

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7389 of 2020

Chanda Kumari, Wife of Abhinandan Kumar, Resident of Village and Post Office-Upari, P.S. Ramgarh, District-Kaimur at Bhabua.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Social Welfare Department, Bihar, Patna.
2. The Director, Welfare (I.C.D.S.) Directorate, Social Welfare, Govt. of Bihar, Patna.
3. The Collector Cum District Magistrate, Kaimur at Bhabua.
4. The District Programme Officer (ICDS), Kaimur at Bhabua.
5. The Child Development Project Officer (C.D.P.O.), Ramgarh, District-Kaimur at Bhabua.
6. Sarita Paswan, wife of Rakesh Paswan, Resident of Village and Post Office-Upari, P.S. Ramgarh, District-Kaimur at Bhabua.

... .. Respondent/s

Appearance :

For the Petitioner : Mr.Ashok Kumar Garg, Advocate
For the State : Mr.Sunil Kumar Mandal, S.C.-3

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 08-09-2020

The petitioner is aggrieved by the order dated 18.12.2019 of the Collector-Cum-District Magistrate, Kaimur in Anganbari Revision Case No.20 of 2019, dismissing/rejecting her revision application.

2. Brief factual background, pleaded by the petitioner, is that under order dated 26.06.2018, in terms of Misc. Case No.39 of 2018 passed by the District Programme Officer, Kaimur, the petitioner was selected as Anganbari Sawika in Gram Panchayat Ahiwas, Ward No.7, Centre No.147, in Village-



Upari. One Sarita Paswan, who was also claiming her selection as Sewika for the Centre in question, lodged an appeal before the same District Programme Officer. An order dated 25.01.2019 was issued in Appeal Case No.110 of 2018 by the District Programme Officer, Kaimur in favour of selection of Sarita Paswan. Alleging that the order was got issued in collusion with the staff in the Office of the District Programme Officer, Kaimur, the petitioner raised her grievance before the District Programme Officer, Kaimur, whereafter it is alleged that the order dated 26.01.2019 passed in favour of Sarita Paswan was cancelled, restoring the order dated 26.06.2018 passed in the petitioner's Misc. Case No.39 of 2018 by the District Programme Officer, Kaimur.

3. Petitioner's counsel submits that passing of second order by the same District Programme Officer in Appeal Case No.110 of 2018 was without jurisdiction. In view of the earlier order dated 26.06.2018 passed in Misc. Case No.39 of 2018 under which the petitioner was selected as Sewika, issuance of a second order by the same authority purportedly in Appeal Case No.110 of 2018 under order dated 25.01.2019 favouring selection of the said Sarita Paswan, was nothing but an act of collusion to shower undue benefit on Sarita Paswan. It is also



submitted that no such jurisdiction is vested in the District Programme Officer to review his own order dated 29.06.2018, in the guise of passing an order in Appeal Case No.110 of 2018 on 25.01.2019, relying on which said Sarita Paswan was asserting herself to be the duly selected Sewika for the Centre.

4. It is with this grievance that the petitioner approached the Collector in Revision Case No.20 of 2019.

5. Sarita Paswan has also appeared in the revisional proceedings. Her case was that the petitioner was not a resident of Ward No.7. As per the Panchayat electoral roll of 2016, the petitioner was a resident of Ward No.6. In fact, her mother-in-law was a B.L.O. in Ward No.7. The electoral roll clearly shows that the in-laws of the petitioner had shown their address to be House No.69 in Ward No.6. The petitioner was a member of that family living with her in-laws. Only for the purpose of gaining selection as Sewika in Ward No.7, she had wrongly got her name entered in the Panchayat electoral roll of 2018 for Ward No.7, showing her address as House No.69, whereas there is no House No.69 in Ward No.7.

6. It is also the case of Sarita Paswan before the Collector, taken note of in the impugned order dated 18.12.2019 passed in Revision Case No.20 of 2019, that the petitioner had



appeared for the Matriculation Examination twice. The first time her date of birth was recorded as 22.01.1980, whereas the second time she had appeared for the Matriculation Examination having her date of birth recorded as 10.07.1988. The two certificates showing two different dates of birth issued by the Board of Higher Secondary Education, Delhi wherein petitioner's Roll No. has been shown as 1908875, have also been considered by the District Magistrate in the impugned order.

7. Having considered the stands of the parties and on going through the aforesaid documents, the Collector has ruled in favour of the petitioner in so far as her grievance that the District Programme Officer could not have reviewed his own order passed in Misc. Case No.39 of 2018, in the garb of passing orders himself in Appeal Case No.110 of 2018. The Collector has rightly held that such exercise of review having the effect of cancelling the selection of the petitioner as Anganbari Sewika was technically incorrect and unsustainable.

8. The Collector, however, has not overlooked the fact that there was materials on record before him that up-till preparation of Panchayat electoral roll for the year 2016, the petitioner was a resident of Ward No.6 in House No.69 and that her entire in-law's family was shown as residents of Ward No.6.



Her mother-in-law was serving as a B.L.O. in Ward No.6. The petitioner was relying on two dates of birth showing two different dates, i.e., 22.01.1980 and 10.07.1988.

9. Based on consideration of the aforesaid facts and materials, the Collector has concluded that even though the order passed in Appeal Case No.110 of 2018 was technically incorrect, the consequences thereof disqualifying the petitioner on the aforesaid grounds were not required to be interfered with.

10. In view of various irregularities based on materials having been found by the Collector, this Court would find no fault in the Collector's conclusion, inasmuch as interfering with the consequences of Appeal Case No.110 of 2018 would have revived and perpetuated an illegality, being selection of instant petitioner as Anganbari Sewika. Reference in this connection may be made to a decision of the Apex Court in the case of ***Gadde Venkateswara Rao Vs. Government of Andhra Pradesh & Ors.***, reported in ***AIR 1966 S.C. 828***, wherein the law was stated in the following words:

“The result of the discussion may be stated thus: The Primary Health Centre was not permanently located at Dharmajigudem. The representatives of the said village did not comply with the necessary conditions for such location. The Panchayat Samithi finally cancelled its earlier



resolutions which they were entitled to do and passed a resolution for locating the Primary Health Centre permanently at Lingapalem. Both the orders of the Government, namely, the order dated March 7, 1962, and that dated April 18, 1963, were not legally passed: the former, because it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power under S. 72 of the Act to review an order made under S. 62 of the Act and also because it did not give notice to the representatives of Dharmajigundem village. In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated April 18, 1963 ? If the High Court had quashed the said order, it would have restored an illegal order—it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case.”

11. Today, if this Court is to interfere with the Collector's order dated 18.12.2019, the same would have the effect of reviving an illegal order in Misc. Case No.39 of 2018, enabling selection of the petitioner as Sewika, in spite of various irregularities and disqualifications noticed by the Collector based on materials on the records. This Court therefore would not exercise its discretionary jurisdiction to quash the order of



the Collector dated 18.12.2019 so as to revive and perpetuate an illegal order in favour of the petitioner.

12. The writ application is dismissed.

(Madhuresh Prasad, J)

PNM

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	20.09.2020
Transmission Date	N.A.

