

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6783 of 2021

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Rachana Kumari Wife of Hemant Kumar Singh, Resident of Village -
Madhavpur, P.O. - Madhavpur, P.S. - Parbatta, District - Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Welfare Department, Bihar Patna.
2. The District Magistrate, Khagaria District - Khagaria.
3. District Programme Officer, Khagaria, District - Khagaria.
4. Child Development Project Officer, Parbatta, District - Khagaria.
5. Panchayat Member, Ward No. 5, Gram Panchayat, Madhavpur, District - Khagaria.
6. Block Development Officer, Block - Parbatta, District - Khagaria.
7. Lady Supervisor, Office of Child Development Project Office Beldaur, District - Khagaria.
8. Panchayat Sachiv, Madhavpur Panchayat, Block Parbatta, District - Khagaria.
9. Karina Bharti, Wife of Sri Chandan Kumar, Resident of Village - Madhavpur, P.O. - Madhavpur, P.S. - Parbatta, District - Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Durga Nand Jha
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

ORAL JUDGMENT

Date : 22-02-2022

Heard the learned counsels for the parties.

2. State counsel accept notice for respondent nos. 1 to 8. Notice to respondent no. 9 is dispensed since no adverse order is being passed in the present petition.

3. In the instant petition, petitioner has sought for following reliefs:

“(i) Issuance of a writ in the nature of certiorari for quashing the letter no. 189 dated 29.02.2020 issued under the signature



of Mahila Paryavikshika, Beldaur District Khagaria whereby and whereunder Respondent no. 9 has been shown to have been selected for the post of Anganwari Sevika for Anganwari centre no. 263, ward 5 of Madhavpur Panchayat without appreciating that Respondent no. 9 does not come in the category of dense population and no mapping record was produced in the meeting held on 23.10.2019 and meeting was postponed on 23.10.2019.

(ii) Issuance of a consequential writ in the nature of Mandamus directing and commanding the Respondents to hold a general public meeting a fresh and pursuant to advertisement as also on the basis of mapping survey register, the Petitioner be selected on the Post of Anganwari Sevika in ward no 5 centre no 263 under Gram Panchayat Madhavpur being the highest marks holder amongst dense populated general category.

(iii) Issuance of an appropriate holding and declaration that since no general public meeting of ward no. 5, Gram Panchayat Madhavpur could be concluded on 23.10.2019 and inspite of repeated requests no adjourned meeting could be held, any selection of Respondent -9 without holding general public meeting and without considering the mapping is out and out bad in law and is violative of provisions of Margdarshika 2019 and thus said selection is fit to be quashed.

(iv) Issuance of an appropriate holding that had any general public meeting could be held after 23.10.2019, there would have been no occasion to furnish the copy of proceeding dated 23.10.2019 only in August 2020 under RTI vide letter dated 10.06.2020 and had respondent no. 9 could have selected on 23.10.2019. there would have been no occasion for lady supervisor to issue selection letter to Respondent No. 9 on 29.02.2020(after objection by petitioner on



18.02.2020) after more than four months and thus selection of Respondent no. 9 is illegal, malicious and bad in law and is fit to be quashed and petitioner is fit to be selected being the candidate from General Category which is densely populated, and even advertisement was for General Category and same is required to be produced by the Respondents.

(v) Any other relief of reliefs be granted to petitioner to which she is found to be entitled to.”

4. Short question for consideration in the present petition is whether selection and appointment of 9th Respondent is in order or not? Undisputedly, petitioner has statutory remedy of appeal before the appellate authority. Petitioner has not exhausted such remedy of appeal before the appellate authority, in the light of Apex Court decision in the case of *State of Jammu and Kashmir V. R.K. Zalpuri* reported in *AIR 2016 SC 3006* at para 20 held as under:

“20. Having stated thus, it is useful to refer to a passage from *City and Industrial Development Corporation V. Dosu Aardeshir Bhiwandiwalla and Others*, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

“The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;



(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.”

5. Present petition is pre-mature. It is mandatory requirement of exhausting the statutory remedy of appeal. Thus, petitioner is hereby directed to prefer appeal before the appellate authority within a period of eight weeks from the date of receipt of this order along with application for condonation of delay in questioning the order dated 29.02.2020. If such appeal is filed, the appellate authority is hereby directed to decide the same within a period of four months from the date of receipt of petitioner's appeal after giving due ample opportunity of hearing to the petitioner and 9th Respondent-Karina Bharti.

6. With the above observations, the instant petition stands disposed of.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

