

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4452 of 2019

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Saba Imam, aged about 27 years, Female, W/o Md. Zahir Hussain @ Md. Zahir Huhain, Resident of Village- Bishanpur Bazar, Ward No. 4, P.S. Kumarkhand, District- Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
2. The Director Integrated Child Development Scheme Directorate, Bihar, Patna.
3. The Collector-Cum-District Magistrate, Madhepura.
4. The District Programme Officer, Madhepura.
5. The Child Development Project Officer, Kumarkhand, District-Madhepura.
6. Sagufta Praween, W/o Md. Nafish, Resident of Village Bishanpur Bazar, Ward No. 4, P.S. Kumarkhand, District-Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pramod Mishra, Adv. Mr. Pawan Kumar, Adv.
For Respondent No.6	:	Mr. Rajeev Kumar Singh, Adv. Mr. Alok Kumar Singh, Adv.
For the State	:	Mr. Rajesh Kumar, AC to GP-3

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 09-05-2019

Heard Mr. Pramod Mishra, learned Advocate for
the petitioner, Mr. Rajeev Kumar Singh, learned Advocate
for private respondent No. 6 and Mr. Rajesh Kumar, learned



AC to GP-3.

2. The petitioner has challenged the order of the District Magistrate, Madhepura dated 19.01.2019 passed in Anganbari Appeal No. 15 of 2016, whereby the order passed by the District Programme Officer, Madhepura, dismissing the complaint of private respondent No. 6, has been upturned and the private respondent No. 6 has been directed to be appointed on the post of Anganbari Sevika at the concerned Anganbari Centre.

3. In order to recapitulate the facts in short, it is stated that the petitioner was recommended for being appointed as Anganbari Sevika over the concerned Centre, but a complaint was lodged against such appointment by private respondent No. 6 before the District Programme Officer, Madhepura. Several grounds were urged before the District Programme Officer, the main objection being that the petitioner was not entitled to be engaged/appointed on such post because of her sister-in-law (husband's sister) being in Government employment from before. The other objections were with respect to the qualifications of the petitioner which



disentitled her from being considered for such post.

4. The District Programme Officer, Madhepura, after hearing all the concerned parties, rejected the complaint of the private respondent No. 6.

5. Against the aforesaid order, an appeal was preferred by private respondent No. 6, when the District Magistrate, Madhepura, on finding the fact that the sister-in-law of the petitioner was in service, set-aside the appointment of the petitioner and directed for appointment of private respondent No. 6 on the said post. Pursuant to the aforesaid order, private respondent No. 6 is now discharging her functions as Anganbari Sevika at the concerned Centre.

6. Mr. Pramod Mishra, learned Advocate for the petitioner, has pointed out that the Circular of 2011 was amended on 10.06.2013 and the advertisement in question, against which the petitioner as well as private respondent No. 6 had applied for being considered on such post, was issued on 11.06.2013. According to the amendment, if the sister of the husband was in service from before the



application of the concerned aspirant, no disqualification would attach if such earlier appointed relative received remuneration of less than Rs. 6,000/-. The specific case of the petitioner is that her sister-in-law received less than Rs. 6,000/-. The aforesaid aspect was not considered by the District Magistrate, Madhepura and an order was passed setting-aside the appointment of petitioner on the post of Anganbari Sevika.

7. Mr. Rajeev Kumar Singh, learned Advocate for the private respondent No. 6, on the other hand, has defended the order of the District Magistrate, Madhepura on the ground that the amendment to the Circular would not apply to the facts of this case and the petitioner, otherwise, was not entitled for being considered for such post.

8. There are other issues also which are raised in the present proceeding, viz., the genuineness of the signature of the petitioner in the register of the Aam Sabha as compared to her signature in the form which the petitioner had filled as also the Vakalatnama. The issue of the lack of requisite qualification of the petitioner has also



been raised in the present petition.

9. However, this Court, on finding that the amendment to the Circular of 2011 was not adverted to by the District Magistrate, Madhepura, has no hesitation in holding that the order impugned suffers from the vice of non-application of the relevant amendment of the Circular of 2011.

10. As a result of the aforesaid finding, the order of the District Magistrate, Madhepura, which has been impugned in the present petition, is set-aside.

11. The matter is remitted to the District Magistrate, Madhepura for writing out a fresh order in accordance with law after affording hearing to the parties. The remand of this case to the District Magistrate is not with the limited remit of looking at the amendment of the Circular of 2011 which came prior to the issuance of the concerned advertisement, but the consideration would include other aspects referred to above, so as to attach finality to such decision taken by the District Magistrate. The District Magistrate would be under an obligation to hear the



petitioner, the private respondent No. 6 and other necessary parties/stakeholders and conclude the hearing within a period of eight (8) weeks of the receipt/production of a copy of this order. In case, it is found that the petitioner's claim to the post was wrongly rejected, necessary sequel order shall also be passed, reinstating the petitioner on such post of Anganbari Sevika.

12. Needless to say that any order, which would be passed by the District Magistrate, Madhepura, would be a reasoned order and in accordance with law.

13. Till the time, the final order is passed by the District Magistrate, Madhepura, the *status quo*, as on date, shall continue.

14. With the aforesaid observation/direction, the writ petition stands disposed off.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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