

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1046 of 2019

In

Civil Writ Jurisdiction Case No.7866 of 2015

=====

Sunita Devi W/o Sri Sunil Kumar Ram Resident of Village Piparahiya Kurmi
Tola, PO Nevri Barauli, PS Barauli, Dist.Gopalganj.

... .. Appellant/s

Versus

1. The State of Bihar through the Divisional Commissioner, Saran Division at Chapra
2. The Collector, Gopalganj
3. The District Programme Officer, Gopalganj
4. The Child Development and Project Officer, Prakhanda Barauli, Gopalganj
5. Mantosh Kumar Patel S/o Bharat Patel Resident of Village Piparahiya Kurmi Tola, PO Neuri Barauli, P.S. Barauli, Dist.Gopalganj

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Naresh Prasad, Advocate
For the Respondent/s : Mr.Gyan Prakash Ojha (GA-7)

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 14-07-2022

The present appeal has been preferred against the judgement and order dated 17.07.2019 passed by the learned Single Judge (Hon'ble Mr. Justice Madhuresh Prasad) in C.W.J.C. No. 7866 of 2015 by which the writ application preferred by the appellant-petitioner was dismissed.

2. The matrix of facts leading to the present appeal is/are as follows :-

(i) On 25.06.2007, the appellant-petitioner



participated in the '*Aam Sabha*' held for the selection of '*Anganbari Sevika*' of *Paparahiya Kurmi Tola* in the district of Gopalganj. The appellant-petitioner was selected by the said '*Aam Sabha*' and on 02.07.2007, the appointment letter was issued to her, pursuant thereto, she joined the post and started working;

(ii) on 18.02.2010, one Mantosh Kumar Patel along with some villagers petitioned the District Magistrate, Gopalganj bringing to his attention the irregularities/illegalities that were committed in the selection of the appellant-petitioner. As per the allegation, the appellant-petitioner was wife of the younger brother of the '*Mukhiya*' who headed the said '*Aam Sabha*' leading to her selection;

(iii) the District Magistrate, Gopalganj noticed the appellant-petitioner as also sought report from the Child Development Project Officer (henceforth for short "the CDPO"), Barauli, who after inquiry submitted report vide Letter No. 63 dated 11.02.2011 stating therein that

(a) the appointed lady is not the resident of the '*Posahar Area*';

(b) she is wife of the younger brother of the '*Mukhiya*';



(c) it was further found that upon upon physical verification of her residence, she showed a hut inside the '*Posahar Area*' but it had no sign of any inhabitation or is being in use. Further, the villagers showed them the actual house of the appellant-petitioner which was outside the ambit of the said *Anganbari/Posahar Area*;

3. The District Magistrate, Gopalganj came to the conclusion that vide Memo No. 787 dated 06.08.2012 that;

(i) despite the area being a majority of backward class people violating the norms/rules, the present lady belonging to Scheduled caste category was selected;

(ii) her resident is outside the '*Posahar Ara*';

(iii) being wife of the younger brother of the '*Mukhiya*' she was not eligible for the said appointment.

4. Accordingly, the District Magistrate, Gopalganj held that the selection of the appellant-petitioner is dispensed with and direction was given to the District Programme Officer, Gopalganj and the CDPO, Barauli to take steps for fresh selection process.

5. Being aggrieved, the appellant-petitioner preferred appeal vide Aganbari Appeal No. 297 of 2012 before the Commissioner which came to be dismissed vide an order



dated 17.01.2015 for being lack of jurisdiction in selection process holding that there is no provision of appeal against the order of the Collector in Anganbari cases.

6. This led to filing of the C.W.J.C. No. 7866 of 2015 dated 17.07.2019.

7. The learned Single Judge after hearing the parties and perusing the records vide an order and judgement dated 17.07.2019 passed in C.W.J.C. No. 7866 of 2015 held as follows:-

“Heard counsel for the petitioner and counsel for the respondents-State as well as counsel for respondent no.5.

