

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11159 of 2018

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Nirmala Devi @ Nirmala Wife of Manoj Kumar Yadav @ Manoj Yadav,
Resident of Village- Barki Nainijor Dhabi Tola, P.S.- Nainijor, District- Buxar.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary Social Welfare Department, Bihar, Patna.
2. The Director, Integrated Child Development Services Bihar, Patna.
3. The Collector cum District Magistrate, Buxar.
4. The District Programme Officer, Buxar.
5. The Child Development Project Officer, Brahampur, District- Buxar.
6. Shobha Devi, Wife of Sukul Yadav, resident of Village- Barki Nainijor, Dhabi Tola, P.O.- Barki Ninijor, P.S.- Nainijor Brahampur, District- Buxar.

... .. Respondents

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with

Civil Writ Jurisdiction Case No. 23224 of 2019

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Sobha Dev, female aged about 27 years, W/o- Sri Sukul Yadav, resident of Village- Dhabi Tola, Post- Badaki Nainijor, P.S.- Nainijor, Block- Bramhapur, Dist- Buxar.

... .. Petitioner

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, Dist- Buxar.
5. The Child Development Project Officer, Bramhapur, Dist.- Buxar.
6. The District Programme Officer (Establishment), Buxar.
7. Nirmala Devi, W/o- Manoj Kumar, Resident of village- Dhabi Tola, Panchayat- Nanijor, Block- Bramhapur, Dist- Buxar.

... .. Respondents

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Appearance :

(In Civil Writ Jurisdiction Case No. 11159 of 2018)

For the Petitioner : Mr. Prashant Sinha with
Mr. Anil Kumar Singh, Advocates

For the State : Mr.S.K. Mandal- SC3

(In Civil Writ Jurisdiction Case No. 23224 of 2019)

For the Petitioner : Mr. Bijay Shankar Choubey, Adv.



For the State : Mr. S.K. Mandal, SC-3
For Resp. No.7 : Mr. Prashant Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT

Date : 02-12-2022

Today being Friday, matters are being taken up through virtual mode, as per current procedure for hearing.

2. The facts of both the writ petitions are same, and as such, they are being disposed of by this common judgment.

3. The brief facts giving rise to these to writ petitions is that the petitioner of CWJC No. 11159 of 2018 (Nirmala Devi @ Nirmala) was selected as *Anganwari Sevika* for Center No. 160, Anganwari Center Dhabhi Tola in village Dhabhi Tola at Brahampur. Her selection was assailed by petitioner of CWJC No. 23224 of 2019 (Sobha Devi).

4. Nirmala Devi's selection was assailed by Sobha Devi before the District Programme Officer, ICDS, Buxar, (for short 'DPO') in case No. 09 of 2015, wherein, her selection was cancelled by District Programme Officer vide order dated 07-09-2015, on a finding that she had obtained selection by relying upon wrong certificates. The DPO also directed for recovery of honorarium paid to Nirmala Devi during the period she had worked on the basis of such selection. The Child Development Project Officer (for brevity 'CDPO') did not implement this order. On 23-01-2016, she sent a letter to the DPO ICDS, Buxar stating



that the certificate of Nirmala Devi had been verified and found to be correct. The DPO, in turn, had again issued an order dated 07-05-2016, under letter No. 502, allowing Nirmala Devi to resume the work of *Anganwari Sevika* for center in question.

5. The order of the DPO dated 07-05-2016, was assailed by the Sobha Devi before the District Magistrate in case No. 42 of 2017, wherein, by order dated 14-03-2018, the District Magistrate set aside the order by the DPO dated 07-05-2016 and directed for ensuring compliance of the earlier order dated 07-09-2015, passed by the DPO in case No. 09/2015. The District Magistrate further directed that the show cause be issued to the CDPO, Brahampur as to why he had not implemented the order dated 07-09-2015 passed in case No. 09/2015. The District Magistrate further gave liberty that if any party is aggrieved by order passed in case No. 09 of 2015, then appeal may be filed before the District Magistrate as per the guidelines.

