

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20004 of 2019

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Shamama Pravin, Wife of Md. Gulam Rabbani, Resident of Village Mokhnaha, Gram Panchayat Dharhara Chakla, Police Station Banmankhi, District Purnia.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Purnia Division, Purnia.
2. The Regional Development Officer, Purnia.
3. The District Magistrate, Purnia.
4. The District Programme Officer, Purnia.
5. The Sub-Divisional Officer, Banmankhi, Purnia.
6. The Child Development Project Officer, Banmankhi, Purnia.
7. Nusrat Pravin, Wife of Md. Jibrail, Daughter of Taiyab Ali, Resident of Village Mokhnaha, Gram Panchayat Dharhara Chakla, Police Station Banmankhi, District Purnia.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shivendra Kumar Sinha, Advocate
For the Respondent/s : Mr. Binay Kumar, Advocate, A.C. to S.C.-10

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 18-11-2019

Heard learned counsel for the parties.

2. The dispute arises out of selection for engagement as *Aganbari Sevika* for Ward No. 10 in *Gram Panchayat Dharhara Chakla*, in the District of Purnea. The petitioner and respondent No. 7 were aspirants for the said post. The guidelines issued on 04.11.2011 for selection of *Anganbari Sevika/Sahaika* under integrated Child Development Services were in vogue when the selection process was undertaken in 2013.



3. Clause 5 of the guidelines prescribed the method for determination of merit list by awarding marks against various attributes. Under the said clause, marks scored in the matriculation or equivalent examination was to be the basis for preparation of merit list. There was a provision for allowing additional bonus of '7' marks for widows/deserted women.

4. Respondent No. 7 claims to be a deserted woman, based on which, '7' additional bonus marks were awarded to her. In the merit list prepared by the *Aam Sabha*, respondent No. 7 was placed at Sl. No. 1, whereas petitioner at Sl. No. 2. There is no dispute that had the respondent No. 7 been not treated as a deserted woman and not given '7' additional bonus marks, she would not have been placed at Sl. No. 1 in the merit list, and she would have been below the petitioner in the merit list.

5. The petitioner questioned the claim of respondent No. 7 of having been deserted by her husband by making an application before the competent authority. It transpires that the District Programme Officer had turned down the said claim of the petitioner by an order dated 12.12.2013, with his finding that respondent No. 7 was deserted by her husband for last 3 years and was, therefore, deserted by her husband for last 3 years and was residing at her parental house. The petitioner, then, questioned the



said order of the District Programme Officer by preferring an appeal which was decided by the Regional Development Officer, Purnea, who allowed the appeal by his order dated 29.05.2014 upon recording his finding that respondent No. 7 was not in fact deserted by her husband rather she had manipulated documents to take advantage of the fake desertion. Against the said order dated 29.05.2014 passed by the Regional Development Officer, Purnea, respondent No. 7 approached this Court by filing a writ application giving rise to CWJC No. 12351 of 2014, which was disposed of by an order dated 08.05.2018 (Annexure-3). It is also noteworthy that respondent No. 7 had claimed to be suffering from physical disability candidate and there being provision for additional bonus of '5' marks on that basis, her merit points were calculated accordingly. Respondent No. 7 had, *inter alia*, questioned the genuineness of the disability certificate submitted by the petitioner. This Court, while disposing of the writ application by an order dated 08.05.2018 had issued following directions:

“Learned counsel for the petitioner submits that he will file a comprehensive application to bring to the notice of the competent authority regarding such illegality as alleged on the basis of the said letter dated 12.9.2014 which strikes at the root of the matter as petitioner’s candidature as physically handicapped is



unsustainable. Learned counsel for the respondent No. 7 submits that respondent No. 7 would also appear before respondent No. 2. Both parties agree that they would appear before respondent No. 2 on or before 20.6.2018.

In view of such subsequent development after disposal of Misc. Appeal No. 179/2013, this writ petition is being disposed of with a direction that the District Programme Officer, Purnea (respondent no. 4) would be obliged to dispose of the matter in accordance with law preferably within three months thereafter, after hearing the parties concerned”

6. It is noticeable that with ‘7’ additional bonus marks as a deserted woman, respondent No. 7 was having 74.83 per cent marks whereas the petitioner was found to have scored 74.08 per cent of marks with her disability additional bonus marks of ‘5’. On the one hand, the petitioner questioned the status of respondent No. 7 as deserted woman, respondent No. 7 questioned the petitioner’s claim of being a disabled candidate in the dispute, before the authorities, empowered to resolve disputes under the guidelines.

7. The District Programme Officer, taking into account the fact that there was specific finding already recorded by the Regional Development Officer, Purnea, that respondent No. 7



could not establish her claim of being deserted candidate, he confined the dispute, which had come to him by virtue of the order of this Court dated 08.05.2008, on the point of claim of the petitioner as physically challenged candidate. In the aforesaid background, the District Programme Officer, in order to resolve the dispute, concluded that if additional bonus marks of '5' awarded to the petitioner as being disabled candidate, and the additional bonus marks awarded to respondent No. 7 as deserted candidate were excluded; the petitioner's score and that of respondent No. 7 would be 69.08 and 67.83 respectively. For this reason, he refused to interfere with the selection of the petitioner as *Anganbari Sevika* by an order dated 19.01.2019. Against the said order of the District Programme Officer, Purnea, respondent No. 7 filed an appeal before the District Magistrate, Purnea. The District Magistrate, Purnea, has set aside the order of the District Programme Officer, by an order dated 13.08.2019 and while allowing the appeal, has held respondent No. 7 to be entitled to additional bonus marks as a deserted candidate, on the basis of such materials, which were there before him. He has relied on a letter dated 02.09.2015 of the Regional Development Officer, Purnea Division, Purnea, which contains an enquiry report submitted to the Divisional Commissioner, Purnea, to the effect



that respondent No. 7 was staying with her parents for nearly 4-5 years. He also noticed that the certificate of disability by the petitioner was forged and fabricated.

8. Mr. Shivendra Kumar Sinha, learned counsel appearing on behalf of the petitioner assailing the impugned order has submitted that after coming into force of new guidelines in 2019, the District Magistrate ought not to have decided the appeal since the District Magistrate did not have any such power. He has submitted that under the new guidelines, the appeal against the order of the District Programme Officer would lie before the Divisional Commissioner and not before the District Magistrate. He has accordingly contended that the impugned order deserves to be set aside on this ground alone. According to him, the District Magistrate, has not applied his mind judicially, while setting aside the order of the District Programme Officer.

From the facts noted above, the sole question as to whether respondent No. 7 has been deserted by her husband or not which is a disputed question of fact. Such disputed question of fact cannot be gone into by this Court in a Proceeding under Article 226 of the Constitution of India. The finding recorded by the Collector that respondent No. 7 is a deserted woman, is not without any basis, inasmuch as he has referred to the materials on



record before reaching his conclusions. On the question of maintainability of appeal before him, I find that revised guidelines have been issued in May, 2019. It is evident that the selection process was initiated under the old guidelines issued in 2011 and the order of the District Programme Officer was passed before coming into force of new guidelines dated 27.05.2019. Learned counsel for the petitioner has not disputed that before coming into force of 2019 guidelines, the District Magistrate did have the appellate jurisdiction.

9. Considering the facts and circumstances, I do not find it to be a fit case for interference with the impugned decision, in a judicial review proceeding under Article 226 of the Constitution.

10. This writ application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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