

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.130 of 2018

In
Civil Writ Jurisdiction Case No.10660 of 2014

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Suman Kumari @ Suman Devi, wife of Shri Ishwar Chandra Sah, resident of
Village- Sawan Bahar, P.S. and Block- Kargahar, District- Rohtas.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary Social Welfare Department, Secretariat, Patna.
2. The Director, Integrated, Child Development Scheme, Indra Bhawan Boring Canal Road, Patna.
3. The Divisional Commissioner, Patna.
4. The District Magistrate, Rohtas at Sasaram.
5. The District Programme Officer, Rohtas at Sasaram.
6. The Child Development Project Officer, Kargahar, District- Rohtas.
7. The Mukhiya, Barhari Gram Panchayat, Block and P.S.- Kargahar, District- Rohtas.
8. The Secretary, (Panchayat Sewak) Barhari Gram Panchayat, P.S.- Kargahar, District- Rohtas.
9. Anjana Kumari, wife of Shri Rajesh Rai, resident of Village- Khairhi, Panchayat- Barhari, P.S.- Kargahar, District- Rohtas.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajesh Kumar Sinha, Advocate
For the Respondent/s : Mr. Gyan Prakash Ojha, GA-7

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-04-2019

Heard learned counsel for the appellant.



The petition questions the correctness of the judgement dated 13.12.2017 of the learned Single Judge whereby the writ petition filed by the appellant has been dismissed and she has been called upon to face the show cause issued by the Commissioner of the Division. At first flush, it did appear that the Commissioner has issued only a show cause notice which can be replied by the appellant, but on a deeper scrutiny of the facts, we find that the challenge raised was not without substance as would be evident from the facts of the present case.

The undisputed fact is that there was only one post of Anganbari worker in 2004 in village Barhari East and which also comprises of another Hamlet (Tola), namely, Sawan Bahar. The selection was held for East Barhari in which there were seven applicants, including the appellant, and the respondent no.9 Anjana Kumari was not even an applicant. The appellant claims that she was selected, but in spite of her selection she was not being permitted to join nor was she sent for training. Consequently, she was compelled to approach this Court by filing C.W.J.C. No.12016 of 2006 that was clubbed together with such similar petitions that were disposed of by a learned Single Judge on 05.11.2007 directing the authority competent, namely, the Collector of the district to proceed to pass appropriate orders. This was done as the



remedy was available under the guidelines and, therefore, the direction was given to be complied with as per the guidelines. A Copy of the said judgement is Annexure 4 to the writ petition.

The appellant's claim was considered by the District Magistrate, Rohtas and it was allowed vide order dated 25th of June, 2009.

There is an intervening fact which deserves mention, namely, that in the same village in the Hamlet of Sawan Bahar another Anganbari Center was sanctioned and a decision was taken to appoint another Anganbari worker at the said center. The selection proceedings of the said center were conducted and the respondent no.9 was selected on 29th May, 2007 as Anganbari worker of Sawan Bahar.

However, while passing the order dated 25th of June, 2009, the Collector set aside the selection of the respondent no.9 and directed that the appellant should be sent on training and then given charge keeping in view her selection.

In spite of the said order, neither the appellant was given joining nor was she sent on training, therefore, she filed a second writ petition being CWJC No.8529 of 2010. This writ petition was, however, filed without impleading the respondent no.9 and it appears the writ petition was disposed of on 17th of March, 2011



on the impression that the appellant's selection is complete and final and, therefore, appropriate action should be taken.

The appellant claims that thereafter, she was sent on training and a certificate was issued to her, copy whereof has been filed as Annexure-7 to the writ petition. The said certificate discloses the name of the center for which, the appellant was being trained and it refers to Barhari East, but later on also mentions "Bhag Sawan Bahar" Center No.163. It appears that this mentioning of the center number as well as mentioning the name of Sawan Bahar raised the dispute that has culminated in the present controversy.

Admittedly, the appellant was selected in 2004 for the center at East Barhari and not for Sawan Bahar as there was no such center being run when the appellant was selected nor the respondent no.9 was an applicant then. The selection and appointment for Sawan Bahar emerged only in the year 2007 for the first time with which the appellant had no concern. On the other hand, the respondent no.9 had no concern with the selection and appointment of the appellant at East Barhari, but the certificate which was issued appears to have given rise to this controversy.

