

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.455 of 2018
in
Civil Writ Jurisdiction Case No.9004 of 2010

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Sangita Devi, Wife of Raj Kumar Bhagat, resident of Village + P.O. + P.S.-
Minapur, District- Muzaffarpur.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Director, Integrated Child Development Scheme, Govt. of Bihar, Patna.
3. The Commissioner, Tirhut Division, Muzaffarpur.
4. The District Magistrate, Muzaffarpur.
5. The District Programme Officer, Muzaffarpur.
6. The Child Development Officer, Meenapur, Muzaffarpur.
7. The Mukhiya, Panchayat Raj Minapur, Muzaffarpur.
8. The Panchayat Sachiv Panchayat Raj Minapur, District- Muzaffarpur.
9. Rinku Kumari, W/o Sheoshankar Bhagat, resident of Village + P.O. + P.S.-
Minapur, Dist.- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Appellant	:	Mr. Shankar Kishore Shahi, Advocate
For the State	:	Mr. Gyan Prakash Ojha, GA-7
For Respondent No.9	:	Mr. Krishna Kant Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

CAV JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date : 14-02-2019

The present Letters Patent Appeal has been preferred against the judgment dated 12.03.2018 passed in C.W.J.C. No.9004 of 2010, by which the appointment of the appellant has been held to be illegal and thus the order of the District Programme Officer, declaring the appointment of the appellant as illegal, has been upheld.



2. The writ petitioner and the present appellant had responded to an advertisement published for appointment of Anganbari Sevika. The writ petitioner-Rinku Kumari (respondent no.9), who was possessing the qualification of Madhyama from Bihar Sanskrit Shiksha Board, Patna, was claiming the said qualification to be equivalent to Matriculation whereas the appellant had the qualification of Vidhya Vinodini from Prayag Mahila Vidyapeeth, Allahabad, which was not recognized by the State of Bihar. Nevertheless, at the Aam Sabha, vide its proceeding dated 15.09.2008, Sangita Devi, the present appellant, was appointed as Anganbari Sevika defeating the case of the writ petitioner, which, according to her, was *per se* illegal.

3. Constrained by the action of the Aam Sabha, the writ petitioner filed an application before the District Programme Officer, Muzaffarpur, who categorically held that the qualification of Vidya Vinodini acquired by the appellant/respondent No.9, from Prayag Mahila Vidhyapeeth, Allahabad, not being a recognized institution by the State of Bihar as being equivalent to the qualification of Matriculation, the appellant Sangita Devi could not have been appointed as Anganbari Sevika.

4. Another ground on which the appointment of the appellant was set aside was that her husband, namely, Raj Kumar



Bhagat, was the Panch of Ward No.7 and since he had not tendered his resignation, the appointment of Sangita Devi was completely unsustainable. Since the appointment of the appellant Sangita Devi was rejected by the authorities on two grounds; firstly, that her husband had not tendered his resignation from Gram Panchayat Raj, Meenapur and also because she did not possess the requisite qualification and thus, the District Programme Officer, Muzaffarpur held that the writ petitioner has a legitimate right over the post and had accordingly directed that she be appointed after calling a meeting of the Aam Sabha.

5. Aggrieved by the aforementioned order of the District Programme Officer, Muzaffarpur, the present appellant-Sangita Devi (respondent No.9 in writ), filed an appeal before the Divisional Commissioner, Tirhut Division, Muzaffarpur, bearing Service Appeal No.88 of 2009. The Commissioner set aside the order of the District Programme Officer and held the qualification of Vidya Vinodini as acquired by the appellant to be equivalent to that of the Matriculation. The Commissioner, however, declared that the very basis of the rejection of the appointment of the appellant was the Government Notification No.3152 dated 25.08.2008, which derecognized the qualification of Vidya Vinodini as being equivalent to Matriculation to be effective from



25.08.2008, whereas the appellant-Sangita Devi had acquired the qualification of Vidya Vinodini in the year 2006 from Prayag Mahila Vidhyapeeth, Allahabad prior to the derecognition of the degree. Consequently, the order of the District Programme Officer was set aside. As such, Rinku Devi challenged the aforesaid order passed by the Commissioner under Article 226 of the Constitution of India.

