

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.5940 of 2017**

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Asmat Tara, W/o Md. Sahid Anwar, Resident of Village+ P.O.- Dhamaul,  
Police Station- Dhamaul, District- Nawada.

... .. Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Social Welfare Department, Govt. of Bihar, Patna.
2. The Director, I.C.D.S., Bihar, Patna.
3. The Deputy Director, Welfare, Magadh Division, Gaya.
4. The District Magistrate, Nawada.
5. The District Programme Officer, Nawada.
6. The Child Development Project Officer, Pakri Brawan, District- Nawada.
7. Anita Kumari (Sahayika, Dhamaul- II, Code- 115), W/o Alok Kumar Resident of Village- Dhamaul, P.O.+ P.S.- Dhamaul, District- Nawada.

... .. Respondents

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**Appearance :**

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|---------------------------|---|---------------------------------------|
| For the Petitioner/s      | : | Mr. Asit Kumar Jha, advocate          |
| For the State             | : | Mr. Manish Kumar, A.C. to AAG-8       |
| For the Respondent No.7 : |   | Mr. Shivendra Kishore, Sr. Advocate   |
|                           |   | Mr. Bimlendu Shekhar Thakur, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

**ORAL JUDGMENT**

**Date : 11-09-2018**

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

2. In this case, the petitioner is challenging the order dated 21.02.2017 (Annexure-6) passed by the District



Magistrate, Nawada, in Case No. 94(M) 2016, whereby and whereunder he has found that the order of the District Programme Officer, Nawada, dated 13.04.2015 is completely misdirected and based on wrong presumption of constitution of feeder area, declared the order to be illegal and set aside the same. Further, the petitioner is challenging the order dated 09.03.2017 (Annexure-7), by which the Child Development Project Officer, has complied the order of the District Magistrate and thereby the present petitioner has been removed and in her place respondent no.7-Anita Kumari, has been directed to take the charge of Anganbari Sevika.

3. The question, in the present case, hinges upon two facts; first is related to the advertisement against which the petitioner has applied for the post of Anganbari Sevika and second is based upon the fact as to whether the feeder area is dominated by backward class or is a minority community dominated area.

4. The present case is related to the selection of Anganbari Sevika of Dahmaul-II centre, Code 115, district-Nawada. A survey was made on 09.11.2012 to prepared statistical data of the population of different communities, as per



the statistical data, B.C. category population was found 666, Most Backward Class community population was found 8, General Class community population was found 211, Scheduled caste category population was found 60 and minority community population was found 433. Total population was 1378, is apparently clear from the advertisement, wherein it has been mentioned that Dhamaul-II is dominated by backward community and at the end of the advertisement in item no.2 it has further been mentioned that in selection process preference would be given to the person belonging to dominated class, which is apparently clear from the mapping register, where the details have been mentioned with respect to names and address of the persons, at the end of this mapping register the details of the population has been mentioned, from where it appears that Dhamaul-II was dominated by B.C. category population, and as such, preference was/is to be given to B.C. category candidate. This mapping register has not been challenged to be forged and fabricated one.

5. It is also very interesting that in pleading and the submission the petitioner states that she had applied against the advertisement no.04 of 2012, has alleged that in the notification of advertisement the date of Aam Sabha for selection of



Anganbari Sevika was fixed on 11.02.2013, but the same was conducted on 24.02.2014, which was not the date fixed for the Aam Sabha. Further alleged that this Aam Sabha suffers from illegality on account of non-compliance of Clause-8.4 of the Guidelines of 2011 and it was duty of the Child Development Project Officer in the event of change of date of Aam Sabha, he was required to give fresh notice of Aam Sabha, which has not been done. It has also be alleged that the provisions of Clause-8.10 of the Guidelines has not been complied with, failure to record videography of Aam Sabha, violates Clause-8.17 of the Guideline of 2011, the petitioner belongs to minority community she was the single candidate, and as such, she should have been appointed on the post of Anganbari Sevika. On the aforesaid grounds, a complaint was made before the District Programme Officer that the petitioner was wrongly been denied the benefit of appointment of Anganbari Sevika. The District Programme Officer called for the records and found that the allegation made by the petitioner to be correct and the appointment of respondent no.7 was declared illegal, accordingly, vide order dated 13.04.2015 (Annexure-4) set aside the appointment of respondent no.7 and directed to appoint the petitioner.



