

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18914 of 2011

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Sarika Kumari, Wife of Arvind Kumar Mahto, Resident Of Village-Balha,
Ward No. 10, P.S. Balia, District-Begusarai.

... .. Petitioner

Versus

1. The State of Bihar
2. The Divisional Commissioner, Munger.
3. The District Magistrate, Begusarai.
4. The District Programme Officer, Begusarai.
5. The S.D.M., Balia.
6. The B.D.O. Dandari, District-Begusarai.
7. The C.D.P.O. Dandari, District-Begusarai.
8. Kumud Kumari, Wife Of Umesh Mahto Resident of Village-Balha, P.S.-
Balial, District-Begusarai.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Arun Kumar, Advocate Mr.Raghubir Chandreya, Advocate
For the Respondent no. 8:		Mr.Ajay Kumar Thakur, Advocate Ms.Vaishnavi Singh, Advocate
For the State	:	Mr.Ajeet Kumar, GA-9

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 21-04-2023 Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for respondent no. 8.

2.The petitioner in the present case has challenged the
order dated 13.09.2011 passed in Service Appeal No. 21 of 2011
by the learned Divisional Commissioner, Munger. By the
impugned order, the Divisional Commissioner being the
appellate authority has set aside the order of the District
Magistrate, Begusarai and held that no fault may be found with
the selection of respondent no. 8 in the Aam Sabha held on



06.06.2007. The petitioner further prays for any other incidental or consequential relief/ reliefs for which the petitioner may be found entitled to.

Brief facts of the case

3. One Aganwadi Centre being Centre no. 148 in the village of Balha, Dandari block in the district of Begusarai was opened. For purpose of selection of Angawadi Sevika and Sahaika at the said centre, in terms of the guidelines a general meeting was held on 06.06.2007. The minute of the meeting of 06.06.2007 is Annexure '1' to the writ application. In the said meeting, it was found that this petitioner who was the only candidate from the so-called majority class cannot be appointed because her mother-in-law was elected on the post of Panch in the Panchayat. There were five applications from the candidates belonging to backward class out of which 4 applications were made by the persons who were resident of outside of the nourishing/beneficiary area. One applicant i.e. respondent no. 8 was resident of the neighbouring area of the Aganwadi Centre. There was no applicant from the Scheduled Caste category. Under these circumstances, the Aam Sabha selected respondent no. 8 who is the resident of the neighbouring area.

4. The petitioner made a complaint against the



selection of respondent no. 8 whereupon the selection of respondent no. 8 was canceled by the District Magistrate, Begusarai vide memo no. 381 dated 12.03.2008 (Annexure '2'). Against this, the petitioner preferred a writ application being CWJC No. 7919 of 2008 in this Court which remained pending without there being any order of stay.

5. It is worth mentioning here that vide Annexure '2' while canceling the appointment of the private respondent no. 8, the District Magistrate, Begusarai had directed the Child Development Project Officer, Dandari to initiate fresh selection process for appointment of Aganwadi Sevika in accordance with the guidelines. In absence of any stay of Annexure '2', the Child Development Project Officer, Dandari took further steps for fresh selection and ultimately in the Aam Sabha held on 31.10.2008, the petitioner was selected. Her mother-in-law had already resigned on 07.06.2007 and it is the case of the petitioner that her resignation had been accepted well before the consideration of the name of the petitioner in the Aam Sabha held on 31.10.2008, this is one of the reasons why this time no impediment was not recorded in the minute of the Aam Sabha.

6. The respondent no. 8 never challenged the selection of the petitioner in the Aam Sabha held on 31.10.2008. A copy



of the minute of the Aam Sabha held on 30.06.2008 is Annexure '3' to the writ application and the copy of the letter of appointment of the petitioner issued on 14.11.2008 is Annexure '4' to the writ application. It is an admitted position that the appointment of the petitioner was not challenged in accordance with the guidelines before the competent authority. The petitioner was sent for training and thereafter she has continued on the post of Aganwadi Sevika in this Centre.

