

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1194 of 2020

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Rinku Kumari Wife of Ashok Paswan Resident of Village Narghoghi, Ward No. 3, within Gram Panchayatiraj Narghoghi, Block and Police Station- Sarairanjan, District- Samastipur

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Integrated Child Development Services Bihar (ICDS, Bihar) through its Director, Indira Bhawan, Patna
3. The District Magistrate Samastipur
4. The District Programme Officer Samastipur
5. The Child Development Project Officer Block Sarairanjan, District- Samastipur
6. The Selection Committee, Gram Panchayati Raj Narghoghi, Block Sarairanja, District- Samastipur
7. The Arti Kumari Wife of Ashok Kumar Das Resident of Narghoghi, Block Sarairanjan, District- Samastipur
8. The Divisional Commissioner, Tirhut Division, Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Choudhary Shyam Nandan
For the Respondent/s : Mr.Smt.Kumari Amrita (Gp3)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

6 13-10-2023 Counsel for the petitioner is directed to add the Divisional Commissioner, Tirhut Division, Muzaffarpur as party respondent in this case in the course of the day

2. Heard learned counsel for the petitioner, learned counsel for the private respondent and learned counsel for the State.

3. Counsel for the petitioner submits that vide order dated 12.10.2022, notices have been issued to Respondent No. 7



by both process. He submits that in compliance of the said notices, Respondent no. 7 appeared in this case through vakalatnama and name of Respondent No. 7 has appeared in the daily cause list too but no one had appeared for Respondent No. 7.

4. Counsel for the petitioner submits that the present writ petition has been filed for quashing the order dated 22.08.2019 passed in Anganwari Appeal Case No. 84 of 2017 (Annexure-6) by which the District Magistrate, Samastipur has set aside the order dated 28.04.2017 passed in Anganwadi Case No. 64/2016-17 and confirmed the selection of Respondent No. 7.

5. Counsel for the petitioner further submits that the present dispute is relating to Anganwadi Sewika of Anganwadi Kendra No. 130, Narghoghi Dusad Tola, Code No. 180 Ward No. 03 of Narghoghi Panchayat, District, Samastipur.

6. Counsel submits that in pursuance of Advertisement dated 11.09.2016 in Prabhat Khabar for appointment of Anganwadi Sewika for Anganwadi Kendra No. 130, seven applicants have applied including the Respondent No. 7 and the petitioner himself. Counsel submits that on 14.11.2017, Aamsabha was scheduled and Medha Suchi was



prepared in which the name of the respondent No. 7 was found at Sr. No.1 and name of the petitioner was found in Sr. 2. After declaration in Aamsabha dated 14.01.2017, the petitioner filed an objection before the Child Development Project Officer, Block Sarairanjan, Samastipur (Respondent No. 5). The candidate Aarti Kumari (Respondent No. 7) shall not be selected on the ground that the salary of the husband of Respondent No. 7 who is working in Government Office gets Rs. 13,529 per month as pay/salary. Respondent No. 7 is not eligible to be selected as per Anganwadi 2016 guidelines for the post of Anganwadi Sewika in the light of the said guidelines of Integrated Child Development Services Bihar. Counsel submits that even after the said objection, the decision was taken for selection of Respondent No. 7 as Anganwadi Sewika. Against the said decision, petitioner filed complaint before the District Programme Officer, Samastipur. Complain of the petitioner was registered as Anganwadi Case No. 64 of 2016-17 and the District Programme Officer, after issuance of notice, and upon calling a report from the Office where the husband of Respondent no. 7 was working and after hearing both the parties has passed order and set aside the selection of the petitioner.

7. Counsel further submits that from the salary slip of



the husband of the Respondent no. 7, it is clear that the monthly emolument amount is more than Rs. 12,000/- and therefore the Aanganwadi Case No. 64 of 2016-17 was decided in favour of the petitioner.