6. When the matter came up before this Court, the writ petitioner contended that the order of the Commissioner was patently and manifestly illegal inasmuch as the Circular issued in the year 2006, dealing with the appointment of Anganbari Sevikas, specifically debarred the daughter, wife, daughter-in-law, wife of grandson of Mukhiya, Member of the Panchayat Samiti, Ward Member of Zila Parishad, from the zone of consideration for appointment as Anganbari Sevikas. Thus, the appellant/respondent No.9 could not have been selected as Anganbari Sevika. The further ground urged by the writ petitioner before the learned single Judge was that the Circular dated 07.01.1987 had clarified that certain certificates issued by the institutions, which were earlier recognized by the State of Bihar, in which the name of Prayag Mahila Vidhyapeeth, Allahabad had also been mentioned, were valid up to 1985 but its validity had been extended up to



31.12.1987. The respondent No.9 who had secured the said certificate in the year 2006 was thus not eligible for appointment as the same cannot be treated to be equivalent to Matriculation. Consequently, her appointment and selection to the post of Angabari Sevika by the Aam Sabha is completely *dehors* the provisions and the decision of the Commissioner is clearly erroneous and warrants interference by this Court.

7. Though the matter was keenly contested by respondent No.9, the appellant herein, who tried to demonstrate before the Court that the Notification dated 25.08.2008 alone was available to show that the qualification of Vidya Vinodini obtained from Prayag Mahila Vidhyapeeth, Allahabad was, in fact, a proper qualification and the contention of respondent No.9/writ petitioner was wrong as it presumed that the said notification, issued in the year 2008, had any retrospectivity. It was contended before the writ Court that the appellant having passed in the year 2006 from the said institution, the notification dated 25.08.2008 issued by the Human Resources Department cannot be construed to be applicable to the present appellant. The appellant herein also contended before the writ Court that the writ petitioner had failed to file a complaint on affidavit whereas the guidelines issued by the Government of Bihar under Clause 10 provides that only the



applications on affidavit will be entertained for enquiry by the District Magistrate or any person appointed by him, and, therefore, such a complaint ought not to have been entertained.

8. The learned single Judge, after considering all facts and circumstances of the case, allowed the writ application and while setting aside the appointment of respondent No.9/appellant Sangita Devi, has held that she was not holding proper and requisite qualifications and thus her appointment as Anganbari Sevika by the Aam Sabha is wholly illegal and thus the Commissioner, Tirhut Division, Muzaffarpur vide impugned order dated 19.01.2010, had clearly misunderstood and misdirected itself in upholding her appointment. While doing so, the learned single Judge has also directed that the writ petitioner be appointed on the post of Anganbari Sevika.

9. Aggrieved by the aforementioned order, the appellant herein, who had been working on the post of Anganbari Sevika, has preferred the present intra-Court appeal on the grounds that the learned single Judge has failed to consider that the order of the Commissioner was wholly legal both on facts and in law. The very first contention that the appellant had applied for Anganbari Sevika before the Secretary, Panchayat Raj, Meenapur, Centre No.253, at a time when her husband was a Panch, is misconceived



as the Court had not gone into the issue for the reason that it was presumed that the appointment of Sangita Devi-appellant was illegal on account of improper certificate.

10. The other contention raised by the appellant is that the certificate of Vidya Vinodini issued by the Prayag Mahila Vidhyapeeth, Allahabad, particularly because the circular dated 25.08.2008, which was circulated with the names of 28 institutions, was but in the nature of clarification to an earlier circular which had been proved to be a fraudulent document. It was thus urged that the decision of the learned single Judge which is based purely on the notification dated 25.08.2008 contained in letter No.3152, is wholly erroneous as the appellant had passed the aforesaid examination from Prayag Mahila Vidhyapeeth, Allahabad prior thereto. It was thus submitted that since the qualification of the appellant was valid and recognized, the appellant had also been granted admission in the intermediate course of the Bihar Intermediate Council, wherein such a qualification had been considered to be recognized for the purposes of taking admission. It was also contended that several other persons who had been similarly selected on the basis of a same set of qualifications was still continuing and, therefore, the appellant could not be differentiated and her appointment cannot



be treated to be as illegal. It is under such premises, that the appellant has preferred the appeal.