The respondent no.9 challenged the order of the District Magistrate in C.W.J.C. No.14906 of 2011. The said writ petition



was disposed of with a direction that the petitioner therein, namely, respondent no.9, to approach the Divisional Commissioner who was to pass appropriate orders after giving an opportunity of hearing to the concerned party. However, while disposing of the writ petition, the learned Single Judge categorically recorded that there was no conflict of interest between the applicant and the respondent no.9 who had been selected for different places. The judgement dated 20th of October, 2011 is extracted hereinunder:

“After some argument, learned counsel for the petitioner seeks permission to withdraw the writ application with liberty to move the Divisional Commissioner against the order of the District Magistrate, which per se is stated to be bad as the basic fact that the petitioner was selected for Sawan Bahar Centre and the private respondent Suman Devi for Barhara and there was no conflict of interest between two as they were not appointed on the post of ‘Anganwari Sewika’ on the same centre.

Since there are no materials available before this Court with regard to such point having been urged let petitioner approach the Divisional Commissioner on this point and the Divisional Commissioner must hear one and all before deciding the issue on merit without raising any questions on the question of limitation or delay.

The writ application is disposed of.”



The Commissioner thereafter has passed the order on 22nd of October, 2013 / 30th of January, 2014 and has also issued a show cause to the appellant to give her reply as the allegation against the appellant was that she had earlier obtained the orders by suppressing the fact of the existence of two centers and the subsequent selection of the respondent no.9.

During the pendency of the writ petition, an order was passed by the Child Development Project Officer on 18th June, 2017 calling upon the appellant to handover the charge which was also challenged and an amendment to that effect was allowed. It is thereafter that upon exchange of affidavits that the writ petition has been dismissed. Hence this appeal.

The order of the learned Commissioner records categorically about the existence of only one center when the appellant was selected in 2004 and the coming up of another center in the year 2007 against which the respondent no.9 was selected. The learned Commissioner, however, adversely commented upon the appellant in not having brought correct facts to the notice of the Court or to the authorities concerned that has resulted in the aforesaid conclusion and, therefore, a show cause notice has been issued to the appellant to explain her conduct as to why an appropriate action be not taken against her.



Having considered the submissions raised and having heard learned counsel for the State of Bihar, who has opposed this appeal, there is no doubt that there was no challenge raised to the selection and appointment of the appellant on any ground previously. To the contrary, the subsequent selection and appointment of the respondent no.9 at Sawan Bahar which became subject matter of challenge vis-a-vis the claim of the appellant stood finally adjudicated under the judgement of the learned Single Judge dated 20th of March, 2011 extracted hereinabove. Thus there was no conflict of interest nor was either of the appointments under challenge by any other person, but on account of the endorsement of "Sawan Bahar-Centre No.163" in the certificate which was issued in favour of the appellant and on account of the order of the Commissioner impugned in the writ petition, the appellant was called upon to handover charge without there being any adjudication as to whether the appellant was entitled to continue at East Barhari or not. This was the basic error which appears to have occurred on account of the aforesaid action of the respondents who without having commented upon the same have proceeded now to non-suit the appellant and the Child Development Project Officer has issued a direction for the handing over the charge by the appellant. We find that this action is



absolutely illegal inasmuch as so long as the selection and appointment of the appellant is not set aside, she is entitled to function as an Anganbari worker at East Barhari which is the place of her selection. Simultaneously, the respondent no.9 is also entitled to her functioning at Anganbari center in Sawan Bahar. With the availability of two separate centers, there is no conflict of interest between the appellant and the respondent no.9. The learned Commissioner has unnecessarily issued a show cause notice instead of resolving the dispute at his level in the manner aforesaid in spite of these facts not being disputed by him also in the impugned order.

We, therefore, to that extent allow this appeal and set aside the impugned judgement dated 13.12.2017 in so far as it relates to dismissing the writ petition without adjudicating upon the claim of the appellant. The selection of the appellant and the respondent no.9 on their respective centers is, therefore, declared to be intact in supersession of the orders passed by the authorities and the impugned judgment. The respondents no.4 and 5 are directed to allow the appellant to join at Anganbari center at East Barhari and the respondent no.9 to continue at Sawan Bahar.



The District Magistrate shall pass appropriate orders in the event any intervening appointments have been made which would obviously be subject to the outcome of this litigation.

With the aforesaid directions, the appeal stands allowed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	N.A.F.R.
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