

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.319 of 2018

In
Civil Writ Jurisdiction Case No.15802 of 2009

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Sakila Kumari, Wife of Arbind Kumar Singh, Resident of Village- Dadhapi,
P.O. Goh, P.S. Goh, Block Goh, District- Aurangabad. Appellant/s

Versus

1. The State of Bihar represented through the Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
2. The Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Director, Integrated Child Development Scheme, Social Welfare Department, Government 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, Wife of Late Ajeet Singh, Resident of Village- Dadhapi, P.S. Goh, District- Aurangabad.
11. The Mukhiya, Gram Panchayat Dadhapi, P.S. Goh, District Aurangabad.
12. The Panchayat Sachiv, Gram Panchayat Dadhapi, P.S. Goh, District Aurangabad. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Mrigank Mauli, Advocate
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 13-08-2018

Heard learned counsel for the appellant and the State.

This intra court appeal is directed against the judgment dated 07.02.2018 passed by learned Single Judge of this Court by which the writ petition filed by the appellant has been dismissed.



In fact, this is the second round of litigation. In the earlier round, the respondent no.10 was the writ petitioner in CWJC No.16074 of 2004 which was filed for quashing the appointment of respondent no.6 therein (the present appellant/writ petitioner). The challenge was made to her appointment on the ground that the same was not in accordance with the Government's Guidelines contained in Circular Letter No.1129 dated 13.06.1998 issued by the Secretary, Welfare Department, Government of Bihar which was required to be followed in the matter of selection of Aanganwari Sevika in particular the condition no.5 of the said Circular wherein it was laid down that if the qualification of two candidates were identical then the widow/abandoned women of the same category was to be given preference in appointment. The learned Single Judge allowed the writ petition, quashed the appointment and remanded the matter to the authorities to reconsider the case of the writ petitioner. The relevant passage from the aforesaid decision is extracted as under :-

“ 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”.

(emphasis is ours)

It would be evident from the aforesaid decision that the selection of respondent no.6, present writ petitioner-appellant, by the Aamsabha and the consequential order of appointment, both were quashed and set aside and the matter was remanded to the authorities to reconsider the case of the respondent no. 10 (the writ petitioner in the earlier round) in accordance with aforesaid observations/principles of law as laid down in the aforesaid order. The respondent no.6 (writ petitioner/appellant in the present matter) made a challenge to the aforesaid order passed by the learned Single Judge by preferring L.P.A.No.631 of 2006 but the said LPA was also withdrawn vide order dated 23.11.2007. However, it was urged before the learned Single Judge in the present matter that the aforesaid appeal was withdrawn in view of the subsequent selection of the writ petitioner/appellant by the Aam Sabha held on 11.04.2007 and as she has already joined.



However, the Aam Sabha held on 11.04.2007 once again selected the writ petitioner-appellant taking note of higher marks in the matriculation examination.

In our considered view, such action of the concerned authorities in again appointing the writ petitioner-appellant, apart from being bad in law was contumacious in nature as being directly in violation of the direction of learned Single Judge. Thus, the District Programme Officer, Aurangabad had rightly passed an order dated 30.10.2009 (Annexure-10 to the writ petition) in compliance of the aforesaid earlier order passed by the learned Single Judge holding that the subsequent consideration of the case of the present writ petitioner-appellant by the Aam Sabha in the meeting dated 11.04.2007 was not in accordance with the direction of this Court. Therefore, he held that the aforesaid decision of the Aam Sabha being contrary to the direction of this Court was required to be rectified by him by quashing the appointment of the writ petitioner-appellant and by issuing direction to take immediate steps for appointment of Nirmala Kuwar (respondent no.10) without further delay. Once the District Programme Officer issued such direction, the then Child Development Project Officer, Goh, Aurangabad came out with the consequential order as contained in Annexure-11 by which the writ petitioner/appellant was removed as her selection was



cancelled. Such cancellation led to the filing of the connected writ petition by the writ petitioner/appellant.

The learned Single Judge, after hearing the parties and considering the matter in detail, has come to the conclusion that the subsequent action of Aam Sabha was not in conformity with the direction of this Court given in the earlier round of litigation and, thus, no fault was found with the decision of the authority in canceling the selection of the writ petitioner-appellant.

It appears that it is urged on behalf of the petitioner-appellant that the vacancy in the present case stood exhausted with her appointment, thus, the respondent no.10 cannot be selected and appointed. Secondly, it is submitted that when the final selection process was initiated by Aam Sabha holding its meeting on 11.04.2017, the new Rule of the year 2006 came in existence and was required to be followed. Thus, the Aam Sabha has rightly followed the rules/guidelines and under such rule the writ petitioner, having higher marks, was rightly selected. Lastly, it is submitted that respondent no. 10 had also participated in the selection process when the Aam Sabha Meeting was held on 11.04.2007, thus, now she cannot be allowed to question the selection process.

However, in our view, the learned Single Judge has rightly held that it was not a case of initiation of the fresh selection process as being contended by the petitioner. The 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 the case in hand, the selection process had started in the year 2003 and by that point of time the Guidelines of the Government of the year 1998 was in vogue. As such, the said guidelines was required to be followed.

We do not see any reason to vary from the views taken by the learned Single Judge. In the earlier round of litigation, selection of the writ-petitioner/appellant made in the year 2003 by Aam Sabha was held to be in complete violation of 1998 circular/guideline of the Government. The matriculation was one of the qualification for applying for the post. It was nowhere in the guidelines that the person holding higher marks in matriculation would rank higher. That was not to be taken as a better qualification. Thus, qualification being same, the respondent no. 10 being a widow was required to be given preference. The aforesaid judgment was assailed before a Division Bench but for whatsoever the reason that appeal was withdrawn and the judgment attained its finality. The remand was only for consideration of the case of respondent no. 10 (the writ petitioner in earlier round) and not for reconsidering the case of the present writ petitioner. Thus, we are in full agreement with the views of the learned Single Judge that the subsequent selection was a clean case of violation of orders passed by the writ court and, as such, apart



from being erroneous, such exercise was contumacious in nature also.

Mr. Mrigank Mauli, learned counsel for the appellant vehemently argued that the respondent no. 10 had participated in such selection process but when she was not successful she has challenged the selection process as her case could not be found favour of the authorities as stated above.

This submission made on behalf of the appellant is noted only to be rejected inasmuch as there was no initiation of fresh selection process by advertising the vacancy afresh. Everything appears to have been done to benefit the writ petitioner-appellant by the Aam Sabha in violation of spirit of the order of the learned Single Judge in the earlier round of litigation as has been discussed above.

Accordingly, this appeal, being devoid of any merit, is dismissed. However, there would be no order as to costs.

(Mukesh R. Shah, CJ)

(Dr. Ravi Ranjan, J)

V.K.Pandey/-
Vikash/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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