

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1322 of 2019

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Aarti Kumari, Wife of Sugreev Mallah Resident of Village-Atrauna Under
Gram Panchayat Raj-Atrauna, Block-Itarhi, P.S. Itarhi, District-Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Social Welfare, Govt. of Bihar, Patna
2. The Director, Directorate of Integrated Child Development Services, (Deptt. of Social Welfare), Govt. of Bihar.
3. The District Magistrate Buxar.
4. The District Programme Officer Buxar.
5. The Child Development Project Officer, Block-Itarhi, District Buxar.
6. Uttima Devi, W/o Daya Shankar Singh, Resident of Village-Ataranuna Under Gram Panchayat Raj-Atarauna, Block-Itarhi, P.S. Itarhi, District-Buxar Presently Working as Anganwari Sevika Of Centre Code-138 Atarauna (Mallah Tola).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bishwa Nath Chaudhary, Advocate
For the Respondent/s	:	Mr. Prashant Pratap, GP-2
		Mr. Digvijay Kumar Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 24-10-2024

Heard the parties.

2. The petitioner is aggrieved by the order dated 28.09.2018 passed in Case No. 213 of 2015, by which the appeal preferred by the petitioner has been rejected affirming the earlier order dated 16.12.2014 passed in Case No. 45 of 2014 (Misc.) with respect to the selection of respondent no.6 to the post of Anganwadi Sevika of Anganwadi Centre No. 138 (Atarauna-Mallah Tola) under Gram Panchayat Raj-Atarauna,



Block-Itarhi, District-Buxar.

3. In response to the advertisement published for the selection of Anganwadi Sevika of Anganwadi Centre No. 138, having found eligible, the petitioner filed application for her selection.

4. Learned counsel for the petitioner contended that the petitioner, who belongs to Mallah by caste under the category of Extremely Backward Class falling within Bahulya Caste of Ward No. 5 of Atarauna Gram Panchayat, had secured 5th position in the merit list duly prepared by respondent no.5. The name of respondent no.6 figured at serial no.10.

5. It would be relevant to mention that the father-in-law of the petitioner was the Ward Member of Ward No. 5 of Gram Panchayat Atarauna and since he was a public representative holding the post of Ward Member and, as such, in view of clause 4.8 of the Guideline, the petitioner being his daughter-in-law was not eligible; hence, he tendered his resignation to the Mukhiya of the Gram Panchayat on 14.08.2013 and it was accepted on 22.08.2013. The information about the resignation of the father-in-law of the petitioner was sent to the concerned respondents.

6. The Selection Committee upon being found the



petitioner most suitable for the post of Anganwadi Sevika, issued letter of selection vide Memo No. 9 dated 20.08.2013, the copy of which is marked as Annexure-2 to the writ petition.

7. On account of the afore-noted facts, the petitioner's father-in-law being Ward Member on the date of selection, the respondent no.6 filed a complaint against the selection of the petitioner.

8. Having found no response, the petitioner moved before this Court in CWJC No. 1255 of 2014. This Court vide its order dated 18.02.2014 remitted the matter to respondent no.3 with a direction to consider the complaint of the petitioner and dispose off the same in accordance with law.

9. On remand being made, respondent no.3, the District Magistrate, Buxar, initiated a case bearing Case No. 45 of 2014. Upon hearing the parties and on being found irregularity in the selection of the petitioner, vide its order dated 16.12.2014 has set aside her selection. While setting aside the appointment of the petitioner, the District Magistrate, Buxar has taken note of the fact that the selection letter was issued in favour of the petitioner before acceptance of the resignation of her father-in-law and thus found contrary to the guidelines/relevant departmental letters governing the selection



process. In the aforesaid premise, direction has also been given for fresh selection.

10. The petitioner on being aggrieved against the order dated 16.12.2014 has preferred Anganwadi Appeal No. 36 of 2015 before the Deputy Director (Welfare), Patna Division, Patna. However, the matter had further been transferred to respondent no.3, in pursuant to the Government Guidelines for hearing and deciding the matter. The respondent no.3 reiterated his earlier order dated 16.12.2014 and rejected the case of the petitioner vide its order dated 28.09.2018. It is both these orders, which are put to challenge in the present writ petition.

11. While assailing the initial order passed by respondent no.3 dated 16.12.2014, it is contended that since the District Magistrate, Buxar was not the competent authority, thus any order passed by him is wholly without jurisdiction. All the more, the subject impugned order has been passed without any notice or opportunity of hearing. He thus submitted that on both these counts, the impugned order is unsustainable and fit to be quashed and cancelled.

