

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2921 of 2021

Madhu Kumari, W/o - Jaykaran Sah, resident of Village - Dharphari, Ward No. - 3, P.S. - Devariya, Block - Paru, Dist- Dist- Muzaffarpur.

... .. Petitioner/s

Versus

1. State of Bihar through the Principal Secretary, Social Welfare Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Social Welfare Department, Govt. of Bihar, Patna.
3. The Director, ICDS, Patna.
4. District Magistrate, District - Muzaffarpur.
5. The District Programme Officer (establishment), Dist- Muzaffarpur.
6. The Child Development Project Officer, Block - Paru, Dist- Muzaffarpur.
7. Sunita Kumari, W/o - Santosh Kumar, resident of Ward No. - 3, Gram Panchayat Raj- Dharphari, Block - Paru, Dist- muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bijay Shankar Choubey, Advocate
For the Respondent/s : Mr. Gyan Shankar Ojha, GA-7

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 28-01-2022

This matter is heard via video conferencing due to circumstances prevailing on account of COVID-19 Pandemic.

2. Service of notice to 7th respondent Sunita Kumari is dispensed with, since no adverse order is passed.

3. Heard learned counsel for the parties.

4. In the instant petition, the petitioner has prayed for the following reliefs:

“i. For the issuance of appropriate Writ/ Writs, Order/ Orders, Direction/ Directions in the nature of Writ of Certiorari for setting aside the order dated 4.11.2020 containing memo no. 2479 passed by the District Programme Officer, Muzaffarpur, whereby and



whereunder the selection and appointment of the petitioner on the post of Aanganbari Sevika on center no. 299 in ward no -3, Dharphari Bazar has been cancelled on the ground that the certificate on the basis of which the selection of the petitioner has been made is not given legality by the Govt. of Bihar.

ii. For issuance of Writ of mandamus directing and commanding the respondent authorities to not disturb the selection of the petitioner who has been selected and appointed after completion of the due process under law.

iii. And for the other necessary relief/reliefs on the basis of the facts and circumstances of the case stated and enumerated hereinafter.”

5. The petitioner has a statutory remedy of appeal before the Appellate Authority. In the light of the Apex Court decision in the case of *State of Jammu and Kashmir V/s. R.K.Zalpuri and others*, reported in *AIR 2016 SC 3006 (para 20)*, the present petition is premature. Para 20 reads as under:

“20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation V/s. Dosu Aardeshir Bhiwandiwalla and others {(2009) 1 SCC 168}, 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 question 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;”

6. Accordingly, the writ petition stands disposed of reserving liberty to the petitioner to prefer appeal before the Appellate Authority. If such appeal is filed by the petitioner before the Appellate Authority, the Appellate Authority is hereby directed to examine the petitioner’s appeal while hearing the petitioner and 7th respondent, namely, Sunita Kumari.

7. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

8. The writ petition stands disposed of.

(P. B. Bajanthri, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.02.2022
Transmission Date	NA

