

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19062 of 2012

Punam Kumari W/O Sujit Kumar R/O Villand P.O.-Marwam 1, P.S.-Sarara,
Distt-Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar, Principal Secretary, Social Welfare Department, New Secretariat, Government of Bihar, Patna.
2. The Director, Welfare , New Secretariat, Government of Bihar, Patna
3. The Deputy Director, Welfare, Tirhut Division, Muzaffarpur
4. The Commissioner , Tirhut Division, Muzaffarpur
5. The Block Development Officer, Sakara, Block -Muzaffarpur
6. The Child Development Officer, Sakara, Block-Muzaffarpur
7. The Gram Panchayat Secretary, Panchayatraj Marwan, Sakara Block, Muzaffarpur
8. The Mukhiya Panchayatraj Narwan, Sakara, Block-Muzaffarpur
9. Mamta Kumari W/O Ramesh Sah R/O Villand P.O.-Marwan, P.S.-Sakara, Distt-Muzaffarpur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Arup Kumar Chongdar, Adv.
For the Resp. No.9	:	Mr. Bipin Bihari Singh, Adv.
		Mr. S.K. Ranjan, Adv.
For the State	:	Mr. Sanjay Kumar, AC to GA-13

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 17-05-2019

Heard learned counsel for the petitioner and counsel for the State as also counsel for the private respondent.

In this case, the petitioner is challenging the order of Commissioner, Tirhut Division, Muzaffarpur in Service Appeal Case No. 153 of 2010 in Mamta Kumar Vs. State of Bihar & Ors., whereby and whereunder, he has allowed the appeal of Mamta Kumari and dislodged the petitioner for being appointed as Anganbari Sevika.



An advertisement was published for recruitment of Anganwari Sevika in Panchayat- Panchayatiraj Marwan @ Aziz Nagar in Sakara Block, Muzaffarpur. The petitioner along with fourteen others applied for the recruitment as Anganwari Sevika and, accordingly, the seniority list of each candidate was prepared, the name of Rekha Kumari was at the top having secured 85.11 points, Punam Kumari secured 80.57 points, Mamta Kumari secured 56.28 points, Manju Kumari secured 56.85 points and Sandhya Kumari got 54.33 points. The 1st Aam Sabha for recruitment of Anganwari Sevika was convened on 21.4.2007 and 2nd Aam Sabha was hold on 19.6.2007 and it has been stated that in the 1st Aam Sabha, Punam Kumari, the petitioner, filed her application for withdrawal of her candidature. On that account, the claim of the petitioner has been rejected. In 1st Aam Sabha dated 21.4.2007, as seven applicants were outside feeder area, their applications were rejected, Kavita Kumari wife of Ram Supal Rai and Manju Kumari wife of Amit Kumar have been rejected as because their family members were employees of semi government organization. The candidature of Rekha Kumari was rejected as because she had obtained the certificate from Hindi Sahitya Sammellan, Prayag having been not recognized by the State of Bihar for the purposes of appointment of Anganwari Sevika. As the claim of nine persons were rejected, as not suitable



for consideration, Mamta Kumari and Sandhya Kumari remained in fray for being appointed as Anganwari Sevika. As per record, it appears that Sandhya Kumari has got lesser points than to Mamta Kumari but, the Mukhia of Gram Panchayat had nominated Sandhya Kumari for being appointed as Anganwari Sevika (Annexure-8). When Mamta Kumari could know, she filed an objection to the C.D.P.O. (Annexure-8/1) and to the D.P.O. (Annexure-8/2) having stated that as per merit list, she is at top and she has obtained better points than to Sandhya Kumari. On receipt of the complaint, the C.D.P.O. has addressed a letter dated 30.4.2008 (Annexure 8/3) to the Mukhia having stated that Mamta Kumari has better points than Sandhya Kumari. The evidence produced by her shows that her husband is not an employee of semi government organization and, in support of the same, she has also filed an affidavit having stated that if the factual narration will be found to be false, she was ready to face the legal consequences and, hence, directed to recommend the name of Mamta Kumari as Anganwari Sevika in place of Sandhya Kumari. Mamta Kumari has filed an application to the District Magistrate, Muzaffarpur dated 10.7.2008 having narrated the fact and requested that she should be appointed as Anganwari Sevika and wrongly Sandhya Kumari has been appointed as Anganwari Sevika. She has further said that the C.D.P.O. has written a letter for recommending the



