

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4863 of 2009

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Bimal Devi, wife of Sri Basudeo Putra Akhilesh, resident of village and
P.O. Sirisiya Jagdish, P.S. Kathaiya, District- Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Welfare Department, Government of Bihar, Patna
3. The Director, Integrated Child Development Scheme, Bihar, Patna
4. The District Magistrate, Muzaffarpur, District-Muzaffarpur
5. The Block Development Officer, Motipur, District-Muzaffarpur
6. The Child Development Project Officer, Motipur (Baruraj), District-Muzaffarpur
7. The Mukhiya, Gram Panchayat Raj, Rampur Bheriyahi, Block-Motipur, District-Muzaffarpur
8. The Panchayat Secretary, Gram Panchayat Raj, Rampur Bheriyahi, Block-Motipur, District-Muzaffarpur
9. Kumari Rajani, wife of Sri Arun Kumar Singh, resident of village-Sirisiya Jagdish, P.S. Kathaiya, District-Muzaffarpur
10. Department of Vigilance, Government of Bihar, Patna through the Additional Director General of Police (Vigilance)

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. S.B.K. Mangalam
For the Respondent/s : GP-18
For the Vigilance : Mr. Amresh Kumar

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

13 18-06-2018 The present petition has been filed for directing the respondents to produce the selection/appointment letter of the respondent no. 9 and thereafter quash the same as well as for directing the respondent authorities for appointing the petitioner as Anganwari Seveka at Centre No. 6 under Gramin Raj Rampur, Bheriyahi.

The brief facts of the case are that for selection of Sevika and Sahayika for Centre No. 6, a meeting was held on 29.01.2004 under the chairmanship of the respondent no. 7 but no selection



could be made on account of non-availability of the eligible candidates. The meeting was thereafter adjourned to 08.11.2004 for the purposes of appointment of Sevika and Sahayika for Centre Nos. 2, 3, 6, 7 and 8. According to the petitioner, in the meeting held on 08.11.2004, the petitioner was the only candidate available for appointment as Sevika for the Centre No. 6 while one another namely Smt. Rita Kumari was the applicant for the post of Sahayika, hence the petitioner is stated to have been selected for appointment as Anganwari Sevika for Centre No. 6. However, while the petitioner was waiting for her appointment letter, she came to know that the respondent no. 9 has been appointed as Anganwari Sevika at Centre No. 6 after tampering with the proceedings of the meeting dated 08.11.2004.

The learned counsel for the petitioner submits that firstly the entire proceeding book has been manipulated and tempered with in order to facilitate the appointment of respondent no. 6. It is further submitted that a bare perusal of the proceeding book, which has been produced before this Court, would show that though the petitioner herein was present before the Aam Sabha called for the purposes of selection of Sevika / Sahayika but the respondent no. 9 was not present as is apparent from the attendance sheet, hence it is stated that the name of the respondent no. 9 has been inserted subsequently with oblique motives in order to facilitate her illegal appointment. Another issue raised by the



learned counsel for the petitioner is that Centre No. 6 is reserved for the Backward Class categories and since the said selection by the Aam Sabha had taken place on 08.11.2004, the revised guidelines, contained in letter no. 1323 dated 26.7.2004 would be applicable for the purposes of taking into account the eligibility as regards their educational qualification and the letter no. 1129 dated 13.6.1998 would not be applicable. It is further submitted that the petitioner qualifies for being selected to the post of Anganwari Sevika in terms of the guidelines contained in letter dated 26.7.2004, however, the proceeding book would show that the proceedings recorded pertaining to Centre No. 6 has been tampered with deliberately and in an illegal manner and further letter dated 13.6.1998, instead of letter dated 26.7.2004 has been referred to in order to illegally appoint the respondent no. 9.

The learned counsel for the State has submitted that it is true that letter dated 26.7.2004 has to be considered for the purposes of taking into account the educational qualification for appointment of Anganwari Sevika but according to her interpretation, the said circular postulates that in case no candidate belonging to the majority class of the beneficiary / reserved category possesses the requisite educational qualification, in that case the General Category candidate shall be appointed, hence the appointment of respondent no. 9 cannot be said to be illegal.

The learned counsel appearing for the respondent no. 9 has



also made similar submissions as has been made by the learned counsel for the State.

I have gone through the records of the present case as also have heard the learned counsel for the respective parties. First of all, it must be relevant to state that the Child Development Project Officer, Baruraj (Motipur), Muzaffarpur has filed an affidavit on 19.2.2018 before this court stating that since the concerned file has been seized by the Vigilance Department in the year 2006, he is finding it difficult to produce the registers/record of Aam Sabha of Centre No. 6, in compliance of the order of this Court dated 24.1.2018. On the contrary, the Vigilance has filed an affidavit on 06.04.2018 stating therein that no records of Centre No. 6 has been seized by the Vigilance. This Court by an order dated 01.5.2018, in view of the stand of the Vigilance, had directed the State to produce the record on the next date of hearing, failing which the C.D.P.O., Muzaffarpur was directed to remain present in the Court. Today, when the matter has been taken up for hearing, the learned counsel for the petitioner has produced the proceedings of the Aam Sabha pertaining to Centre No. 6, which shows that a false affidavit was filed by the concerned C.D.P.O. Baruraj, Muzaffarpur on 19.2.2018, obviously with the intention of preventing this Court from adjudicating the present case in a just and proper manner as also apparently with a view to conceal the manipulations and tampering made in the proceedings of the



