

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1138 of 2019

In

Civil Writ Jurisdiction Case No.24 of 2019

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Rubi Kumari wife of Sri Ashok Kumar Resident of Village- Nehal Bigha,
Police Station- Pauthu, District- Aurangabad.

... .. Appellant/s

Versus

1. The State of Bihar through Principal Secretary of Social Welfare Department, Government of Bihar, Patna.
2. The Director, Integrated Child Development Scheme, Social Welfare Department, Government of Bihar, Patna.
3. The District Magistrate, Aurangabad.
4. The District Programme Officer, Aurangabad.
5. The Child Development Project Officer, Rafiganj, District- Aurangabad.
6. The Ward Member of Ward No. 16, of Gram Panchayat Raj, Pauthu, Police Station- Pauthu, District- Aurangabad.
7. Smt. Madhubala Kumari wife of Sri Sunil Kumar Resident of Village- Nehal Bigha, Police Station- Pauthu, District- Aurangabad.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Nawal Kishor Singh, Advocate
For the Respondent/s : Mr. Gyan Prakash Ojha (GA7)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 03-08-2022

Heard learned counsels for the respective parties.

The present appeal is against the order of the learned
Single Judge dated 08.08.2019 passed in CWJC No. 24 of 2019.

Pursuant to the advertisement to the post of Anganbari
Centre Nehal Bigha, Circle Rafiganj, District-Aurangabad the
appellant and seventh respondent were candidates for the selection



and appointment to the post of Anganbari Sevika, the appellant was selected and appointed.

Feeling aggrieved by order of selection and appointment of the appellant seventh respondent filed a petition in which DPO by its order dated 08.04.2015 issued order of appointment in favour of the appellant. Feeling aggrieved and dissatisfied with the order of the DPO dated 08.04.2015 seventh respondent preferred appeal before the District Magistrate and the District Magistrate passed order on 08.12.2018 reversing the order dated 08.04.2015, thus, appellant preferred CWJC No. 24 of 2019 and it was decided against him. Hence, appellant presented the present appeal.

Learned counsel for the appellant raised two issues namely seventh respondent Madhubala Kumari did not participate in the Aam Sabha and further it is contended that District Magistrate has no authority of law to decide appeal.

In the light of Clause 10.3 of 2011 Guidelines in respect of filing of appeal the competent authority is Deputy Director Office of the Divisional Commissioner. Seventh respondent should have invoke appeal remedy before the Deputy Director Office of the Divisional Commissioner. On the other hand, DPO while passing order dated 08.04.2015 he has made clear that if seventh respondent is aggrieved she has a remedy before the appellate



authority-Deputy Director Office of the Divisional Commissioner in terms of 10.3 of 2011 Guidelines. The District Magistrate has not taken note of the observation made by the DPO in its order dated 08.04.2015 read with Clause 10.3 of 2011 Guidelines and proceeded to decide the seventh respondent appeal in her favour.

In the light of these facts and circumstances, District Magistrate had decided seventh respondent appeal without authority of law in terms of Clause 10.3 of 2011 Guidelines. Thus, the appellant has made out *prima facie* case so as to interfere with the District Magistrate order dated 08.12.2018 read with the order of the learned Single Judge dated 08.08.2019 passed in CWJC No. 24 of 2019. The order dated 08.12.2018 is set aside. Matter is remanded to the District Magistrate. The District Magistrate is hereby directed to transmit the appeal papers of the seventh respondent to the competent authority under Clause 10.3 of 2011 Guidelines. Appellate authority/Competent authority is hereby directed to decide the appeal within one month from the date of receipt of this order. On receipt of appeal by the appellate authority/competent authority shall decide appeal within a period of three months from the date of receipt of appeal, after providing ample opportunity of hearing to the appellant, seventh respondent and appoint authority. The appellate authority is hereby directed to



decide the appeal in accordance with law in passing speaking order. The concerned authority is hereby directed not to displace the service of the seventh respondent till appeal is decided.

With the aforesaid observations, the present Letters Patent Appeal No. 1138 of 2019 stands disposed off.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Vikash/-

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

