

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10530 of 2011

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Sunita Kumari @ Sunita Devi, W/O Sri Narayan Mahto, R/O Village - Amba,
P.S.- Teghra, Distt.- Begusarai

.... Petitioner/s

Versus

1. The State of Bihar
2. The Divisional Commissioner, Munger
3. The Director, Welfare Department, Govt. Of Bihar Patna
4. The District Magistrate, Munger
5. The Child Development Project Officer Teghra, Begusarai, Distt.-Begusarai
6. Mukhiya Chilha Gram Panchayat, R/O P.S.-Geghra, Distt.-Begusari
7. Babita Kumari, W/O Chandra Shekhar Sah, R/O Village- Amba, P.S.- Teghra,
Distt.- Begusarai

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Mahasweta Chatterjee, Advocate.
For the State : Mr. Anwar Karim, AC to GP 10.
For the private respondent: Mr. R.C. Thakur and
Mr. Kamal Kishore Singh, Advocates.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 29-06-2018

Heard learned counsel for the petitioner, learned counsel
representing the State and the private respondent.

The present Writ Application has been preferred for
setting aside the order dated 11.04.2011 passed by the Divisional
Commissioner, Respondent no. 2, in Misc. Service Appeal No.
33/2010 as contained in Annexure-4 to the application.

By the impugned order it appears that the present



petitioner has been non-suited and thrown out from the post of Anganwadi Sevika only on the ground that the duplicate marks sheet issued by the Bihar School Examination Board was dated 16.09.2006 whereas the petitioner was considered by the AAM SABHA for her appointment as Anganwadi Sevika on 21.07.2006. Learned counsel for the petitioner submits that on perusal of the minutes of the AAM SABHA held on 21.07.2006 it would appear that the AAM SABHA had taken note of the marks obtained by this petitioner and that of the private respondent no. 7 and finding that this petitioner had secured 495 marks as against 425 marks obtained by the private respondent no. 7, the AAM SABHA had recommended for appointment of the petitioner and based on that recommendation she was appointed / engaged as Anganwadi Sevika at the concerned centre.

Learned counsel for the private respondent submits that the fact that the petitioner could produce only a duplicate marks sheet before the Commissioner would go a long way to prove that the petitioner was not in possession of the Matriculation marks sheet at the time of submission of her application and, therefore, the AAM SABHA was not justified in taking note of the marks obtained by the petitioner on her mere mentioning of marks in the application submitted for her engagement as Anganwadi Sevika. Learned counsel, however, admits to the extent that the certificate and the marks sheet



submitted by the petitioner have been found genuine and it is not in dispute that the petitioner has obtained 495 marks which is higher than the marks obtained by the private respondent.

Learned counsel for the State is present. It is submitted that the centre has been reserved for Most Backward Class candidate and it is not in dispute that both the petitioner and the private respondent no. 7 belong to Backward Class even as the caste of the respondent no. 7 is in majority in the Mohalla.

In order to justify the impugned action of the Commissioner, in the counter affidavit it has been reiterated on behalf of the State that at the time of counseling the marks sheet of the Bihar School Examination Board in the Matriculation Examination was not produced by the writ petitioner. It is, however, submitted that after passing of the order dated 06.07.2011 by a co-ordinate bench of this Court in the present Writ Application whereunder the impugned order has been stayed during pendency of the Writ Application, the writ petitioner is continuing as Anganwadi Sevika.

Having heard learned counsel for the parties and upon perusal of the record, this Court finds that so far as the genuineness of the Matriculation Certificate issued by the Bihar School Examination Board is concerned the same is not in dispute. It is an admitted position that this petitioner has obtained 495 marks in the



Matriculation Examination whereas the private respondent no. 7 has been awarded 425 marks and, therefore, it is not denied that based on the Matriculation Examination the petitioner was entitled to be selected over and above the private respondent. The only controversy which has been raised by the private respondent is that the Matriculation Certificate / marks obtained by the petitioner was not placed before the AAM SABHA in course of counseling.

In the opinion of this Court, this controversy has lost its significance and relevance inasmuch as the petitioner has already produced the marks sheet issued by the Bihar School Examination Board which categorically shows that what was placed before the AAM SABHA for consideration was correct and on merit it would be the petitioner who will get selected because she has admittedly secured more marks than the private respondent.

In the opinion of this Court, the Commissioner while considering the grievance of the private respondent could not appreciate that the nature of the complaint in the present case would not be a reason so as to oust the petitioner from the post of Anganwadi Sevika when admittedly she has been able to produce the Matriculation Certificate having higher marks than the private respondent. The Commissioner could not appreciate that substantial justice should prevail over the mere technicality.



In result the Writ Application is allowed. The impugned order as contained in Annexure-4 is set aside. The petitioner is found entitled to continue as Anganwadi Sevika accordingly.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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