11. We have heard learned counsel for the appellant and perused the materials on record. It appears from the materials on record that one of the disqualifications for applying for the post of Anganbari Sevika was that the applicant should not be a relative of any Ward Member or Member of Panchayat Samiti or Zila Parishad. Apparently, on the date of application, as has been contended by the respondent-State in their counter affidavit, the husband of the present appellant had not tendered his resignation. The resignation letter dated 30.05.2008, which has been brought on record, also appears to be a doubtful document which could not be gone into. Even though the learned single Judge has not gone into the issue, there being no clear finding that the husband of the appellant had, in fact, demitted the office before the appellant had made her application for appointment as Anganbari Sevika, the appellant's candidature can well be said to be under a cloud.

12. The most vital issue regarding the eligibility requirement of the appellant with regard to her possessing the Vidhya Vinodini certificate, which, as per the contention, is equivalent to the qualification "Matriculation", has been considered by the District Programme Officer. The District



Programme Officer after due hearing to both the parties, namely, the complainant Smt. Rinku Kumari and the appellant Sangita Devi as well as the Mukhiya and the Panchayat Secretary, came to a categorical finding that the certificate of Matriculation being equivalent to that of the qualification of Vidya Vinodani from Prayag Mahila Vidyapeeth, Allahabad, was valid up to 1987 alone. The Principal Secretary, Human Resources Department, Government of Bihar, vide Letter No.312 dated 25.08.2008, has clarified that Vidya Vinodini (Matriculation) from Prayag Mahila Vidyapeeth, Allahabad, is not recognized. In view of such clarification being given by the Government, the District Programme Officer proceeded to set aside the appointment of the appellant and directed that the said Rinku Kumari be appointed as Anganbari Sevika.

13. It further appears from a perusal of the letter dated 7th of January, 1987 issued by the Government of Bihar, that the Department of Personnel and Administrative Reforms clarified that the institutions which had earlier been derecognized and the certificate granted by them of Vidya Vinodini would be treated to be equivalent to Matriculation only up to 31.12.1987. The name of the aforementioned Institutions finds place at Serial No.5 of the letter marked as Annexure 7 to the writ application.



14. So far as Government Notification No.3152 of 25.08.2008 is concerned, we also find and hold that the Commissioner in his order has clearly failed to notice the aforementioned Circular of the year 1987, whereby it appears that way back in the year 1985 itself, the Vidya Vinodini acquired from Prayag Mahila Vidyapeeth, Allahabad had not been treated to be equivalent to Matriculation. Thus, vide circular dated 07.01.1987 (Annexure 7), such recognition was extended up to 31.12.1987. The circular dated 07.01.1987 clarified that certain certificates issued by the institution had been previously recognized by the State of Bihar, wherein the name of Prayag Mahila Vidyapeeth, Allahabad, has also been mentioned in the Schedule and which had been valid up to 1985, had now been extended up to 31.12.1987. We also find that the appellant has not been able to produce any chit of paper to demonstrate to the contrary and for the aforementioned reason, the claim of the appellant for being selected to the post of Anganbari Sevika does not, in our considered opinion, appear to be valid and legal.

15. Having perused the aforementioned letter, we are of the considered opinion that such an embargo having been placed on the equivalence of the aforementioned examination, the



petitioner, who had passed the Vidya Vinodini in the year 2006, was not in possession of the requisite qualification.

16. So far as Letter No.1068 dated 14.05.2007 is concerned, the aforementioned letter only speaks of the qualifications which would be necessary for appointment to the post of teacher and other posts under the scheme. The qualification for appointment on the post of teacher under the ICDS, Bihar, Patna would be the same as that of Anganbari Sevika and Sahayika and is thus not relevant in the present context.

17. Another ground urged by the appellant is that other persons, who had been appointed on the basis of the certificate from the aforementioned institutions, are being permitted to continue on the post of Anganbari Sevika whereas the petitioner is being differentiated and her appointment has been cancelled on the premise that the certificate of Vidya Vinodini was not recognized, which is wholly violative of the right of the appellant to continue on the said post. We do not appreciate such a plea which is just taken to be rejected as the Court cannot and will not venture to perpetuate any illegality. More so, the learned single Judge has in his judgment categorically given the direction that the respondents should examine this aspect of the matter and take appropriate steps in accordance with law.



18. We thus do not find any anomaly in the decision of the learned single Judge and hold that the case of the appellant, who does not possess the requisite qualification, is devoid of any merit.

19. In the result, the appeal fails and is consigned to records.

(Anjana Mishra, J)

Amreshwar
Pratap Sahi, CJ I agree.

(Amreshwar Pratap Sahi, CJ)

PNM

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