

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.625 of 2018

In
Civil Writ Jurisdiction Case No.13161 of 2010

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Ritu Kumari W/o Shashi Bhushan Yadav, resident of Village- Dhusar, P.S. Tikapatti, District- Purnia.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Director, I.C.D.S. Integrated Child Development Scheme, Directorate, Social Welfare Department
4. The Commissioner, Purnia Division, Purnia.
5. The District Magistrate, Purnia.
6. The District Programme Officer, Purnia.
7. The Child Development Project Officer C.D.P.O. Rupauli, Purnia.
8. Phool Kumari Devi, wife of Yadunandan Mandal, resident of Village- Dhusar, P.S. Tikapatti, P.O. Tikapatti, District- Purnia.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shailesh Kumar, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha- GA7
		Mr. Vishwajeet Kumar Mishra, Advocate
		Mr. Rohit Kumar Tripathi, Advocate
		Mr. Abhishek Singh, AC to G.A.7

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

- 13 13-07-2023 1. Hard learned counsel for the parties
2. The instant appeal has been preferred against the judgment dated 3.4.2018 passed in CWJC no. 13161 of 2010.
3. The case of the appellant in brief is that a meeting of the ‘Aam Sabha’ was held on 18.10.2002 for constitution of



Anganbari Kendra at Rupauli and to select Sevika/Sahayika at the said Anganbari Kendra. A meeting of the Aam Sabha was held on 14.9.2004 under the Mukhiya for selection of the Anganbari Sevika/ Sahayika in which applications were obtained. Out of population of 1000 of Anganbari Centre Dhusar Kali Asthan Tola the caste wise breakup of the population was Gangota- 450, Dhanuk- 300, Bania- 50 Bind- 50 and Yadav- 150. Of the applications received, there were no applications of the caste Gangota or Dhanuk and other applicants were not resident of the Anganbari center and as such the selection committee had no option except to select the appellant who belonged to the 3rd most populated caste ie Yadav and was possessing the requisite qualification. It further transpires that the appellant was selected and an appointment letter in her favour was issued on 16.9.2004 by the Child Development Project Officer (CDPO), Rupauli. The appellant started to discharge her duties to the satisfaction of all.

4. Subsequently, the respondent no. 8 who was also a candidate for Sevika at the said Anganbari Centre, filed a complaint before the District Programme Officer, Purnea in the year 2009 ie after 5 years of selection of the appellant stating therein that she belongs to the Most Backward Caste (MBC) and



that the appellant had wrongly been selected. The appellant was asked to submit evidence in support of her selection. By order dated 15.7.2010 issued under the signature of the District Magistrate, Purnea the selection of the appellant was cancelled. As such the appellant filled CWJC no. 13161 of 2010 praying therein for quashing the order contained in memo no. 711 dated 15.7.2010 issued by the District Programme Officer, Collectorate, Purnea under the signature of the District Magistrate, Purnea whereby her selection as Anganbari Sevika was cancelled, for a direction to the respondents to reinstate her and for other reliefs.

5. By judgment dated 3.4.2018 passed in CWJC No. 13161 of 2010 the learned Single Judge was pleased to dismiss the writ application. It is against this judgment dated 3.4.2018 that the instant appeal has been preferred.

6. Learned counsel for the appellant submitted that the learned Single Judge failed to appreciate that the respondent no.8 was a resident of another ward ie ward no.14 and her name appears at serial no.70 of the voter list. The learned Single Judge also failed to take into consideration that so far as the Anganbari Centre Dhusar Kali Sthan Tola is concerned the population of people belonging to Gangota caste was the highest being 450



followed by Dhanuk- 300, Yadav- 150 and 50 each of Baniya and Bind. Admittedly there being no candidates of caste of Gangota and Dhanuk, the appellant belonging to Yadav caste was rightly selected. The respondents ie the District Magistrate committed an error in passing the order dated 15.7.2010 cancelling the selection of the appellant.

7. Learned counsel for the respondent no. 8 submitted that it is incorrect to state that she made a complaint after five years. It was a result of manipulation that she was shown in surplus area although her candidature was available but the same was ignored by the State in favour of the appellant.

8. The case of the State- respondents were that the order of the District Magistrate setting aside the selection of the appellant was upheld by the Divisional Commissioner by his order passed in Misc. Petition no. 101/10-11. There is no illegality in the order of the District Magistrate, the Divisional Commissioner nor in the order passed by the learned Single Judge.

9. Having learned counsel for the parties and taking into consideration the material on record it transpires that the matter in issue relates to appointment of Anganbari Sevika for Centre Dhusar Kali Asthan under Gram Panchayat Laxmipur



Chhatrapati in the district of Purnea. The caste wise composition of population of the people living in the area under the Anganbari Centre was that out of a total population of 1000, 450 belong to the caste Gangota, Dhanuk- 300 Yadav- 150 Baniya- 50 and Bind- 50.

10. As per the guidelines for appointment, preference in appointment was to be given to a person belonging to the most populated caste. The contention of the appellant to the effect that there was no candidate belonging to the most populated caste of Gangota or to the next most populated caste of Dhanuk has not been disputed. There after the 3rd most populated caste was the Yadav to which the appellant belonged. As such, it was the appellant who should have been appointed and was appointed as the Anganbari Sevika.

11. So far as respondent no. 8 is concerned, she was not the resident of the concerned Anganbari Centre and belonged to Kabrat caste whose population in the Centre was not more than the caste of the appellant ie Yadav. So far as the stand of the State-respondents that it was not the person/applicant belonging to the most populated caste but to the most populated class who was to be given preference in appointment is concerned it would be relevant to quote part of paragraph no. 8 of the counter



affidavit of respondents District Magistrate, Purnea and CDPO, Rupauli, Purnea filed in the writ application which is to the following effect:

“8..... and the selection of Sevika for that centre as per guideline was to be made from the candidates of most backward Class (Annex-I) but in contravention of the provisions of guideline the petitioner belonging to Yadav B. C (Annex-II) caste was selected ignoring the candidature of Phool Kumari belonging to Kabart an most Backward Caste (Annex-I) who was present in the Aamsabha and is the resident of concerned Poshak Kshetra as per survey Panji prepared by the petitioner also.”

12. From perusal of the stand of the respondent District Magistrate and the CDPO on affidavit as quoted hereinabove the words ‘caste’ and ‘class’ have been used interchangeable between the two and it is for this reason that the District Magistrate in his counter affidavit as quoted hereinabove states that the petitioner belonging to Yadav B.C caste was selected ignoring the candidature of Phool Kumari belonging to Kabart, a most backward caste. It further transpires that although the appellant was selected pursuant to the meeting held on 18.10.2004 and appointment letter was issued to her on 16.9.2004, complaint with respect to her appointment was made by the respondent no. 8 after an inordinate delay, only in the



year 2009.

13. It would also be relevant to mention that the respondent no.8 challenged the order dated 27.4.2011 passed by the Commissioner directing for fresh selection through Aam Sabha of the Anganbari Sevika by filing a writ application ie CWJC no. 6936 of 2012 which was dismissed by this Court by its order dated 4.5.2012.

14. Having heard learned counsel for the parties and taking into consideration the facts and circumstances of the case, the appellant having been appointed in the year 2004 and the Court having been informed that she continued to work even after passing of the order in the writ application and continues to work today, the Court is inclined to allow the appeal.

15. The appeal is allowed and the order dated 3.4.2018 passed by the learned Single Judge dismissing CWJC no. 13161 of 2010 is hereby set aside. The impugned order of cancellation of appointment of the appellant also stands set-aside.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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