

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 5219 of 2023

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Soni Kumari Wife of Niraj Kumar, Resident of Village-Gyashpur, P.O. and
Panchayat-Gyashpur, Block-Paroo, P.S.-Paroo, District-Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department, Govt. of Bihar, Patna.
2. The Director, Integrated Child Development Services (I.C.D.S.), Social Welfare Department, Govt. of Bihar, Patna.
3. The Collector cum District Magistrate, Muzaffarpur.
4. The District Programme Officer, Muzaffarpur.
5. The Child Development Project Officer, Paroo, District-Muzaffarpur.
6. Shabnam Khatoon, Wife of Md. Ehsan, resident of Village-Gyashpur, Panchayat-Gyashpur, Block-Paroo, P.S.-Paroo, District-Muzaffarpur.

... .. Respondents

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Appearance:

For the Petitioner/s	:	Mr. Pramod Rajpati, Adv. Smt. Durga Kumari, Adv. Mr. Keshav Anand, Adv.
For the Respondent/s	:	Mr. Md. Raisul Haque, SC-10

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 22-11-2023

The present writ petition has been filed for quashing the order dated 13.01.2023, passed by the Collector-cum-District Magistrate, Muzaffarpur, in Anganwari Case No. 28 of 2020-21, whereby and whereunder the selection of the petitioner on the post of Anganwari Sevika has been cancelled. The petitioner has further prayed for reinstatement on the post of Anganwari



Sevika at Anganwari Centre No. 338, Panchayat-Gyashpur, Ward No. 6, Block-Paroo, District-Muzaffarpur.

2. The brief facts of the case, according to the petitioner, are that the petitioner has passed the Madhyama Exam-2012 from the Bihar Sanskrit Shiksha Board, Patna and has secured 74.57% marks. The petitioner belongs to the Extremely Backward Class in the State of Bihar. It is stated that in the year, 2018, an advertisement was floated for selection of Anganwari Sevika at Anganwari Centre No. 338, Ward No. 6, Panchayat-Gyashpur, District-Muzaffarpur, whereupon the petitioner had applied for the post of Anganwari Sevika on 20.12.2018 and then, the merit list was prepared, wherein the petitioner was shown to be the sole candidate. On 18.6.2019, a meeting of the Aam Sabha was convened in presence of the Chairman, Ward Members and others, wherein the petitioner was selected as Anganwari Sevika and then an appointment letter dated 18.06.2019 was also issued to the petitioner. The petitioner had then joined on the post of Anganwari Sevika on 18.06.2019 itself at Anganwari Centre No. 338, whereafter she had received training and since then she has been working diligently. However, in the month of October, 2020, one Shabnam Khatoon i.e. the Respondent No. 6 filed a complaint to the effect that the



petitioner does not belong to the poshak area of the Anganwari center in question, leading to initiation of a case bearing Case No. 46 of 2020 by the District Programme Officer, Muzaffarpur, whereafter, notices were issued to all the parties. The District Programme Officer, Muzaffarpur, after hearing the parties, had passed an order dated 22.10.2020, in Case No. 46 of 2020, rejecting the complaint filed by the private Respondent No. 6.

3. The private Respondent No. 6 had then filed an appeal bearing Anganwari Case No. 28 of 2020-21, before the Ld. Court of Collector-cum-District Magistrate, Muzaffarpur, wherein the petitioner had appeared upon notice and filed her objections on 07.01.2022, inter-alia stating therein that she comes from the poshak area of the Anganwari centre in question and her name also appears in the voter list as also in the mapping panji since the year, 2016. Ultimately, the Collector-cum-District Magistrate, Muzaffarpur, after hearing the parties, has passed the impugned order dated 13.01.2023 in Anganwari Case No. 28 of 2020-21, whereby and whereunder the selection of the petitioner on the post of Anganwari Sevika has been cancelled.

