

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18372 of 2015

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Imrana Tarannum @ Bibi Imrana Tarannum wife of Md. Afroz Alam and
Daughter of Md. Safiruddin 'Safar', resident of Village- Bageshwari, P.O.
Gairki, Police Station- Jokihat, District-Araria. Petitioner/s
Versus

1. The State Of Bihar.
2. Principal Secretary, Department of Social Welfare, Government of Bihar,
Patna.
3. Collector, Araria.
4. District Programme Officer DPO, Araria.
5. Child Development Project Officer C.D.P.O., Jokihat, District- Araria.
... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rajendra Narain, Sr. Advocate Mr. Umesh Kumar Roy, Advocate
For the State	:	Mr.Dhurjati Kumar Prasad, GP 14.

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT

Date : 17-04-2019

Heard learned senior counsel appearing for the petitioner
as well as the State counsel.

2. Writ petition has been filed challenging the
communication dated 07.07.2015 issued by the Child
Development Project Officer, Jokihat, Araria whereby and
where under the petitioner was directed to hand over charge of
the job of Anganwari Sewika for Bageshwari Sheikh Tola,
Center no. 182 in the District of Araria to the successor.

3. Direction has been given in light of the order dated
17.04.2015 issued by the District Programme Officer (DPO),
Araria whereby and where under the petitioner's selection as
Anganwari Sewika for center in question has been cancelled.



The cancellation of petitioner's selection is on the ground that at the time she had been selected by the Aam Sabha i.e., on 24.04.1990 she was 12 years 10 months and 21 days old. The petitioner was under age for appointment and that in view of the aforesaid disqualification her selection from its very inception was illegal and could not be continued.

4. Learned senior counsel appearing on behalf of the petitioner submits that the selection of the petitioner was done on 24.04.1990 in a social scenario when it was difficult to find females for performing the job of Anganwari Sewika for a paltry sum of hundred rupees per month. Being faced with such difficulty the petitioner was duly selected by Aam Sabha conscious of the fact that her date of birth was 25.05.1977. The submission of the learned senior counsel is that the petitioner was to complete 25 years of service as Anganwari Sewika and by virtue of such experience she had acquired eligibility for being considered for selection and appointment as lady supervisor against the 25% promotional quota.

5. It is submitted that being conscious of this fact just about seven days before she was to acquire 25 years experience the selection has been cancelled by the respondent authorities due to the complain made by agnate of the petitioner's husband



which was motivated due to family feud. He submits that having given such a long period of service to the respondent authorities, the petitioner could not be removed on the ground that at the time of her original selection she was under age.

6. Reliance is placed on two decisions in case of **Ful Kumari @ Ful Kumari Devi vs. the State of Bihar** arising out of C.W.J.C. No. 3211 of 2011 decided on 10.05.2012 by this Court, as also the decision in case of **Sunita Kumari vs. the State of Bihar** arising out of C.W.J.C. No. 13952 of 2011 decided on 01.12.2011. It is submitted that in both the said judgments (Annexure 7 series) those who had been selected as Anganwari Sewika below the legal age for employment were purported to be deprived the fruits of their employment and in the circumstance this Court has saved the petitioner's therein from arbitrary action of the respondents on the ground that after afflux of such a long time and since the petitioners therein, as in the instant case had not obtained the employment by any misrepresentation or fraud, the respondent authorities were estopped from depriving the petitioners therein the fruits of their past service rendered as Anganwari Sewika.

7. The judgments in the said two cases were delivered in favour of other similarly situated as the petitioner and even



though the petitioners therein were under age, this Court had interfered with the order of the State Government depriving the petitioners therein the fruits of the experience on the post of Anganwari Sewika. It is submitted that on the same analogy the petitioners should be granted the relief of reinstatement on the post of Anganwari Sewika.

8. The counsel for the respondent State however, has submitted that the petitioner was at the time of her initial selection admittedly about 12 years and 11 months old. She was still a “child”. The said circumstance created a bar against her employment as is evident from the provisions of **the Child and Adolescent Labour (Prohibition and Regulation) Act 1986** as also other similar laws in the past.

9. It is submitted that the petitioner could not be permitted to rely upon decisions in favour of **Ful Kumari** (supra) as also **Sunita Kumari** (supra) as in the said cases the facts were different and do not apply in the instant case. He submits that in those cases the only issue was whether the petitioners therein could be deprived the benefit of experience of working as Anganwari Sewika for the purposes of eligibility in the matter of consideration for selection to the post of lady supervisor against 25% promotional quota that is not the case



here. Benefit of experience gained by the petitioners therein was the only relief granted to the petitioners therein. Petitioner in the instant case is seeking relief of reinstatement as Anganwari Sewika, which selection had admittedly been obtained when the petitioner was still 12 years and 11 months old as such by no stretch of imagination same could be called as a legal selection. In the case of **Ful Kumari** (supra) and **Sunita Kumari** (supra) this Court has not issued any direction for reinstatement of the petitioners therein. Only benefit of past service experience has been allowed. In the instant case a relief distinct from that claimed by the two petitioners and granted by this Court. Petitioners cannot be permitted to place reliance on judgment in the case of **Ful Kumari**(supra) and **Sunita Kumari** (supra) as judgment in the said two cases is not in respect of relief of reinstatement but only for recognition of work experience as Anganwari Sevika for the purposes of selection tot the post of lady Supervisors against the 25 % promotional quota. Accordingly, it is submitted that the same is not applicable in the instant case.

10. This Court is of the view that the initial selection being illegal the petitioner could not approach the writ Court for perpetration of illegality merely by relying on the fact that the



respondent authority had failed to take due and adequate care to prevent the petitioner's selection at that time when she was less than 13 years old. By virtue of a mistake committed by the respondent authorities in appointing the petitioner at such a young age, the petitioner cannot claim any right to continue as Anganwari Sewika in spite of the fact that admittedly selection was illegal on account of her being still a child.

11. The petitioner's selection as Anganwari Sewika was at the age of less than 13 years. She was still a child. This Court would therefore, hold that the initial selection as Anganwari Sevika was itself illegal. Merely for the fact that the same has continued for such a long period cannot create a right in favour of the petitioner to seek quashing of communication dated 07.07.2015 whereby Child Development Project Officer has directed petitioners to hand over charge of Anganwari Sevika to the successor and claim reinstatement to such an illegal appointment. It is trite law that such a relief, which has the effect of restoring an illegality cannot be claimed in a writ proceeding. Article 226 cannot be resorted to revive an illegality. Accordingly, this Court would refuse to exercise jurisdiction under Article 226 of the Constitution of India to quash the communication dated 07.07.2015 and direct the



respondents to reinstate her as the same would have the effect of reviving an illegal appointment. In this connection this Court would rely upon judgment of the Apex Court in the case of **Gadde Venkateswara Rao vs. Government of A.P.** reported in **AIR 1996 SC 828**, **Mohd. Sawalker vs. III ADJ** reported in **(1988) 1 SCC 40**, as also judgment in the case of **Maharaja Chintamani Saran Nath Shahdeo vs. State of Bihar & Ors.**, reported in **(1999) 8 SCC 16**.

12. However, having considered the relief granted in favour of **Ful Kumari** (supra) and **Sunita Kumari** (supra) this Court would observe that the petitioner would also be entitled to claim the benefit of experience for the purposes of consideration of her claim for appointment against the 25 % promotional quota to the post of lady supervisor in accordance with law.

13. The writ petition stands dismissed.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	AFR
CAV DATE	29.03.2019
Uploading Date	18.04.2019
Transmission Date	