name of the petitioner for appointment as Anganwari Sevika but, the Mukhia has failed to carry out the direction of the C.D.P.O. and an identical letter was written by the D.P.O. vide Memo No. 1501 dated 13.12.2008 (Annexure-8/5) having stated that the Mukhia was directed to issue a letter for recruitment of Anganwari Sevika in favour of Mamta Kumari but, even after lapse of time, no action was taken, in turn threatening was given to Mukhia that if she would not carry out the order within three days, necessary legal action will be taken against her whereafter the name of Mamta Kumari was recommended for appointment as Anganwari Sevika and, whereafter, the present petitioner lodged a complaint to C.D.P.O. having stated that she is a better candidate as she has better marks than to Mamta Kumari and she wants to work as Anganwari Sevika and requested to take legal action against the erring officials and, in place of Mamta Kumari, she should be appointed as Anganwari Sevika. The petitioner has also addressed a letter to the Panchayat Secretary but, vide letter dated 17.4.2009, the Mukhia has sent Mamta Kumari on training for acquiring necessary skill for running Anganwari Sevika. When the petitioner could know of aforesaid appointment, the petitioner wrote a letter to the Collector again having stated that the appointment letter related to Anganwari Sevika in favour of Mamta Kumari should be set aside and, in her place, she should be appointed. On receipt of



the complaint, the Mukhia was called upon by the C.D.P.O. vide letter no. 442 dated 24.8.2009 with respect to complaint made by the petitioner for refusal of getting appointed as Anganwari Sevika and give her show-cause cum explanation within a period of two weeks and the Panchayat Secretary has given a reply that she has withdrawn her application and requested to take cognizance of the proceeding of Aam Sabha dated 21.4.2007 and 19.6.2007 and the application of withdrawal is sufficient to show that she has withdrawn her candidature. The withdrawal letter along with affidavit bears the signature of the petitioner which should be verified testing the genuineness of signature, requested to absolve him from the charge and along with the application of petitioner addressed to the Mukhia (Annexure-14). The matter was looked upon by different authorities, the Deputy Director, Tirhut Division, Muzaffarpur vide Memo No. 572 dated 24.9.2009 addressed a letter to the Mukhia as well as the Panchayat Secretary, there asked to file reply on certain question, as to whether the withdrawal application was filed by the petitioner, Punam Kumari, herself or if any other person, who had filed the withdrawal letter on her behalf, whether she was present during the proceeding of Aam Sabha dated 21.4.2007 and the withdrawal application was read out during the proceeding of Aam Sabha, directed to give explanation within one week. The petitioner Punam Kumari again



wrote a complaint to the Divisional Commissioner, Muzaffarpur making a complaint that she has wrongly been treated and, whereafter, the Commissioner has passed an order in favour of the petitioner that she should be appointed provisionally and her confirmation will be subject to verification of the admitted signature vis-à-vis signature standing in the withdrawal letter, if it is found that both the signatures are different to each other, in that circumstances, the provisional appointment will be confirmed but, if the forensic report comes otherwise, in that circumstances, her candidature will be treated to have been withdrawn. Against that, Mamta Kumari filed a review application before the Commissioner against the order to recall, which the same remained pending, Mamta Kumari approached to the High Court in C.W.J.C. No. 3482 of 2010 and this Court disposed of the same with a direction to the Commissioner to deal with the representation and take a decision in accordance with law. When the Commissioner did not take any action, again she approached this Court in C.W.J.C. No. 5589 of 2011 and that too was disposed of vide order dated 16.5.2011 (Annexure-R/16, Page 107) wherein the Court has said that as the order is in interim nature and the Commissioner is supposed to take a final decision in the matter and he is required to give a notice to other side, only then he could take a final decision in the matter after hearing both parties.



Accordingly, both the parties were heard and, finally, the impugned order has been passed by the Commissioner.

Learned counsel for the petitioner submits that admittedly, the signature which is appearing in the purported application of withdrawal and her admitted signature was sent for examination before the Forensic Laboratory, the Forensic Laboratory after due verification has recorded that the signature at both the places is not tallying to each other rather they are differing and admittedly the signature on the application which was purported to have been filed in the 1st Aam Sabha is a forged and fabricated document, the same cannot be the basis for disowning the recruitment of the petitioner, further said, the Commissioner has rejected the claim of the petitioner on the sole ground that she remained under slumber for two years on account of the fact that Sandhya Kumari, who is relative of the petitioner, was appointed in the first stint, so long she remained there, no complaint was made by the petitioner, when she was replaced by Mamta Kumari, then only the petitioner started filing the complaint for her being appointed as Anganwari Sevika.