4. The learned counsel for the petitioner has submitted that the voter list shows that the petitioner is resident of Ward No. 6,



House No. 94, Panchayat Gyashpur, Block-Paroo, District-Muzaffarpur. In fact, the domicile certificate of the petitioner also mentions that the petitioner is resident of village Gyashpur, Panchayat Gyashpur, District-Muzaffarpur, in which the Anganwari Centre in question is situated. The learned counsel for the petitioner has further contended that the husband of the petitioner had purchased a plot of land, appertaining to Khata No. 34, Khesra No. 3209, situated at Mauza Gyashpur, Ward No. 6, in the year, 2015, where the petitioner and her husband are residing. Thus, it is submitted that the impugned order dated 13.01.2023, passed by the Collector-cum-District Magistrate, Muzaffarpur, is arbitrary and perverse, hence, is fit to be set aside.

5. *Per contra*, the learned counsel for the Respondent-State has submitted, by referring to the counter affidavit filed in the present case that upon enquiry, it has transpired that while preparing the mapping register of Ward No. 6, the lady supervisor, namely, Ruby Kumari, had wrongly added the name of the petitioner in the mapping panji, intentionally and deliberately and the fact is that the petitioner was / is permanent resident of Ward No. 2. It is also submitted that no information was published regarding holding of Aam Sabha on



18.06.2019 and in fact the then C.D.P.O., namely, Kumari Rina Singh and the lady supervisor, namely, Ruby Kumari, had, secretly and in a clandestine manner declared the petitioner to be the sole candidate, whereafter it was circumspetly shown that the Aam Sabha was held on 18.06.2019, merely on papers and then selection letter was quickly issued to the petitioner on the same day i.e. 18.06.2019. Nonetheless, after the private Respondent No. 6 came to know about the illegalities committed in the selection of the petitioner as Anganwari Sevika for Ward No. 6, she had filed a complaint before the District Programme Officer, Muzaffarpur, however, the same was rejected by an order dated 22.10.2020, which was then challenged by the private Respondent No. 6 before the Collector-cum-District Magistrate, Muzaffarpur, who, after hearing the parties and perusing the materials on record, has cancelled the selection of the petitioner as Anganwari Sevika at Centre No. 338, Ward No. 6, Panchayat Gyashpur, District-Muzaffarpur, vide order dated 13.01.2023, on the following grounds:-

- (i). Though the house of the petitioner is situated in Ward No. 2, Panchayat-Gyashpur, Block-Paroo, District-Muzaffarpur, however, she has merely got her name recorded in Ward No. 6 at serial No. 283, whereas the



name of all the family members of the petitioner are registered in Ward No. 2 at Serial No. 261, 260 and 258.

(ii). Though the advertisement for selecting Anganwari Sevika and Sahayika relating to various panchyats was published on the notice board of the office of the Child Development Project Officer, Paroo, but the same did not mention about the vacancy of Anganwari Sevika and Sahayika, pertaining to Centre No. 338, Ward No. 6.

(iii). On 18.06.2019, Aam Sabha was organized secretly and despite opposition by the persons belonging to poshak area of Ward No. 6, the petitioner was selected by depicting that she has been selected unanimously.

(iv). The Child Development Project Officer, Paroo, District-Muzaffarpur, vide letter dated 07.08.2020, has submitted a report to the effect that though the petitioner has been selected on the post of Sevika at Centre No. 338, Ward No. 6, Panchayat-Gyashpur, but since she does not belong to the posak area, recommendation has been made to cancel her selection. In fact a report of the lady supervisor has also been annexed with the aforesaid letter dated 07.08.2020, wherein it has been admitted by her that by mistake selection of the petitioner has been made, against the guidelines of the Department and the house of the petitioner falls in Ward No. 2.

6. Thus, it is submitted by the learned counsel for the Respondent-State that since the petitioner does not belong to the poshak area of Centre No. 338, Ward No. 6, Panchayat-Gyashpur, gross irregularity and illegality has been committed



in conduct of the selection process, pertaining to Centre No. 338, Ward No. 6, Panchayat-Gyashpur, Block-Paroo, District-Muzaffapur and fraud has been played by the petitioner in connivance with the lady supervisor and the concerned Child Development Project Officer, thus there is no merit in the present writ petition, hence, the same is fit to be dismissed.