Aam Sabha and further in order to save the illegal appointment of respondent no. 9. Since the C.D.P.O., Muzaffarpur has tried to deceive and mislead this Court, I deem it fit and proper to direct the District Magistrate, Muzaffarpur to initiate appropriate departmental proceedings against the concerned C.D.P.O., Muzaffarpur, responsible for deceiving this Court. Now, coming to the merits of the case, I find from the records / proceeding of the Aam Sabha, recorded in a register which has been produced before this Court that not only there is gross manipulations in the records but also the records have been tempered to suit the respondent no. 9. First of all, it is apparent from the proceedings of the Aam Sabha that the respondent no. 9 had never participated in the selection process and it was only the petitioner herein who had participated and put her signature in the said proceeding book but despite the said fact, the candidature of the respondent no. 9 was considered by the Aam Sabha and finally she was appointed as Anganwari Sevika. The next issue is with regard to the circular / guidelines which would cover the present case, whether it is the guidelines contained in letter dated 13.6.1998 or whether it is the guidelines contained in letter dated 26.7.2004. Apparently since the selection had taken place on 08.11.2004, the guidelines contained in letter dated 26.7.2004 would be applicable. According to the said guidelines dated 26.7.2004, procedure has been prescribed wherein in case no candidate possessing the



specified educational qualification is available for appointment from amongst the majority class of the beneficiary, then the Sevika/Sahayika would be chosen from various categories in the following seriatim:-

- (a) Scheduled Caste/Scheduled Tribe
- (b) Extremely Backward Class
- (c) Minorities
- (d) General Category

In the aforesaid letter dated 26.7.2004, it has been further postulated that in case no female candidate possessing the specified educational qualification is available from the beneficiary class/reserved category, then in the said case the minimum educational qualification for the purposes of appointment to the post of Anganwari Sevika would be 8th pass. In the present case the petitioner is admittedly from the Backward Class and is 9th pass whereas though the respondent no. 9 is a graduate but belongs to the general category. In such view of the matter, since the petitioner possesses the minimum educational qualification of 8th pass and is a Backward Class candidate, the Centre No. 6 being a reserved seat for Backward Category, the petitioner was/is entitled for selection on the post of Sevika at Centre No. 6 as per the guidelines and had to be given preference above the respondent no. 9 but deliberately the Aam Sabha in its proceeding referred to the guidelines dated 13.6.1998, to oust the petitioner herein since as per the said guidelines, the minimum



qualification for a Backward Category candidate was matriculate and for a General Category candidate the same was matriculate pass. Thus, it is clear that in order to illegally appoint the respondent no. 9, the proceeding of the Aam Sabha was deliberately tempered and manipulated by inserting reference to the letter no. 1129 dated 13.6.1998 instead of referring to the guidelines contained in letter dated 26.7.2004. It must also be pointed out that upon a complaint made before the District Magistrate, Muzaffarpur, the District Magistrate, Muzaffarpur by its order dated 15.4.2010 has recorded that while the petitioner was present in the selection process, the respondent no. 9 did not appear in the Aam Sabha or in the selection process. In such view of the matter, the District Magistrate directed to initiate fresh process for appointment of Sevika at the Centre No. 6 and simultaneously directed for lodging FIR against the concerned Child Development Project Officer, Baruraj, Panchayat Sevak and concerned Mukhiya of the Gram Panchayat. The said order dated 15.4.2010 was challenged in Appeal No. 110 of 2010 before the learned Court of Commissioner, Tirhut Division, Muzaffarpur who by his perfunctory order dated 24.10.2011 has set aside the aforesaid order of the District Magistrate merely on a non-existent and illegal ground that it was not necessary for a candidate to be present in the selection process before the Aam Sabha. In fact the learned Commissioner did not consider the circular dated



26.7.2004 by which the earlier guidelines dated 13.6.1998 had been modified.

Having regard to the facts and circumstances of the case, I find that the learned court of Commissioner, Tirhut Division, Muzaffarpur, has passed an illegal and perverse order dated 24.10.2011 in Service Appeal No. 110 of 2010, for the reasons as discussed hereinabove, hence the same is quashed. I further find that the proceeding of the Aam Sabha has been tampered with and manipulated and the name of the respondent no. 9 has been deliberately and illegally inserted although she had not participated in the selection process or in the proceeding of the Aam Sabha, hence on this ground alone, the appointment of the respondent no. 9 is fit to be declared illegal. I further find that apart from deliberate tampering of the records of the Aam Sabha, reliance has wrongly been placed on the letter dated 13.06.1998 instead of the guidelines contained in the circular dated 26.7.2004, which has resulted in illegal denial of appointment to the petitioner herein.

For the reasons mentioned herein above, I deem it fit and proper to quash the appointment of the respondent no. 9 on the post of Anganwari Sevika, at Centre No. 6, Gram Panchayat Raj, Rampur Bheriyahi, Block-Motipur, Muzaffarpur and direct the District Magistrate, Muzaffarpur to consider the case of the petitioner for appointment as Anganwari Sevika at the aforesaid



centre.

The proceeding book of the Aam Sabha, produced by the learned counsel for the State be returned back to the said learned counsel.

The writ petition is allowed.

(Mohit Kumar Shah, J)

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