Per contra, learned counsel for the State and private respondent has submitted that though her name is standing in the 1st Aam Sabha and on the basis of her application of withdrawal, 2nd seniority list was prepared, the name of the petitioner was not



standing and, for two years, so long Sandhya Kumari remained in service, no complaint was filed by the petitioner. So the findings recorded by the Commissioner that she might have filed an application through certain person for withdrawal of the application is completely correct and requires no interference.

Having considered the rival contentions of both the parties, the sole question arising in the present case is moving around two facts, the first one is that the petitioner, as per claim of the respondent, she has withdrawn her candidature at the 1st Aam Sabha itself and the 2nd Aam Sabha, her name was not there, so, she was knowing well that she had withdrawn the application, so, she never raised any objection but, in the present case, when the withdrawal letter which was filed purportedly thereby she had withdrawn her candidature, has been found to be fabricated document. Admittedly, in the present case, the signature standing in the purported application of withdrawal vis-a-vis the admitted signature was sent to the Forensic Laboratory and the Forensic Laboratory has given a finding that said signature on the application of withdrawal does not tally with the admitted signature. So, one point is very much clear that the said application which was alleged to have been filed by the petitioner is a manipulated and forged document in order to create mischief against the petitioner but, the question in the present case is that



she kept mum for two years systematically, she had not filed her objection so long Sandhya Kumari remained in service but, the question is dependent on the fact that merely because during the period Sandhya Kumari remained in posting, the petitioner did not file any application, will deprive her for consideration of her selection as Anganwari Sevika. From the record, it appears that Sandhya Kumari as such was never appointed but, she was nominated by the Mukhia. Ultimately, the appointment has been made to Mamta Kumari and Mamta Kumari was sent for training which she completed but, this fact is not in the case of Sandhya Kumari though her name was nominated by Mukhia but, finally she was never appointed as Anganwari Sevika. So, this point that the petitioner had not raised the objection during sustenance of recruitment Sandhya Kumari does not appears to be a correct submission as the record does not show that ever she was served with any appointment letter nor she was sent to any training for the purpose of Anganwari Sevika. When Mamta Kumari was appointed, she straightway started filing application or complaint to different authorities including the Mukhia, C.D.P.O., D.P.O. and Commissioner. So, in all places, the petitioner has approached making complaint that in a wrong manner, she has been deprived of her right. The Commissioner himself in the order has recorded that admittedly, the application for withdrawal mentioned in the 1st



Aam Sabha is completely forged document as admitted signature differs with the withdrawal letter, inasmuch as, one thing is also strange, when she had withdrawn her candidature, why she was allowed to appear in both Aam Sabha and participate in the proceeding. She could have safely withdrawn from the proceedings saying that as she had already withdrawn her candidature, there was no occasion for her to participate in the proceeding, one thing is also clear that when she has filed the application in the 1st Aam Sabha of her withdrawal of candidature, then what was the circumstances, she was allowed to participate in the 2nd Aam Sabha and again in 2nd Aam Sabha, it has not been recorded that the application of the petitioner for withdrawal of the candidature was read over in public view and with the knowledge of the petitioner.

In that view of the matter, the findings of the Commissioner is not based upon any fact as he himself has recorded a finding on the guess work that she might have filed an application through certain person and she did not raise her voice against the appointment of Sandhaya Kumari and she has remained silent for two years and, on that account, she has been non-suited. This finding of the learned Commissioner, in the opinion of this Court, is a perverse finding, knowing well that in the judicial review, there is a limited scope for the Court to



interfere, the Court will interfere when the finding is based upon no evidence or the materials which were required to be taken into consideration, has not been taken into consideration and irrelevant fact has been taken into consideration to record a finding or the finding is perverse. In my opinion, the findings recorded by the Commissioner is a perverse finding based on no material but, it is based on imagination and surmises.

Accordingly, the order of the Commissioner is set aside with a direction to the Mukhia cum C.D.P.O. to ensure the appointment of the petitioner on the post of Anganwari Sevika, if already she is not working.

In the result, this writ application stands allowed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.05.2019
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