

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5666 of 2020

Sweta Raj (Female), aged about 34 years, wife of Anant Kumar Sinha,
Village- Chak Madari, P.S.-Mehsi, District-East Champaran.

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Social Welfare Department, Government of Bihar, Patna.
2. The District Magistrate, East Champaran, Motihari.
3. The Director, Integrated Child Development Services, Government of Bihar, Patna.
4. The District Program Officer, East Champaran, Motihari.
5. The Deputy Development Commissioner, East Champaran, Motihari.
6. The Child Development Project Officer, Chakia, East Champaran.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Ansul, Advocate
For the Respondents	:	Mr. Ashutosh Ranjan AAG-15

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 27-05-2020

The matter was mentioned for listing on urgent basis,
which was allowed by Hon'ble the Chief Justice.

Accordingly, the same has been listed today for
consideration through Video Conferencing in view of the
Nationwide lock down on account of the COVID 19 Pandemic.

Learned counsels are appearing and making submissions
from their residence. The Court Master and Secretary are also
part of this virtual Court proceedings with the aid of audio
visual technology.

Heard the parties.



In the process of selection of *Aanganbari Sevika*, there were many allegations of favoritism and irregularities. The issue was therefore, taken up by the District Authorities to address the various complaints. It is, in this process, that the Deputy Collector Land Reforms (for short ‘ DCLR’), Chakiya submitted a report dated 25.09.2019 that the photo copy of application form of one applicant , viz., Rekha Kumari , for her selection as *Aanganbari Sevika* was accompanied by the Mark-sheet and admit card issued by the Jharkhand State open School. The report further takes note of the fact that the application form of the same applicant, received from the Child Development Project Officer (for short ‘CDPO’), Chakiya contains a Mark-sheet and certificate enclosed with the application form issued by the *Bihar Sanskrit Shiksha Board*. The report takes note of the fact that the Mark-sheet and certificate issued by the Board bears the receiving of the Receiving Clerk dated 19.01.2019. The application form, on the other hand, bears a receiving of an earlier date i.e., 12.09.2018.

The report further takes note of the fact that when the issue was enquired from the CDPO, Chakiya, she expressed ignorance about the whole issue . Having recorded the report, of the DCLR, the District Magistrate, East Champaran, Motihari



has gone on to conclude that the lady Supervisor (petitioner's) role, in this regard, seems to be suspicious. Accordingly, the selection of the petitioner as Supervisor has been cancelled. The order of the District Magistrate dated 22.04.2020 cancelling the petitioner's selection as lady Supervisor is impugned in the instant writ proceedings.

The learned counsel for the State, Mr. Ashutosh Ranjan Pandey submits that he is in receipt of the instructions from the Department. Based on the instructions, he submits that the appeal against the order dated 22.04.2020 lies before the Divisional Commissioner. Such submission is founded on the basis of Circular vide memo no. 1844 dated 10.06.2010, which provides the procedural Rule for proceedings to be conducted against the petitioner. Referring to the same, he submits that Rule 14 of the same Circular provides for such action, as has been precipitated by order of the District Magistrate, East Champaran Motihai dated 22.04.2020. He, however, submits that the action is required to be preceded by hearing in terms of Rule 14 thereof.

Mr. Ansul, learned counsel, appearing for the petitioner, in response, submits that it does not lie in the mouth of the State Authorities to raise the plea of alternative remedy of



appeal being available under the Rule, which Rule they have chosen to violate themselves.

Prima facie, the order dated 22.04.2020 of the District Magistrate East Champaran, Motihari, makes it abundantly clear that the same is based merely on suspicion, no opportunity of hearing, whatsoever has been granted prior to issuance of impugned order dated 22.04.2020. The impugned order also does not take into consideration the petitioner's response dated 21.01.2020 to the show cause earlier issued to the petitioner.

Having considered the rival submission, this Court would observe that the order purporting to cancel the petitioner's selection as a lady Supervisor being penal in nature was required to be preceded by an opportunity of hearing, more so, in view of the Circular of 10.06 2010 (*supra*). The same has not been done. Manifestly, the order is in violation of the principles of Natural Justice, arbitrary and, therefore, violates the fundamental rights guaranteed under Article 14 of the Constitution of India. The same also suffers on account of non-consideration of the petitioner's show cause dated 21.01.2020. The objection raised by the State counsel regarding availability of the alternative remedy of appeal is unsustainable on account of the fact that the order is in violation of the



principles of the Natural Justice as also in violation of the departmental Circular of 10.06 2010 (supra) being relied upon by the State counsel, to raise such an objection. The order dated 22.04.2020 issued by the District Magistrate, East Champaran, Motihar, impugned in the instant writ proceedings, is, therefore, clearly unsustainable in the eyes of law. Whether the petitioner can be held in any manner responsible for the lapses committed in the process of selection of *Aanganbari Sevika* in-question is an issue which was required to be considered after due opportunity in terms of the Circular dated 10.06 2010 (supra) relied upon by the State counsel. But no consideration has been done in accordance with law.

For enabling such consideration, this Court would remand the matter to the District Magistrate, East Champaran, Motihari. (Respondent No.2). The petitioner would be under an obligation to cooperate for consideration of the matter in accordance with law. In order to facilitate such consideration, she would appear before the Respondent No.2 within a period of four (04) weeks. The earlier order dated 22.04.2020, as contained in memo no. 1189, (Annexure-12), issued under the signature of District Magistrate, East Champaran, Motihari stands quashed.



The writ petition stands allowed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27.05.2020
Transmission Date	

