of one month. Since this Court has come to a conclusion that this is a case of overreaching the order of the Court in order to confer benefit to this petitioner, the District Magistrate, Aurangabad would be obliged to hold and conclude a proper enquiry as to the facts and circumstances and the persons behind this overreaching of the order passed by this Court in CWJC No. 16074/20014.



29. This writ application is dismissed with the
aforesaid observations and directions.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
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