

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7989 of 2020

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Sarita Kumari W/o Rajiv Kumar Resident of Village and P.O.- Phulkaha,
P.S.- Shyampur Bhatha, District- Sheohar.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
2. The Director, Integrated Child Development Scheme (ICDS), Bihar, 2nd Floor, Indira Bhawan, R.C. Singh Path, P.O. Punaichak, P.S. Punaichak, District Patna.
3. The District Magistrate, Sheohar.
4. The District Programme Officer (DPO), Sheohar.
5. The Child Development Project Officer (CDPO), Dumri Katsari, District- Sheohar.
6. The Aanganbadi Pravechika, Aanganbadi Center No. 105, Ward no. 14, Gram Panchayat Raj- Phulkaha, Block- Dumri Katsari, District- Sheohar.
7. Ruby Kumari wife of Dharmendra Kumar Yadav Resident of Village and P.O.- Phulkahan, P.S.- Shyampur Bhatha, District- Sheohar.

... .. Respondent

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Appearance :

For the Petitioner/s : Mr. Bindhyakeshari Kumar, Sr. Adv.
Mr. Neeraj Kumar Alias Sanidh, Adv.

For the Respondent/s : Mr. Lalit Kishore (Ag)

For respondent no. 7 : Mr. Suman Kumar Verma, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 21-01-2021

1. Heard the learned counsel for the parties.
2. The petitioner has challenged the appointment of respondent no. 7 as Aanganwadi Sevika at the concerned Aanganwadi Centre. The petitioner was ranked first in the merit list but a complaint was raised by the respondent no. 7



with regard to the correctness of age of the petitioner.

3. The contention of respondent no. 7, all through had been that there was an interpolation in the date of birth of the petitioner. There are two dates of birth are available on record, one in the school register of the school situated at the birth place of the petitioner and the other of the Bihar Sanskrit Shiksha Board. In the former, the date of birth of the petitioner is indicated as 01.02.2000, whereas, in the latter, the date of birth is 10.04.1994. Because of this, either of the date of birth of the petitioner has been rendered suspect in the eyes of law.

4. The aforesaid objection was turned down on the ground that the date of birth in the matriculation certificate shall prevail and, thereafter, the process was set afoot for appointing the petitioner on the post of Aanganbadi Sevika at the concerned center.

5. The respondent 7 did not sit quiet and took up the matter with the higher authorities including the District Magistrate, Sheohar. It was stated by her in her complaint that the petitioner did not have the capacity to either read or



write but she could manage to obtain 82% marks from the Bihar Sanskrit Shiksha Board.

6. The District Magistrate, Sheohar directed for an inquiry in the matter by the Block Development Officer, Dumri. The inquiry was conducted and a report was submitted. In the report, it was held, as has been argued by learned counsel for respondent no. 7, that the petitioner did not choose to appear before the Block Development Officer, Dumri despite ample opportunities given to her. This was not inadvertent but deliberate as the petitioner did not want to subject herself to any inquiry regarding her competence to read or write. The report doubted the correctness of date of birth of the petitioner or her being literate.

7. The District Magistrate, Sheohar, thereafter, vide his order dated 26.08.2020 directed for taking steps for convening third Aam Sabha for the purposes of appointment of Aanganbadi Sevikas.

8. From the counter affidavit filed on behalf of respondent no. 7, it appears that the third Aam Sabha was convened on 04.09.2020, in which respondent no. 7 was



selected as Aanganbadi Sevika for Center No. 104, Ward No. 14 in Gram Panchayat Fulkaha. Selection letter also was issued to respondent no. 7. Pursuant to the aforesaid appointment of respondent no. 7, she also took part in the induction training programme and, thereafter, she gave her joining before the Child Development Project Officer, Dumri on 23.09.2020. Since then, it has been urged on behalf of respondent no. 7, she has been discharging her duties as Aanganbadi Sevika.

9. Mr. Bindhyakeshri Kumar, learned senior counsel for the petitioner has reiterated his arguments that in case of any dispute regarding date of birth, the entry in the matriculation or equivalent certificate must prevail. Apart from this, it has been submitted that for unavoidable reasons, the petitioner could not participate in the inquiry proceedings before the Block Development Officer, Dumri and her absence from such inquiry cannot *ipso facto* be read against her. It was highly presumptuous of the Block Development Officer to have doubted the capacity of the petitioner to either read or write. Such presumption is



unknown in the eyes of law.

10. The whole dispute, therefore, hinges on the correct date of birth of the petitioner.

11. Under the circumstances, this Court deems it appropriate to direct the District Magistrate, Sheohar to conduct an inquiry regarding the correctness of date of birth of the petitioner. It would be in his discretion to call for the necessary information from the Bihar Sanskrit Shiksha Board and also from the school, which was attended by the petitioner in her childhood. A decision shall be taken after subjecting the petitioner to a preliminary test regarding her capabilities to read and write. The District Magistrate shall not relegate the inquiry to any other authority. This direction is being given, keeping in mind that this litigation has been kept pending for a long time unnecessarily.

12. The District Magistrate shall formulate his report within a period of four months from the date of commencement of inquiry, which shall begin within two weeks from the date of receipt/production of a copy of this order. In case, it is found that there is no dispute regarding



the date of birth of the petitioner, the District Magistrate shall call upon respondent no. 7 and after hearing the petitioner as well as respondent no. 7, shall take a decision with respect to either allowing respondent no. 7 to continue as Aanganbadi Sevika or to direct for appointment of the petitioner on the said post.

13. Needless to state that such an order would not immediately be given effect to for thirty days in order to enable the parties (petitioner or respondent no. 7) to challenge the same before the Divisional Commissioner by way of revision. In the meantime, the respondent no. 7 shall not be disturbed.

14. This court is conscious of the Aanganbadi Sevika / Sahaiyka selection guidelines of 2019 in which, the first authority to dispose of any complaint is the Child Development Project Officer and the forum of appeal against the order of Child Development Project Officer is before the District Programme Officer. Revision against the order of the District Programme Officer is maintainable before the concerned Divisional Commissioner. The responsibility of the



District Magistrate with respect to such complaints regarding appointment of Aanganbadi Sevika has now been dispensed with under the new guidelines of 2019.

15. However since an inquiry was directed to be conducted regarding the date of birth of the petitioner by the District Magistrate, Sheohar, this Court has directed for a fresh inquiry in the matter by the District Magistrate only.

16. The writ petition stands disposed of accordingly.

(Ashutosh Kumar, J)

sunilkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.02.2021
Transmission Date	N/A

