

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1857 of 2017

In
Civil Writ Jurisdiction Case No.1918 of 2016

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Vimala Devi alias Vimla Devi, Wife of Sri Ramdeo Bhagat, Resident of
Village - Mohinath Nagar, P.S.- Beldour, District - Khagaria.

... .. Appellant/s

Versus

1. The State of Bihar through the District Magistrate, District - Khagaria.
2. The Child Development Project Officer, Beldour, District - Khagaria.
3. The Deputy Director, Social Welfare, Bhagalpur Division, District - Bhagalpur.
4. The District Welfare Officer, Khagaria.
5. The Member of the Selection Committee, Panchayat Mohinath Nagar, P.S. Beldour, District - Khagaria.
6. Neeva Kumari, Wife of Randhir Kumar, Resident of Panchayat Mahinath Nagar, P.S. Beldour, District - Khagaria.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Satya Narayan Mishra, Advocate
For the S t a t e : Mr. Dharendra Kumar, A.C. to AAG-6

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date : 20-12-2018

Appellant herein, seeks to set aside the order dated 21.09.2017 passed in C.W.J.C. No.1918 of 2016, whereby the learned single Judge has disposed of the writ application of the appellant/petitioner and has declined to interfere with the order of cancellation of appointment of the petitioner as Anganbari Sevika.

2. Reverting to the facts of the case, it would be needful to point out that the appointment of the petitioner as



Anganbari Sevika was cancelled by an order dated 20.01.2003 pursuant to a decision taken by the Aam Sabha. The said decision was put to test by the petitioner before the Collector, Khagaria in Case No.8 of 2011-12, who after giving his due consideration and after hearing the contesting parties, passed an order, bearing Memo No.44/MU dated 19.11.2011 (Annexure 5 to the writ petition). The said order, which was marked as Annexure 5 to the writ petition, was impugned therein as it sought to confirm the cancellation order of appointment on the ground that the petitioner is not a resident of the Village in which the Anganbari Centre is located.

3. The learned single Judge, after hearing the parties, was also not persuaded to entertain the application considering that the cancellation of appointment of the petitioner was occasioned on the ground of her ineligibility, more so because she was not a resident of the village in which the Centre was situated and for which she had been appointed as Anganbari Sevika. The further ground for rejection of the claim of the petitioner was delay and laches, as the order of cancellation had taken place more than six years back.

4. Learned counsel for the appellant has strenuously urged that the order impugned in the present appeal is wholly erroneous as the learned single Judge failed to appreciate that the



engagement/appointment of the appellant on the post of Anganbari Sevika by order dated 07.01.1986 had been cancelled by a decision dated 20.01.2003, i.e. after 17 years, ignoring the fact that there was no irregularity in the appointment of the appellant on the post of Anganbari Sevika. It was contended that the appellant/writ petitioner had worked continuously for 17 years on the post of Anganbari Sevika and her appointment had been made according to rules and procedure and that her appointment was in accordance with the rules and procedure as applicable at the time of appointment. It was further averred that the appointment of the appellant had been made as her residence was in the feeder zone of Anganbari Kendra and it was factually incorrect to hold that the resident of the appellant was out of the feeder zone of Anganbari Kendra and cannot be cancelled on the basis of reorganization of the area made in the year 2003. Thus, the impugned orders dated 20.01.2003 and 17.11.2011 were wholly illegal, arbitrary and had been passed without considering the relevant facts and circumstances of the case, which necessitated the appellant to come to this Court in the writ application.

5. The appellant/writ petitioner had also moved this Court in C.W.J.C. No.8872 of 2006, which was disposed of along



with other analogous cases of similar nature, vide order dated 16.07.2007.

6. It is important to indicate that the appointments of Anganbari Sevikas and the procedure for the selection/removal have been enunciated by the State Government for the purposes of implementation of the I.C.D.S. Scheme by issuance of guidelines from time to time. The Welfare Department of the Government of Bihar issued guidelines under Memo No.1129 dated 30.06.1998, followed by Memo No.32 dated 09.09.2001. Thereafter, Memo No.427 dated 20.06.2003 was issued whereby, the guidelines under which procedure has been provided for selection/removal of Anganbari Sevikas was clearly stated.

7. In 1998, the circulars provided for selection of Anganbari Sevikas by a Selection Committee, subject to its approval by the D.D.C. which was to be granted within 15 days, failing which the Director, Welfare was authorized to give approval to the select list of Anganbari Sevikas. The minimum qualifications under 1998 Circular for the general category was Intermediate and for S.C./S.T. candidates, it was only Matriculate. Only a daughter-in-law of the concerned ward, permanently residing in that area was eligible for being selected as Anganbari Sevika and unmarried/married daughters were ineligible. Priority



in selection was to be given to the beneficiary group of the concerned Village/Tola. In case of similar qualifications, preference was to be given to widow/destitute/beneficiary candidates.

8. The guideline of 1998 was superseded by Memo No.32 of 2001, wherein the power of selection was vested solely in the Gram Panchayat and the approval of the D.D.C. or Director, Welfare was no longer required. In case of any dispute, the District Magistrate was authorized to direct the S.D.O./District Welfare Officer for holding an enquiry and based on the report, the District Magistrate was authorized to take a decision. There was no provision for any appeal under the 2001 guidelines.