12. Adverting to the afore-noted facts and the submissions made hereinabove, reliance has also been placed on a decision of the Hon'ble Apex Court in the case of **Chairman-**



cum-Managing Director, Coal India Limited and Others v. Ananta Saha and Others [2011 5 SCC 142], especially for the proposition that once the initial order is bad in law or wholly without jurisdiction, all the proceedings arising therefrom are not sustainable in law. Heavy reliance has been placed on para-33 of the afore-noted judgment, which is as follows:

“33. In *Badrinath v. Govt. of T.N.* [(2000) 8 SCC 395 : 2001 SCC (L&S) 13 : AIR 2000 SC 3243] this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders.

13. Learned counsel for the petitioner further contended that respondent no.3 while cancelling the selection of the petitioner has taken into consideration the provision of Section 19 of the Bihar Panchayati Raj Act, 2006 (for short ‘the Act, 2006’) that the father-in-law of the petitioner was holding the post of Ward Member the date on which the selection letter was issued, which is wholly erroneous and illegal.

14. On the other hand, learned counsel for the State as well as the private respondent contended that the petitioner’s



father-in-law was a Ward Member and he tendered his resignation to the Mukhiya of Gram Panchayat Atarauna, which was duly accepted on 22.08.2013. The said letter dated 22.08.2013 does not bear letter number on itself, therefore, the legality in genuineness of this letter is very much doubtful. Moreover, prior to the acceptance of the resignation, the CDPO vide its Memo No. 9 dated 20.08.2013 had issued the letter of selection and thus the very appointment of the petitioner of Anganwadi Sevika for Centre Code No. 138 was under the shadow of doubtfulness. It is further contended that the selection of the petitioner as Anganwadi Sevika was cancelled on the basis of the order dated 16.12.2014. The respondent no.3 while cancelling the earlier selection process had also directed to ensure fresh selection process in accordance with the departmental directives. In pursuant thereto, a fresh advertisement was published but the petitioner did not apply and participate in the said process. Conversely, respondent no.6 applied for the post of Anganwadi Sevika and she was selected in the Aam Sabha held for this purpose and thus the selection letter was issued in her favour on 16.12.2015.

15. At this juncture, learned counsel for the petitioner contended that having come to know about the proceeding dated



16.05.2017 and the selection of private respondent no.6, the same was also questioned by filing an Interlocutory Application No. 1 of 2023. It is also the contention of the petitioner that once initial order of the District Magistrate, Buxar dated 16.12.2014 is unwarranted and wholly without jurisdiction, any action taken under the garb of the order dated 16.12.2014 is not sustainable. Thus, the impugned proceeding and selection of the private respondent are also bad in the eyes of law. Furthermore, in the fresh so called selection proceeding, no other candidates have filed their application and, as such, an inquiry was also required to be done.

16. This Court has heard learned counsels for the respective parties and also perused the materials available on record.

17. Suffice it to say that the private respondent on being aggrieved by the selection of the petitioner had preferred CWJC No. 1255 of 2014, which came to be disposed off with a direction to the District Magistrate, Buxar to see to it that cognizance is taken on her complaint by the concerned authority and after hearing the parties, the same shall be disposed off in accordance with law. In pursuant to the direction of this Court, respondent no.3 examined entire records of the selection process



and on being found serious infirmities and the entire process being contrary to the relevant guidelines/circular, directed for fresh selection.

18. Admittedly, the petitioner on being aggrieved preferred appeal before the Deputy Director (Welfare), Patna Division, Patna, who ultimately transferred the case to respondent no.3 in pursuant to the Government Guidelines for hearing and deciding the matter.

19. This Court has also perused the subsequent order passed by the District Magistrate, Buxar as contained in Annexure-8 to the writ petition.

20. Once the petitioner submitted his jurisdiction before the District Magistrate, Buxar in Case No. 213 of 2015, the infirmities and illegalities, which were alleged in the earlier order passed by respondent no.3 has lost its consequences and, as such, the reliance placed by the petitioner on the decision of the Hon'ble Apex Court in the case of **Chairman- cum- Managing Director, Coal India Limited** (supra), is not applicable in the present case.

21. It would also be relevant to note here that once a fresh selection has been commenced pursuant to the direction of respondent no.3 and the petitioner has chosen not to participate



in the said process, now, she cannot be allowed to challege the same after the selection process being complete and appointment letter being issued to the private respondent way back on 16.05.2017 itself.

22. For the reasons afore-noted, this Court does not find any any reason or occasion to interfere in the fresh selection process. Accordingly, the writ petition sans any merit, stands dismissed.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26-10-2024
Transmission Date	