6. On perusal of the order of the District Programme Officer, it appears that he has prepared the data of population of different communities on the basis of the names mentioned in the voter list, prepared the data of population in the following manner as he found there were 344 voters in ward no.8 and out of that, 198 voters were from minority community, and as such, arrived to a finding that the ward no.8 was dominated by the minority community. He has decided the strength on two basis; first the centre was treated to be co-terminus with ward no.8 and another on the basis of the persons whose names were in the voter list, are the wrong basis for calculation of the strength of different communities. The benefit is not confined to only to those who are voters but it depends upon the number of people resides in the territory even though they may not be voter. The feeder area may be comprising more than one ward or if the ward is bigger one, it can be part of the ward. Basically, the centres are created on the population strength of 1000 people, is the basis for creation of feeder area. One thing is also very important in the present case that the ward of the petitioner admittedly has changed and she is no longer in the feeder area of Dhamaul-II centre.

7. As per learned counsel for the State and the private



respondent no.7 the selection from advertisement no.04 of 2012 could not be materialized, and as such, a fresh advertisement no.01 of 2014 was published. As per the petitioner, she had not applied against the advertisement, whereas the State as well as the private respondent have specifically mentioned that the petitioner had consciously applied and participated in the selection process but not selected on account of her position in the merit list as she is last candidate. The petitioner has consistently denied his participation against the advertisement no.01 of 2014, but the State has brought on record the document by way of Annexure-A/2, wherein the details have been mentioned and photograph of the petitioner has also been pasted in the application form with the signature at the end of the application form, inasmuch as, the certificates which were required have also been attached.

8. Though this aspect has not been dealt with either by the District Programme Officer or by the District Magistrate, but this fact cannot be ignored that as per the State specifically the case has been made out that the selection was not made against the advertisement no.04 of 2012, subsequently, the new advertisement was published as advertisement no. 01 of 2014 and against the aforesaid advertisement the petitioner as well as



the private respondent have participated and finally he respondent no.7 has been declared to be successful. If this Court accepts the version of the petitioner that she has not applied, in that circumstance, she is non-suited on account of fact that when the selection was made against the subsequent advertisement, in such circumstance, she cannot have a grievance or can raise the grievance for non-selection of her candidature. If it is presumed that she has participated in the selection process, in that circumstance, the present petition suffers from suppression of material fact about her participation and being non-selected on account of her position in the merit list, inasmuch as, it appears, now on account of exercise of delimitation, the status of the petitioner changes as she is not longer in the feeder area of Dhamaul-II. So, in no circumstance, the petitioner can be appointed as Anganbari Sevika.

9. Furthermore, the present petition does not survive on the ground that the order of the District Magistrate is based upon the guidelines prescribed by the State Government, wherein it has been mentioned that the strength of the population is to be assessed on the basis of 1000 people at the centre, it cannot be co-related on the basis of voter list. Further the petitioner does not fall in Dhamaul-II centre, she has gone



outside the feeder area, which is reflected from Annexure-R/7/L, in which the name of the present petitioner is at item no.47, her husband name has been given as Md. Sahid Anwar Mansuri and again the name of the present petitioner appears at item no.80 where the name of her father has been shown as Md. Shahid Anwar. So far these are the corroborative facts, not denied by the petitioner. In the change of scenario and circumstance, the petitioner at no stretch of imagination can be appointed as Anganbari Sevika. Further, the selection has been made against the advertisement no.01 of 2014, as per the petitioner she did not apply, whereas the other side has taken plea that she applied but could not be qualified on account of her position in the merit list, which has been attached with the counter affidavit filed by the State, wherein the name of the present petitioner appears at serial no.07 and she has obtained 58.67 % marks and Antia Kumar, respondent no.7, who has been appointed having obtained 65.57% marks, so in merit also she cannot be appointed as well as the feeder area is dominated by the Backward Category candidate, so preference has to be given to the B.C. category candidate as well she is no longer in the feeder area of Dhamaul-II centre.

**10.** For the foregoing reason, this Court does not find



any merit in this writ petition. Accordingly, the same is dismissed.

(Shivaji Pandey, J)

Pawan/-

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