9. Then followed the 2003 guidelines, issued under Letter No.427 dated 20.05.2003, wherein Aam Sabha was to be called under the Chairmanship of the Mukhiya of only beneficiary group. Widows and destitutes were required to be given preference. The beneficiary groups were from B.P.L. group as well as coming from a very poorer Section of the society. However, in the year 2006, the Supreme Court issued directions, whereby the Department of Welfare has issued another set of guidelines and under the said guidelines, provision has been made for extending the scheme in order to reach the benefit of the scheme to every



person belonging to the weaker section of the society. Clause 8 of the said guidelines provided that in case of irregularity in selection, an affidavited complaint should be made to the District Magistrate, who would initiate an enquiry through the S.D.O. or the District Welfare Officer or Project Officer or any Officer not below the rank of S.D.O. The report, which would be submitted under Clause 9 would form the basis of the order passed by the District Magistrate under Clause 10 of the guidelines. A new provision of Appeal under Clause 11 of the guidelines was also provided, by which the order of the District Magistrate could be assailed in an appeal before the Commissioner to be filed within thirty days. Thus, the guidelines of 2006 provide for a complete procedure for deciding any dispute relating to selection, removal of Anganbari Sevika/Sahaika.

10. Considering the aforementioned Rules providing for an appeal against the order of the District Magistrate, all the writ applications were relegated back to the District Magistrate for fresh decision on the basis of affidavited objections/complaints to be filed before the District Magistrate within eight weeks from the date of the order and the District Magistrate was directed to pass a speaking order within four weeks from the date of filing of such objection. The order so passed was to be communicated to the



parties through registered post so as to enable them to file appeal. The District Magistrate was further directed that in case some order is passed relating to the selection/removal of the Anganbari Sevika, a fresh selection process must be completed within four weeks from the date of passing of such order. The appeal, if any, preferred against the order of the District Magistrate should also be decided after giving the parties proper opportunity which was to be decided within one month from the date of filing of such appeal.

11. Pursuant to the aforementioned order, the matter lingered and ultimately, the petitioner again moved this Court in CWJC No.5840 of 2014, which was dismissed for want of prosecution on 18.11.2014. The restoration of the said application was also filed and by order dated 2.12.2015, the petitioner was granted liberty to file a fresh writ application and consequently, CWJC No.1918 of 2016 was filed.

12. We have heard learned counsel for the appellant and perused the records of the case. This is virtually the fourth round of litigation. The earlier ground of cancellation of appointment of the petitioner by the Aam Sabha was on the ground that the appellant was absent from the Centre and that she was not regular in discharge of her duties or had been performing the duties of distributing rations and other such duties as she was enjoined to



perform under the terms of agreement. When the matter came before the Collector, it was noticed that the appellant was not even a resident of the locality or even an applicant for Centre No.50. Thus, the Collector had taken a new ground for rejecting her selection, a ground which was never even treated as a ground for rejection of her selection by the Aam Sabha.

13. It was thus contended that a new ground could not be taken for rejecting the case of the petitioner without putting her to notice about any such grievance against her. The order of the District Magistrate contained in Miscellaneous Case No.8 of 2011-12 passed by the District Magistrate, Khagaria has been marked as Annexure 5. The said order clearly reveals that after the earlier round of litigation, a fresh selection process was conducted in pursuance of an order dated 17.12.2007 passed by the District Magistrate, Khagaria in Case No.297 by which one Neebha Kumari, wife of Randhir Kumar was appointed as Anganbari Sevika and one Mostt. Chinta Devi was appointed as Sahaika of Anganbari Kendra No.50. A finding has also been given in the said order that the petitioner Vimla Devi, wife of Ramdeo Bhagat was a resident of Village & P.O. Mohinath Nagar whereas Bhola Das Basa was for Anganbari Kendra No.50. Thus, the petitioner was not a resident of the concerned Centre No.50 and was completely



outside the said area to be considered for appointment. It was under such facts and circumstances that the petitioner's case was rejected.

14. The order of the District Magistrate was an appealable order as has already been discussed earlier. The petitioner, however, did not choose to contest the same and came to this Court in the year 2015 in CWJC No.5840 of 2014, which too was dismissed for non-prosecution and was followed by another writ application, bearing C.W.J.C. No.1918 of 2016, which is a sequel to the restoration application filed by the petitioner.

15. On the last occasion, an opportunity was given to the petitioner to demonstrate as to whether any third party right has been created and also whether any post is available. It is clear from the order of the District Magistrate itself that fresh appointments have been made in pursuance of a fresh selection process and one Neebha Kumari was selected and has been working in Anganbari Centre No.50. Thus, we are of the considered view that since third party rights have accrued and also because a clear finding being available that the petitioner was not belonging to the area where the Centre No.50 was located, the rejection of the case of the petitioner cannot be faulted in any manner.



16. It thus appears that the learned single Judge has rightly rejected this stale claim of the petitioner and declined to interfere in the matter. We fully endorse the said view and hold that the order of the District Magistrate by which a fresh selection process had been initiated and concluded could well be sustained and the cancellation of the appointment of the petitioner is fully/wholly justified considering the fact that she was not a resident of the concerned area where the Anganbari Centre was located.

17. We, accordingly, are of the opinion that the present appeal is devoid of any merit and the order of the learned single Judge dated 21.09.2017 passed in C.W.J.C. No.1918 of 2016 is upheld. The appeal stands rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

