

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3458 of 2023

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Sudha Kumari Wife of Vijay Kumar Resident of Village- Nishunpur, ward no.- 9, P.O. and P.S.- Kutumba, District- Aurangabad (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Social Welfare Department, Bihar, Patna.
2. The Director, Integrated Child Development Services, Bihar, Patna.
3. The District Magistrate, Aurangabad.
4. The Additional Collector-cum-the Additional District Magistrate, Aurangabad.
5. The District Program Officer, Aurangabad.
6. The Child Development Project Officer, (Integrated Child Development Services), Kutumba, Aurangabad.
7. The Selection Committee, through the ward member, ward no. 9, Gram Panchayat Kutumba, Block- Kutumba, Aurangabad.
8. The Female Supervisor, Child Development Project, Kutumba, Aurangabad.
9. Shakuntala Devi, Wife of Birendra Kumar Singh Sultapur, P.O. and P.S.- Kutumba, District- Aurangabad (Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Aman Vishal, Advocate
For the State	:	Mr. Prashant Pratap, GP- 2
For the respondent No. 9:		Mr. Prabhakar Singh, Advocate
		Mr. Rakesh Mohan Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 05-09-2023

1. Heard learned counsel for the petitioner and learned counsel for the State as well as learned counsel for the respondent No. 9.

2. Petitioner has approached this Court aggrieved by order of Additional District Magistrate (for brevity 'A.D.M.'),



Aurangabad dated 28-11-2022 (Annexure- 9) in Anganwadi Seivka/Sahaika Selection Appeal Case No. 68 of 2020.

3. Learned counsel for the petitioner submits that the order has been passed by the A.D.M., in spite of the fact that after coming into force of the 2019 guidelines issued by the ICDS Directorate letter dated 27-05-2019. The Divisional Commissioner was the competent authority to consider revisional appeal arising out of order passed by the District Programme Officer (for brevity 'D.P.O.'). The order therefore, is without jurisdiction and unsustainable.

4. Taking note of such submission the Court had earlier directed for issuance of notice to private respondent No. 9, beneficiary of the order passed by the A.D.M.

5. Learned counsel appears for the respondent No. 9. Submissions are two fold. The first submission is that the petitioner had approached the D.P.O. in terms of the earlier guidelines issued in the year 2016 for selection of *Anganwadi Sevika/Sahaika*. Since the selection process was conducted under the 2016 guidelines, the appellate authority in terms of the 2016 guidelines was required to be approached, which has been done, and therefore, there is no infirmity in the order passed by the A.D.M. It is his submission that the 2019 guidelines would



not be applicable in view of the fact that the selection was done under the earlier guidelines.

6. He has also submitted that the writ petition is not maintainable in this issue, arising out of selection of *anganwadi sevika/sahaika*, as it is not a government service.

7. On consideration of rival submissions, this Court would find that the 2019 guidelines, as contained in letter dated 27-05-2019, is clear in its intent. Relevant extract of the letter reads as follows:-

"विषय: समेकित बाल विकास सेवाएँ अंतर्गत बिहार राज्य के ग्रामीण एवं शहरी परियोजनाओं में आँगनबाड़ी सेविका/सहायिका चयन हेतु मार्गदर्शिका-2019 अधिसूचित करने के संबंध में।

उपर्युक्त विषय के संबंध में कहना है कि समेकित बाल विकास सेवाएँ अंतर्गत बिहार राज्य के ग्रामीण एवं शहरी परियोजनाओं में आँगनबाड़ी सेविका/सहायिका चयन हेतु पूर्व में निर्गत मार्गदर्शिका 2015 (शहरी) एवं 2016 (ग्रामीण) को विलोपित करते हुए नई मार्गदर्शिका-2019 अधिसूचित की जाती है, जिसकी प्रति पत्र के साथ संलग्न की जा रही है।

उक्त मार्गदर्शिका पूर्व विज्ञापित केन्द्रों को छोड़कर निर्गत होने की तिथि से प्रभावी होगी जिसके अनुरूप बिहार राज्य के ग्रामीण एवं शहरी परियोजनाओं में आँगनबाड़ी



सेविका/सहायिका के चयन की कार्रवाई
करने की कृपा की जाय।"

8. The guideline is clear insofar as the process of selection is concerned. So as not to upset the ongoing processes, the 2019 guidelines stipulates that the process, which was initiated under the earlier guidelines, shall continue as if it was being conducted under the earlier guidelines, under which the advertisement was issued. Insofar as other issues, in relation to selection of anganwadi sevika/sahaika, the letter is equally clear. In unequivocal terms, it states that the guidelines of 2015 and 2016 stand repealed from the date of issuance of new guideline i.e., 27-05-2019.

9. In view of repeal of the earlier guidelines, the remedies applicable after 27-05-2019 are those specified in Clause 12 of the 2019 guidelines, wherein order of the District Program Officer is subject to revisional/appeal before the Divisional Commissioner.

10. The contours of exercise of judicial review of administrative action in writ jurisdiction under Article 226 of the Constitution of India, are also well established by now. The writ Court, exercises jurisdiction based on a rule of discretion, which is not absolute in any terms. Precedents abound to the effect that an order which is without jurisdiction may be



interfered with by the writ court, exercising discretionary jurisdiction under Article 226 of the Constitution of India.

11. As considered above, in the instant case, the order has been passed by the A.D.M. (respondent No. 4) without jurisdiction, having severe penal consequences on the petitioner who though not in government service was selected for dissemination of welfare measures under the Government's Integrated Child Development Scheme (ICDS). The selection is as per guidelines issued by the Directorate. Disputes relating to selection are required to be considered by the authorities prescribed under the guidelines issued by the ICDS Directorate, providing alternative efficacious remedy. This Court, in the facts and circumstances above noted is inclined to interfere in the matter.

12. The only specific saving Clause in the 2019 guidelines, is in respect to the process of selection initiated under the earlier guidelines. This Court, therefore, has no hesitation in recording that after issuance of the 2019 guidelines by the ICDS Directorate on 27-05-2019, the competent authority for considering the revisional appeal against the order passed by the D.P.O. was the Divisional Commissioner. Since the order has been passed by the A.D.M., this Court would find



that the same is without jurisdiction. The impugned order dated 28-11-2022, is therefore quashed.

13. Writ petition is allowed.

(Madhuresh Prasad, J)

Raj kishore/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	04-10-2023
Transmission Date	N/A