7. After about three years, the writ application being CWJC No. 7919 of 2008 filed by the petitioner against Annexure '2' was taken up for consideration. The learned Writ Court was of the view that the petitioner may raise her grievance before the Commissioner, Begusarai who will decide the issue after hearing the parties after calling for the records of the Aam Sabha held on 06.06.2007. Accordingly, the learned Writ Court directed that the petitioner may file an appeal along with a limitation petition within a period of six weeks before the Commissioner and a direction was issued to the Commissioner to dispose of the matter after valid service of notice on respondent no. 7, Sarika Devi (the petitioner in the present case).

8. A copy of the order dated 10.05.2011 passed in



CWJC No. 7919 of 2008 (Kumud Kumari versus The State of Bihar and Others) has been placed before this Court. A perusal of the said order would show that the learned Writ Court was not made aware of the fact that in the Aam Sabha held on 31.10.2008, this petitioner had already been appointed. It is for this reason, the order of the learned Writ Court does not talk of the fact that the petitioner had been appointed in the year 2008. Learned counsel for the respondent no. 8 submits that earlier writ was filed on 12.05.2008, however, the fact remains that in the said writ application no interim order was passed and the selection process was not stayed. Since the present petitioner had no notice of the said writ application, she had also no occasion to place these facts before the learned Writ Court.

9. In the above-mentioned background the learned Writ Court granted liberty to the respondent no. 8 to file an appeal before the Divisional Commissioner, Munger, the Divisional Commissioner, Munger heard the matter and passed the impugned order by which he set aside the order of the District Magistrate as contained in Annexure '2' and further held that because there was no eligible candidate of the majority class in the nourishing area, the appointment of eligible candidate from the neighbouring area is not against the



guidelines.

Submission on behalf of the Petitioner

10. Learned counsel for the petitioner has assailed the impugned order dated 13.09.2011 on the grounds inter-alia that the Divisional Commissioner could not appreciate that a fresh selection process had been initiated on the direction of the District Magistrate and pursuant thereto in the Aam Sabha held on 31.10.2008, this petitioner was selected and she had been issued appointment letter vide Annexure '4' to the writ application. The said appointment of the petitioner was never challenged. It is further submitted that the observation of the Divisional Commissioner, Munger that because there was no eligible candidate in the nourishing area from the majority class, therefore, selection of a candidate from the neighboring area is not against the guidelines is wholly arbitrary, have no basis to stand and the same is in fact against the guidelines meant for the selection of the Aganwadi Sevikas. It is submitted that so far as the concept of majority class is concerned, the Hon'ble Division Bench of this Court in the case of **Smt. Satya Bhama Devi and Others Vs. The Union of India through Ministry of Social Welfare and Others** reported in **1998 (1) PLJR 714** had been placed to set aside all such orders of cancellation of appointment



of the Aganwadi Centres which were issued on the ground that the Aganwadi Sevikas who had been appointed did not belong to the “Beneficiary Class”. It is submitted that what was meant as beneficiary class in the judgment of the Hon’ble Division Bench in the case of **Smt. Satya Bhama Devi** (Supra) has been virtually replaced in 2006 guidelines by “majority class”.

11. Learned counsel submits that a bare perusal of the Hon’ble Division Bench judgment of this Court in **Smt. Satya Bhama Devi** (Supra) would show that the Aganwadi Centres have been set up under the ICDS scheme to serve persons from all class and community. The State Government is only a nodal agency to implement the ICDS scheme and while implementing the scheme, they cannot introduce the concept of “majority class” for purpose of selection on the post of Aganwadi Sevikas.

12. Moreover, it is submitted that in this case there were altogether five applicants of the backward class in the Aam Sabha held on 06.06.2007. Four of them are said to be from the outside area of the nourishing area whereas respondent no. 8 had been distinguished as a resident of neighbouring area. The difference is very thin and even that is obliterating inasmuch no meaningful distinction may be made on reading the resolution of the Aam Sabha between a person from outside the nourishing



area and a person coming from neighbouring area of the nourishing area. In fact, both the class of persons are residents of the outside area, therefore, they were not eligible to be considered for this Aganwadi Centre.