7. I have heard the learned counsel for the parties and perused the materials on record from which it is apparent that the petitioner does not belong to the posak area of Ward No. 6, Centre No. 338, Panchayat-Gyashpur, Block-Paroo, District-Muzaffarpur and her house is also situated in Ward No. 2 and not in Ward No. 6, apart from the fact that the entire selection process is marred with irregularities and illegalities, as is apparent from the facts and circumstances of the case, narrated hereinabove in the preceding paragraphs, which depicts that the entire selection process was held discretely, which is also decipherable from the factum of there being only one candidate in the merit list i.e. the petitioner herein, obviously for the reason that the vacancy of Anganwari Sevika and Sahayika with regard to Centre No. 338, Ward No. 6, Panchayat Gyashpur, Block-Paroo, District-Muzaffarpur, was not published on the notice board, hence, this Court finds that the order impugned i.e.



the one dated 13.01.2013, passed by the Ld. Court of Collector-cum-District Magistrate, Muzaffarpur, in Anganwari Case No. 28 of 2020-21, does not suffer from any infirmity, hence, the same does not require any interference.

8. Another aspect of the matter is that the disputed questions of facts cannot be adjudicated in a writ petition under Article 226 of the Constitution of India. Reference in this connection be had to a judgment, rendered by the Hon'ble Apex Court in the case of *Orissa Agro Industries Corporation Ltd. & Others vs. Bharti Industries & Others*, reported in (2005) 12 SCC 725, as also the one, rendered by the Hon'ble Apex Court in the case of *Babubhai Muljibhai Patel vs. Nandlal Khodidas Barot & Others*, reported in (1974) 2 SCC 706. In fact, it is equally a well-settled law that the post of Anganwari Sevika / Sahayika is not a cadre post and the same is governed by guidelines, issued in that respect and moreover, the same is also not a post under the State services and a writ petition, therefore, would not be maintainable with regard to the same. In this connection, reference be had to a judgment, rendered by a coordinate Bench of this Court dated 10.1.2023, passed in CWJC No. 16533 of 2013 (*Neema Prasad @ Smt. Neema Devi vs. The State of Bihar & Others*), paragraph No. 2 whereof is reproduced herein



below:-

“2. The petitioner assails the order of the District Magistrate rejecting the appeal of the petitioner with regard to the non-appointment on the post of Anganwadi Worker. The post of Anganwadi Worker is not a cadre post and the same is governed by guidelines issued in that respect. It is not a post under the State services and a writ petition therefore would not be maintainable with regard to the same. The appeal being heard by the District Magistrate is also under the guidelines issued for the said purpose. Keeping in view thereto, no interference is warranted in writ jurisdiction.”

In this regard, it would also be gainful to refer to a judgment, rendered by the learned Division Bench of this Court in the case of ***Seema Kumari vs. The State of Bihar & Others***, reported in (2015) SCC Online Pat 7267, paragraph no. 9 to 11 whereof are reproduced herein below:-

“9. As noted above, the Anganbari Sevika is not a government servant and has no protection under Article 311(2) of the Constitution of India so as to envisage the concept of regular departmental proceeding. The petitioner was given a notice. She was informed about the allegation against her. She had filed her show-cause reply which was considered by the District Programme officer and when the order went against her, she had also been given adequate opportunity by the appellate authority who, in fact, had himself got the matter



verified by referring the matter to the Bihar Sanskrit Board.

10. In that view of the matter, this Court would not find any error in the impugned order of termination of the services of the petitioner when it is found that the petitioner had got appointment by producing a document in support of qualification which was found to be incorrect/forged.

11. Thus for the reasons indicated above, this application must fail and is, accordingly, dismissed.”

9. It would also be apt to refer to yet another judgment rendered by the learned Division Bench of this Court in the case of *Neetu Kumari v. The State of Bihar and others*, reported in 2011 (4) PLJR 20, paragraphs no. 4 and 5 whereof are reproduced herein

below:-

“4. In our considered view, the post of Anganbari Sevika is not a post having security of tenure or protection under Article 311 of Constitution of India. Considering the very nature of engagement which provides of honorarium, we are of the view that in case the appellant still feels aggrieved, she may approach the Civil Court for damages. There is nothing at stake in such a scheme other than honorarium. For such contractual engagements the relief of reinstatement is not appropriate and even if there is breach of the scheme or any other principle of law, the claim should ordinarily be



permitted, if found good on merits, only for damages.

5. The appeal is dismissed.”

10. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, hence, the same stands dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.12.2023
Transmission Date	NA