Petitioner has assailed the order passed by the District Magistrate, Gopalganj whereby her selection as Anganbari sevika for center at Piparahiya Kurmi Tola, Gopalganj has been cancelled.

Petitioner was selected as Anganbari sevika on 02.07.2007. Application was filed by one Mantosh Kumar Patel (private respondent no.5).

Counsel for the petitioner submits that said Mantosh Kumar Patel was not an applicant in the process of selection and had no locus standi to maintain a complaint before the District Magistrate, Gopalganj. In spite of that the Collector, Gopalganj



has proceeded to cancel the petitioner's selection.

Further submission is that appellate authority has refused to consider the petitioner's appeal on merit on account of change of forum under ICDS communication dated 17.05.2013 and thereby deprived the petitioner of remedy of appeal.

Counsel for the State has referred to the order passed by the Collector, Gopalganj dated 06.08.2012. He submits that there is specific finding of the fact that the petitioner was not a resident of Posahar area and she was relative of local Mukhiya and for reasons recorded on the basis of facts available before District Magistrate, petitioner's selection has been cancelled. Referring to the guideline for selection, he submits that as per clause 8.2 of the 2010 guidelines under which complaint was made, there is no requirement that challenge has to be made by one of the competing candidates.

Objections raised by counsel for the petitioner therefore, on thorough consideration of the order passed by the District Magistrate, are not tenable either in law or in fact. Direction of the District Magistrate, Gopalganj to proceed for selection afresh only in furtherance compliance of ICDS communication. Order of the District Magistrate, Gopalganj does not require any interference.

Writ petition is devoid of merit and the same is dismissed.”



8. Still aggrieved, the appellant-petitioner preferred L.P.A. No. 1046 of 2019.

9. Heard learned counsel for the parties.

10. The contention of the learned counsel for the appellant before this Court is/are that;

(i) as the backward class candidate was having lesser marks, the scheduled caste candidate (appellant-petitioner herein) was picked up;

(ii) wife of the younger brother of the 'Mukhiya' does not fall in the category of the relatives;

(iii) the said Mantosh Kumar Patel was not a candidate and as such he had no *locus standi* to prefer complaint against her;

(iv) since none of the member of the 'Aam Sabha' objected to the presence of the 'Mukhiya' in the selection process so no illegality committed by him in selecting the appellant-petitioner herein.

11. Learned counsel for the State on the other hand submits that

(i) the area being majority of the backward people, the same ought to have been given preference;

(ii) the wife of the younger brother of the



'Mukhiya' do falls in the category of relative and as such she was not fit for being selected for the post.

12. Rule 8 (Kha) of the Bihar Aganbari Pravishika/Sevika/Sahayika clearly envisaged that any villager with his name and address can make complaint against the selection.

13. Learned counsel for the State further submitted that as she was related to *'Mukhiya'* who was presiding *'Aam Sabha'* because it was the duty of the *'Mukhiya'* to inform *'Aam Sabha'* about it and disassociate himself from the selection process but he deliberately did not abstained himself and played a major role in selecting his relative (appellant-petitioner herein) to the said post.

14. This Court has considered the entire matter and we are of the view that the complaint made by the said Mantosh Kumat Patel and other villagers were in line with the 8 (Kha) of the Rules which allows any villagers with his name and address to make complaint against the selection process. We further hold that that the *'Mukhiya'* being directly related to the appellant-petitioner was duty bound to inform *'Aam Sabha'* about his relationship with one of the candidate and merely because none objected to his presence, he cannot exonerate



himself from the bias to the said selection process. We further hold that the District Magistrate was fully justified in dispensing with the selection of the appellant-petitioner herein and directing the State-respondents to take steps for a fresh selection process.

15. Taking into account the aforesaid facts, this Court does find any error in the order and judgement dated 17.07.2019 passed by the learned Single Judge in C.W.J.C. No. 7866 of 2015 and the appeal preferred by the appellant-petitioner is hereby dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Jagdish/-

AFR/NAFR	
CAV DATE	
Uploading Date	25.07.2022
Transmission Date	