13. The guidelines nowhere provides for the same. It is submitted that by way of a classification, the Social Welfare Department has issued a Letter dated 07.08.2015 wherein it is stated under paragraph 4/4.6 that only in case of non-availability of a candidate having minimum educational qualification for appointment as Aganwadi Sevika at the given centre, a candidate from the nearest tola/ward in the radius of the centre may be considered but this is not the case where there is any finding that the four others were not in the nearest of the radius of the centre. Be that as it may, it is his submission that the petitioner has remained working for about 15 years without any challenge to her appointment, therefore, the same cannot be interfered with by virtue of impugned order.

Submission on behalf of Respondent No. 8

14. On the other hand, Ms. Vaishnavi Singh, learned counsel for respondent no. 8 has opposed this writ application. Learned counsel submits that in the Aam Sabha held on 06.06.2007, the petitioner was not eligible to be considered



because her mother-in-law was a Punch elected and the records only speak that she had resigned on the subsequent date on 07.06.2007 but whether her resignation had been accepted or not is not known. Learned counsel submits that in fact, mother-in-law of the petitioner had served her entire tenure but she is unable to say as to when did she complete her tenure. Learned counsel submits that respondent no. 8 had challenged her cancellation of appointment by filing a writ application instead of preferring an appeal, this Court relegated her to the remedy of appeal before the Commissioner and in the said appeal, she has succeeded, therefore, her appointment is liable to be restored and any selection process undertaken during pendency of the writ application is liable to suffer the decision of the Divisional Commissioner, Munger. Learned counsel has explained that in fact respondent no. 8 was served with Annexure '1' at a belated stage, therefore, she had lost on the period of limitation provided for filing of appeal and she was advised to move this Court directly in writ application.

15. Learned counsel submits that respondent no. 8 has succeeded in her appeal, therefore, her appointment be restored by setting at naught the selection of the petitioner.



Submission on behalf of the State

16. Mr. Ajeet Kumar, learned GA-9 has opposed this writ application. As regards the concept of majority class, learned counsel submits that recently in the 2022 guidelines that concept of majority class has been abolished and the entire selection has to be held on its own merit, therefore, learned counsel submits that the issue is not required to be gone into in the present writ application as the same is not required to be adjudicated either directly or instantly to decide the present writ application.

Consideration

17. Having heard learned counsel for the petitioner, learned counsel for the State and learned counsel for respondent no. 8, to this Court it appears that the respondent no. 8 having failed to challenge the appointment of the petitioner during the fresh selection process is bound to lose the present battle. The respondent no. 8, though challenged cancellation of her appointment made vide Annexure '2' to the writ application but there is nothing on record to show that she ever sought for stay on the fresh selection process. The fresh selection process was held without there being any interim order of the Court and pursuant thereto the petitioner was selected. She has continued



in service for almost 15 years. So far as the impugned order passed by the Divisional Commissioner, Munger is concerned, he has set aside the order of the District Magistrate as contained in Annexure '2' by observing that in absence of a candidate of majority class, the appointment of the respondent no. 8 from neighbouring area cannot said to be against the guidelines. The language used by the Divisional Commissioner has been couched in a negative words without positively saying as to under which provision of the guidelines, in the present facts, a person from neighbouring area/outside area may be allowed to apply for an Aganwadi Centre and how her name may be considered in the Aam Sabha held for the appointment of the Aganwadi Centre within which she does not reside.

18. Learned counsel for the State as well as respondent no. 8 are unable to point out any provision in the guidelines which positively provides for selection of a candidate in the present facts of the case, from the neighbouring area in absence of a candidate from the area for which Aganwadi Centre has been opened. Apart from that, when this Court goes through the Resolution of the Aam Sabha, it is noticed that there were five candidates from outside and the Aam Sabha has not taken pain to make it clear that why other four were not



considered. If they were from outside, respondent no. 8 was also from outside, therefore, her case could not have been distinguished by calling her that she is from neighbouring area. There is no clarity on this issue. This is another wrong committed by the Divisional Commissioner in the impugned order.

19. For all these reasons, this Court is of the considered opinion that the impugned order is liable to be set aside and the petitioner who is working for 15 years pursuant to a valid selection process initiated by order of the District Magistrate be allowed to continue.

20. This writ application is, therefore, allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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