

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.1349 of 2018**

**In**  
**Civil Writ Jurisdiction Case No.4990 of 2016**

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Rambha Kumari, Wife of Shri Vijay Kumar Singh, Resident of Village-  
Chhotaka Manjha, Police Station- Mairwa, Block- Zeeradei, District- Siwan.

... .. Appellant/s

Versus

1. The State of Bihar through the Secretary, Social Welfare Department,  
Government of Bihar, Patna.
2. The Director, I.C.D.S, Social Welfare Department, Govt. of Bihar, Patna.
3. The Divisional Commissioner, Saran Division at Chapra.
4. The District Magistrate, Siwan.
5. The District Programme Officer, Siwan.
6. The Child Development Project Officer, Zeeradei, District - Siwan.
7. The Ward Member, Gram Panchayat Raj Chhotaka Manjha, Block-  
Zeeradei, District - Siwan.
8. Rekha Devi, Wife of Sanjay Singh, Resident of Village- Chhotaka Manjha,  
Police Station - Mairwa, Block - Zeeradei, District -Siwan.

... .. Respondent/s

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**Appearance :**

|                      |   |                                       |
|----------------------|---|---------------------------------------|
| For the Appellant/s  | : | Mr.Umesh Kumar Mishra, Advocate       |
| For the Respondent/s | : | Mr.Gyan Prakash Ojha, G.A.-7          |
|                      |   | Mr. Uday Shankar Pandey, AC to G.A.-7 |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE JUSTICE SMT. ANJANA MISHRA**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 14-05-2019**

**Re: I.A. No. 1 of 2019**

Heard learned counsel for the appellants and the learned  
counsel for the respondents.

2. The appeal is reported to be delayed by 163 days.



3. We have considered the affidavit filed in support of the delay condonation application and we find that sufficient cause has been shown to condone the delay in filing the appeal. The delay is condoned and the appeal shall be treated to be within time.

4. I.A.No.1 of 2009 stands allowed accordingly.

**Re: L.P.A.No.1349 of 2018**

The appeal has been filed by Rambha Kumari. She is aggrieved by her non-selection as an Anganbari Worker. She was also aggrieved by the selection of the private respondent No.8 Rekha Devi, about whom the allegation was that she was not in merit and even otherwise her father-in-law had an income of Rs.40,000/- per month.

2. The learned single Judge on 05<sup>th</sup> March, 2018 dismissed the writ petition at the admission stage itself after having noted the arguments that since the appellant had not approached the competent authority, namely, the District Programme Officer, and that the application had been moved by her husband, the same was not competent and, therefore, she was not entitled to any relief.

3. Challenging the said judgment, the present appeal has been preferred and the learned counsel contends that as a matter of fact, the appellant in her own name had also tendered a representation to the District Magistrate, Siwan on 31<sup>st</sup> December, 2015, copy whereof is Annexure 10 to the writ petition, which was in continuation



of the application filed by her husband, which has also been filed before the District Programme Officer. It is therefore submitted that the learned single Judge was not justified in declining to entertain the petition on this ground.

4. The second argument of the learned counsel for the appellant is that the appellant was non-suited on the ground that her father-in-law was employed and was getting salary and therefore taking into account the said income, she was ineligible. For this, it is urged that the salary of the father-in-law of the appellant is Rs.5,195/- plus allowances, which was certified by the Postal Department on 24<sup>th</sup> January, 2015 and this document has not been denied. It is further submitted that the pay-slip that has been appended along with the counter affidavit in this appeal by the respondents is of no relevance. This fact has been stated in the rejoinder affidavit in response to the contention of the respondents.

5. The third contention of the learned counsel for the appellant is that Rekha Devi could not have been selected as her father-in-law was getting a salary of Rs.40,000/- as he was working as a Headmaster. To this, the respondents in the present appeal in their counter affidavit have asserted that a report was called for in this regard and the information received is that the father-in-law of the respondent-Rekha Devi had already died, to which the reply of the



learned counsel for the appellant is that the brother of the father-in-law of the appellant, who was a member of the joint family, was the Headmaster and therefore, such income should also be calculated in order to non-suit the respondent Rekha Devi.

6. We have considered all the submissions raised. So far as the first point is concerned, it is correct that Annexure 10 to the writ petition is an application filed by the appellant before the District Magistrate, but it is not before the District Programme Officer, who is the authority competent to look into the matter. Even assuming for the sake of arguments that the application had been filed by the husband of the appellant before the District Programme Officer, the same is of no relevance keeping in view the fact that the appellant herself is ineligible inasmuch as the fact that Tej Bahadur Rai, the father of the appellant, was getting a take home pay of Rs.10,529/- is on record. The said pay-slip, which has been filed to the counter affidavit, has been described as irrelevant by the appellant, which does not appeal to reason, inasmuch as, there is no denial of the fact that the said pay-slip is of Tej Bahadur Rai. Consequently, once this fact is established that the father-in-law of the appellant was a salaried employee in the Postal Department and was getting a salary of Rs.10,529/- per month, then in that event the contention raised on behalf of the respondents to non-suit the appellant appears to be correct.



7. So far as the third point with regard to selection of Rekha Devi is concerned, as already indicated above, there is nothing on record to indicate that the father-in-law of said respondent was a Headmaster and was drawing a salary of Rs.40,000/-. Her father-in-law had already died and according to the explanation given by the appellant that the brother of the deceased-father-in-law was the Headmaster is of no consequence. All the three points therefore are answered in the negative. The appeal fails and is hereby dismissed.

**(Amreshwar Pratap Sahi, CJ)**

**(Anjana Mishra, J)**

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