8. Counsel submits that being aggrieved and dissatisfied with the said order, Respondent No. 7 has preferred the appeal before the Collector, Samastipur which was recorded as Anganwadi Appeal Case No. 84 of 2017. The said appeal was decided in favour of Respondent No. 7 in which the Collector have decided that the monthly income of the petitioner is Rs. 11032/- which is less than Rs 12000/- and therefore, set aside the order passed by the District Programme Officer, Samastipur and allowed the Anganwadi Appeal in favour of Respondent No. 7, thereafter, petitioner has preferred the present writ petition challenging the order passed by the Collector dated 22.08.2019 passed in Anganwadi Appeal Case No. 84/2017.

9. Counsel for the petitioner submits that definition of pay has been defined in Section 34(a) of the Bihar Service Code, and according to which, pay means more than withdrawn monthly pay and government servant as follows

(i) the pay, other than special pay of pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in



*an officiating capacity, or to which he is entitled by reasons of his positions in a cadre; and
(ii) overseas pay, special pay and personal pay;
(iii) any other recurring emoluments which may be specifically classed as pay by the State Government.*

10. Counsel submits that the salary slip which is Annexure-C of the counter affidavit, it appears that the total amount provided by the department is Rs 13529/- which is more than Rs 12000/- and as such in the light of Clause-6 of Sevika/Sahayka/Margdarshika, the appointment of Respondent No. 7 is illegal.

11. On the other hand, counsel for private respondent vehemently opposes the prayer of the writ petition and submits that *prima-facie* this writ petition is not maintainable due to the reason that the petitioner has the right to prefer revision in the light of the guidelines of 2016 and hence, the present writ petition is not maintainable here.

12. Learned counsel for the Respondent No. 7 further submits that from the finding of the order passed by the Collector in Anganwadi Appeal, it has been held that monthly income of the husband of the Respondent No. 7 is Rs. 11,032/- which is less than Rs. 12,000/- and as such, the order passed by the Collector is in accordance with law Hence, the writ petition is fit to be dismissed.

13. Upon hearing the parties and going through the



documents, particularly, at the point of maintainability, this Court is of the view that the guidelines of 2016 in which the provision regarding filing Revision is no more in existence and the Rule of 2016 has been replaced by the Rule of 2019 and presently the said Rule is prevalent in which order of appeal is vested in the Divisional Commissioner and on this ground, the first objection is not maintainable.

14. So far as the second point raised by the Respondent No. 7 that the total monthly income received by the petitioner is Rs. 11032/- is not correct due to the reason that Annexure-C have been annexed by the State in which salary slip of the petitioner has been attached where it is indicated that monthly received amount by the petitioner is Rs. 13529/- out of said amount, E.P.F. contribution 12% and E.S.I. contribution 1.7% has been deducted and after the said deduction, the amount reached lesser than Rs.12,000/-.

15. In this regard, this Court is of the view that the said contribution which has been deducted by the E.P.F., shall be refunded to him later on and so far as the E.S.I. Scheme is concerned, it is also for the benefit of the petitioner which provides insurance and many other benefits by which the petitioner himself become benefited. But, the actual amount



received is Rs. 13529/- which is more than Rs.12000/- and in this view of the matter, this Court is of the opinion that this order is not in accordance with law, and therefore, the order passed by the Collector in Anganwadi Appeal Case No. 84 of 2017 is hereby set aside and the matter is remanded back before the Divisional Commissioner, Tirhut Division, Muzaffarpur who is the Appellate Authority according to the present Rule 2019.

16. The Divisional Commissioner, Tirhut Division, Muzaffarpur is directed to hear the appeal by opening a Miscellaneous Case upon calling the records of Anganwadi Appeal Case No. 84 of 2017 from the Court of Collector, Samastipur and upon calling both the parties and granting opportunity of hearing to them. The Commissioner is directed to pass final order within three months from the date of production of this order.

17. With the aforesaid observation and direction, this writ petition is allowed.

(Dr. Anshuman, J)

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