

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.923 of 2018

-
1. Jasila Kumari and Ors wife of Shesh Nath Singh, resident of Mairwa, P.O. Mairwa, P.S. Mairwa, District- Siwan.
 2. Arti Kumari,
 3. Neetu Kumari, Both are D/o Umashankar Yadav, resident of Village- Jasauli Kharg, P.O.- Jasauli, Pachrukhi, District- Siwan.
 4. Nilu Kumari, wife of Late Basudeo Prasad, resident of Village- Ambedkar Nagar, Siwan, P.O. District- Siwan.

... .. Appellant/s

Versus

1. The State Of Bihar and Ors
2. The Commissioner, Saran Division, Saran at Chapra.
3. The District Magistrate, Siwan.
4. The District Programme Officer, Integrated Child Development Scheme, Siwan.
5. Kumari Renuka, wife of Sri Upendra Kumar Ram, resident of Village and P.O.- Banthu Sriram, P.S. Andar, District- Siwan.
6. Rinku Kumari, D/o Sri Lal Babu Sah, resident of Village- Sangrampur, P.S. G.B. Nagar, Tarwana, P.O. Sangrampur, District- Siwan.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Shyama Kant Singh, Advocate Mr. Bipin Bihari Singh, Advocate Mr. Akhilesh Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha, G.A. 7 Mr. Gopal Krishna, A.C. to G.A. 7

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

Date : 04-02-2019

The appellants claim appointment as Anganwari Supervisors. They allege that they had been subjected to the selection process, but their selections came to be challenged before this Court where the challenge raised was not entertained and the matter was remitted to the Divisional Commissioner for



decision in accordance with law.

The appellants Jasila Kumari, Arti Kumari, Nilu Kumari who are the appellants before us and Saroj Kumari were also respondents in C.W.J.C. No. 16702 of 2012 where their appointments were challenged. An interim order was passed on 14th September, 2012 in the said writ petition, but while disposing off the petition finally, the learned Single Judge observed that the Divisional Commissioner will proceed to decide the matter and if appointments have not yet been made, then the same shall be kept in abeyance. It was further indicated that if appointments have already been made, the same shall be subject to the result of the writ application. The writ petition itself was disposed off and, therefore, the appointments became subject to any order being passed by the Divisional Commissioner.

According to the case of appellant-petitioners, the Divisional Commissioner ultimately decided the matter on 18th of December, 2013, rejecting the representation against the selection of the appellants.

The appellants had not been offered formal appointments and, therefore, they filed C.W.J.C. No. 17596 of 2014 that has given rise to the present appeal.



The writ petition remained pending for almost 4 years and during this period the vacancies against which the appellants were to be appointed were intimated to the District Programme Officer for being filled up. Thus, the selections of the appellants which were of the year 2011 could not be given effect to in these circumstances and subsequent appointments were made during the pendency of the writ petition giving rise to the present appeal.

The learned Single Judge after having noted the aforesaid facts and appreciated the stand taken in the counter affidavit, did not find any occasion to issue a direction for the appointment of the appellants and, aggrieved, the appellants are before us in this appeal.

The appointment as Anganwari Supervisors is on contract basis and is for a specified period, even though renewable from time to time. The contention of the appellants is that such of those Anganwari Supervisors who had also approached the Court and directions had been issued, have been continued and are still continuing as such denial of the same benefit to the appellants by the learned Single Judge results in discrimination. He, therefore, submits that the claim of the appellants also deserve to be considered and appointment also



deserves to be made keeping in view the fact that the selections of the appellants in the year 2011 have not been set aside and rather have been confirmed with the dismissal of any objections raised against the same.

In the counter affidavit, it has been stated that the vacancies have now been notified for regular appointment. On the other hand, learned counsel for the appellants submits that certain posts are still available.

In the wake of the aforesaid background of the case, where the appellants had been fighting their litigation up to this Court and their selection have not been disturbed, it would have been appropriate for the department to have proceeded to take action on its own, but instead, it appears that a process for fresh appointment against the existing vacancies was undertaken. Such process of appointment on regular basis by the department does not appear to have been challenged by the appellants in the writ petition. Consequently, having not questioned the said process as noticed by the learned Single Judge through the counter affidavit of the State, it will be difficult for this Court to issue a mandamus outright, but in the event such posts are still lying vacant and the appellants are eligible, then in that event it will be open to the respondents to consider the claim of the



appellants in accordance with law and pass an appropriate order, preferably within a period of 6 weeks from the date of receipt/production of a certified copy of this order.

The appeal stands disposed off subject to above.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/Uma/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.02.2019
Transmission Date	N/A

