

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1367 of 2015

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Mamta Kumari W/o Sri Jitendra Yadav resident of Village- Isrichak, Post-Sarma, P.s Masaudhi, District Patna. Appellant/s

Versus

1. The State Of Bihar through Principal Secretary Social Welfare Director ICDS Bihar, Patna.
2. The Deputy Director, I.C.D.S. Patna.
3. The District Programme Officer, Patna.
4. The Child Development officer, Masaudhi, District Patna.
5. Lalilata kumari W/o late Suresh Yadav resident of village -Isrichak, Post charma, P.s Masaudhi, District Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Ranjan Kumar Dubey, Adv. Mr. Shekhar Singh, Adv. Mr. Sumit Kumar, Adv.
For the State		Mr. Shiv Kumar, AC to GA-3
For the Respondent No. 6	:	Mr. Rajendra Narayan, Sr. Adv. Dr. Manoj Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 21-01-2019

Heard Mr. Ranjan Kumar Dubey, learned counsel appearing on behalf of the appellant-writ petitioner, learned counsel for the State and Mr. Rajendra Narayan, Learned Senior Counsel assisted by Dr. Manoj Kumar, learned counsel for the private respondent.

It is feeling aggrieved by the judgment and order dated 03.04.2015 passed in C.W.J.C. No. 5093 of 2015 that the writ petitioner as appellant is before this Court.

The matter relates to appointment of Anganbari Sevika at Aganbari centre Isrichak, Code no. 206 in the District of Patna.



Some undisputed facts leading to the writ petition is that in a selection process for such appointment initiated by publication of advertisement that Aam Sabha was held on 26.12.2013 and in which although respondent no. 6 appeared at serial no. 1 of the merit list, it is the appellant-writ petitioner who was appointed and the reason is because the sister-in-law of the private respondent was a Panchayat Teacher, a Governmental post which was a disqualification under Clause 4.9 of the guidelines which came into force on 04.11.2011. The respondent no. 6 after invoking the provision of the Right to Information Act to ascertain the reason for her non-selection moved in appeal and the Deputy Director Welfare, vide memo no. 155 dated 16.12.2014 upholding her claim has set aside the appointment of the petitioner and directed for her appointment. This order of the Deputy Director Welfare was challenged by the appellant-writ petitioner through the writ petition in question impugned at Annexure-1 and since the decision of the Deputy Director Welfare has not been interfered by the learned Single Judge that the writ petitioner is before this Court.

We have heard Mr. Dubey, learned counsel appearing for the appellant-writ petitioner and learned counsel for the State as



well as Mr. Narayan, learned Senior Counsel for the private respondent and have perused the records.

It is not in dispute that the private respondent figured at serial no. 1 of the merit list. The only issue which falls for consideration is whether the opinion of the Deputy Director Welfare in examining the appeal of the private respondent and to uphold the claim suffers any infirmity. Mr. Dubey has relied upon the provisions of Clause 4.9 to support the disqualification but the plea has not found favour with the learned Single Judge who has upheld the claim of the private respondent. According to the learned Single Judge, since the salary of a Panchayat Teacher was 6,000/-, which was the upper limit so prescribed under the stipulation to escape disqualification, it did not require interference. This opinion of the learned Single Judge, according to Mr. Dubey, is not sustainable because the salary of a Panchayat Teacher did not remain at Rs. 6,000/- on the date that the matter fell for consideration.

In our opinion such consideration for disqualification would arise only if the matter would be covered under Clause 4.9 of the guidelines which came into force only on 04.11.2011. The pleadings on record confirm that the selection process was initiated by the publication of advertisement on 03.03.2011 as



accepted by the respondents in their counter affidavit and thus it is the Rules and Guidelines in force on the said date, which would be regulating the appointment. It is again not in dispute that as on 03.03.2011 it is the guidelines issued by the Social Welfare Department of the Government of Bihar circulated by resolution no. 146 of 2010 which was in force and covered the selection. Now under the said guidelines, the disqualification is set out in para-4.6 and which simply disqualified a daughter-in-law of a public representative from such appointment apart from the relatives of dealers under the Public Distribution System. Clause 4.6 which was in force at the relevant time did not conceive of any disqualification of a candidate whose relatives was a Government/Semi-Government servant which provision for the first time was incorporated in the guidelines brought into force on 04.11.2011.

Law is well-settled and it is the rules and guidelines in force when any process for selection is initiated, which would govern any selection. Even if these rules undergo a change by the time a selection is finalized it cannot have any retrospective effect nor can be applied to past transaction more particularly where rights are crystallized in the selection process as per the guidelines in force. In view of the legal position so well-settled, it is the 2010



guidelines which would be regulating the selection in question and since undisputedly paragraph 4.6 of the 2010 guidelines which was in force as on 03.03.2011 when the advertisement was published did not provide for any such disqualification of a candidate in case her relative was a government or a semi-government servant, the private respondent could not have been disqualified on this ground and has been rightly restored to her position under the orders of the appellate authority by the order impugned in the writ petition dated 16.12.2014 and not interfered with by the learned Single Judge.

For the discussions above, we do not deem it necessary to go into the salary aspect of the matter, which by the pleadings itself, appears debatable.

We may differ in our reasons for upholding the claim of the private respondent but the conclusion we arrive, is the same and the appeal is, accordingly, dismissed.

(Jyoti Saran, J)

(Nilu Agrawal, J)

priyanka/devendra

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