6. In compliance of order of the District Magistrate, the CDPO, Brahampur cancelled the selection of Nirmala Devi. He also asked Sobha Devi to come with her testimonials so that selection letter could be issued to her in compliance of the order dated 14-03-2018, passed by the District Magistrate, as contained in Annexure-7 to the writ petition. Sobha Devi appeared with a



mark-sheet showing her total marks to be 204 (3rd Division). However, Sobha Devi, in her application, during selection process, had claimed 329 marks (1st Division) in the examination by the Bihar School Examination Board. She had submitted a self attested copy of the same. On being confronted with this discrepancy, Sobha Devi took a stand before the CDPO that the mark-sheet showing her marks 329 (1st Division) was not submitted by her and, but by someone else. Under such circumstance, Sobha Devi was not given the selection letter of *Anganwari Sevika* and, therefore, the Sobha Devi approached the District Magistrate by filing case No. 75 of 2018. The District Magistrate, having taken note of this discrepancy in the marks claimed by the Sobha Devi at two different times in the same selection process, considered it appropriate to direct for selection afresh. The order of the District Magistrate dated 12-07-2019, has been assailed by Sobha Devi. The earlier order passed by the District Magistrate dated 14-03-2018 has been assailed by Nirmala Devi.

7. Insofar as the order of the District Magistrate dated 14-03-2018 is concerned, this Court finds that the order of the DPO dated 07.05.2016, under letter no. 502, has been cancelled on the point of jurisdiction, since the DPO had no jurisdiction to



review his order dated 07-09-2015 cancelling the selection of Nirmala Devi. The petitioner's counsel has not been able to show that the DPO had power of review. In fact, the decision of the DPO to allow Nirmala Devi to resume duties as *Anganwari Sevika* is by way of a letter addressed to the CDPO, Brahampur dated 07-05-2016, which reads as follows:-

"महाशय,

उपरोक्त विषयक प्रसंगाधीन पत्र के आलोक में कहना है कि सेविका निर्मला देवी पति मनोज यादव ग्राम पंचायत उत्तरी नैनीजोर के आँगनबाड़ी केन्द्र संख्या 160 ढाबी टोला का शैक्षणिक प्रमाण पत्र का सत्यापन बिहार संस्कृत शिक्षा बोर्ड पटना द्वारा सत्यापित करा लिया गया है। जो सही पाया गया है।

अतः उक्त सेविका को चयनित तिथी से कार्यरत मानते हुए केन्द्र संचालन करने का आदेश दिया जाता है।"

8. It is also a fact that the letter purporting to review/reverse the decision dated 07-09-2015, passed in case No. 09/2015, was issued after the order dated 07-09-2015 had been assailed by Nirmala Devi before the District Magistrate in Case No. 188 of 2015. The appeal has been withdrawn by Nirmala Devi on 17-06-2016. It is, thus, apparent that the DPO has issued the letter dated 07.05.2016 setting at naught his decision in case No. 09 of 2015, which is without jurisdiction and that also at a time when the appeal against his order dated 07-09-2015, was pending before the District Magistrate in Case No. 188 of 2015. This Court,



therefore, has no hesitation in holding that Nirmala Devi cannot claim any benefit of DPO's letter dated 07-05-2016.

9. The order of the District Magistrate dated 14.03.2018, therefore, directing for implementation of DPO's earlier order dated 07-09-2015, does not require any interference by this Court.

10. Insofar as Sobha Devi's claim for implementation of the earlier order of the DPO dated 07.09.2015 is concerned, this Court would find that the same has been considered by the District Magistrate in case no. 75 of 2018, filed by the Sobha Devi. There is a factual finding by the CDPO as well as in the order of the District Magistrate that Sobha Devi participated in the selection process claiming to have passed the requisite qualification in 1st Division. When she was called for verification of her documents and for selecting her in compliance of the DPO's earlier order dated 07-09-2015, she produced certificate showing that she had passed in 3rd Division. The District Magistrate, therefore, rightly held that her position as 2nd empanelled candidate could not be sustained because she had passed with 3rd Division and not 1st Division. From these facts, it is also apparent that Sobha Devi has not participated in the process of selection with fairness. There is apparent misrepresentation. This finding of discrepancy has not been denied or disputed by the Sobha Devi in her writ petition.



Specific averments to this effect in the counter affidavit have also not been denied by filing any reply/rejoinder thereto. She, therefore, cannot claim any benefit of DPO’s earlier order dated 07.09.2015. This Court, thus, find that the order dated 12.07.2019 directing the process of selection afresh does not require any interference. In fact, this Court would observe that the process afresh is only in the interest of proper and due dissemination of welfare measure by the *Anganwari* center in -question by a duly qualified and competent *Sevika*.

11.The writ petition is dismissed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	21-11-2022
Uploading Date	24-12-2022
Transmission Date	

