

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3494 of 2020

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Rubi Kumari, Wife of Rakesh Kumar, Resident of Village- Bishunpur Chak
Pahar, P.S. Sahebganj, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary of Social Welfare Department, Govt. of Bihar, Patna.
2. The District Magistrate, Muzaffarpur.
3. The District Child Development Programme Officer, Muzaffarpur.
4. The Child Development Programme Officer, Sahebganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Nachiketa Jha, Advocate
For the Respondent/s : Mr.Gyan Prakash Ojha (GA7)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 12-01-2024

Learned counsel for the petitioner and learned
counsel for the State are present.

2. Learned counsel for the petitioner submits that
the present writ petition has been filed for quashing of order
dated 06.01.2020 passed by the Director, I.C.D.S., Patna
whereby he directed to all the District Magistrates of Bihar to
invite applications for appointment of Anganwari Sebika and
Sahaika specially regarding Ward No.2 of Gram Panchayat Raj
Bangari Nizamat under Sahebganj Block-Muzaffarpur.

3. Learned counsel for the petitioner further
submits that vide order dated 22.12.2023, this Court directed the



State to file a counter affidavit after taking response of the District Magistrate, Muzaffarpur, but the said counter affidavit has not been filed as yet.

4. Learned counsel for the State though seeks further time to file counter affidavit, but submits that the present writ petition is not maintainable in view of the consistent finding of the Hon'ble Supreme Court as well as the Hon'ble Patna High Court that the post of Anganwadi Sevika is not a post in the government service nor this is a post under the State services, as such, the present petitioner may not claim protection under Article 311 of the Constitution of India.

5. It has come to the notice of this Court that there are several decisions of this Court in which Anganwadi Sevika's matters have been decided, holding the same not maintainable. It is necessary for this Court to refer to the recent judgement rendered in the case of *Parvati Devi @ Parvati Singh vs. the State of Bihar and Ors.* reported in 2024(1) BLJ 178, paragraphs 5, 6, 7 and 8 whereof are reproduced as under:-

“5. This Court would also refer to a judgment rendered by the Hon'ble Apex Court, reported in (2007) 11 SCC 681 (State of Karnataka and others v. Ameerbi and Others), wherein it has been held that the post of Anganwadi workers are not statutory post and



they have been created in terms of the Scheme as also the Anganwadi workers are not holders of civil post since they do not carry on any function of the State as they do not hold post under a statute, their posts are not created, recruitment rules ordinarily applicable to the employees of the State are not applicable in their case, hence, the State is not required to comply with the constitutional scheme of equality, as enshrined under Articles 14 and 16 of the Constitution of India.

6. This Court also deems it fit and proper to refer to a judgment rendered by the learned Division Bench of this Court in the case of Babita Kumari v. The State of Bihar and others, reported in 2016 SCC Online Pat 9434, paragraphs no. 7 and 8 whereof are reproduced herein below:-

“7. Having considered the rival contentions, we do not find any merit in the present appeal. The charges against the appellant were very clear as would be apparent from the show cause dated 22.02.2012, which was issued in light of the findings in the enquiry report as well as the relevant documents/registers which were required to be maintained at the Centre. Reply given by the appellant, copy of which has been brought on record, does not indicate any justification and rather it has been stated that on 24.09.2011 at the time of Inspection, the children were still coming and on 07.10.2011, she herself had gone to call the children and during that time the inspection was held. It was further stated by the appellant that on 30.09.2011 she had become ill due to being drenched by rain. We find that such explanation is



vague and evasive and does not inspire confidence. The spirit and object of running Anganbari Centers cannot be overemphasized and the purpose is to ensure the welfare of children from the lowermost and deprived strata of society. Any lapse in execution of the said scheme has to be taken very seriously. Closure of even one day entails the beneficiaries going without their meals, which cannot be overlooked. Thus, we do not find any infirmity in the decision of the authorities cancelling her selection as well as the procedure adopted by them prior to passing such order.

8. For the reasons aforesaid, the Letters Patent Appeal, being devoid of merit, stands dismissed.”

7. It would 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.”

Similarly, this Court further refers to the judgment rendered in the case of *Urmila Kumari vs. the State of Bihar and Ors.* reported in 2024(1) BLJ 361, paragraphs 9 and 10 whereof are reproduced as under :-

“9. Another aspect of the matter is that the post of Anganbari Sevika is neither a post having security of tenure nor a civil post, hence it is sufficient that after due notice to the petitioner and hearing her, an order is passed, whereafter adequate opportunity is granted by the appellate authority and in case the incumbent is still aggrieved, she may approach the learned Civil Court of competent jurisdiction. In this connection, it would be apt to refer to a judgment rendered by a co-ordinate Bench of this Court in the case of Seema Kumari vs. The State of Bihar & Ors., reported in (2015) SCC Online Pat 7267, paragraphs nos. 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.”

10. It would also be gainful to refer to yet another judgment rendered by the learned Division Bench of this Court in the case of Neetu Kumari vs. The State of Bihar & Ors., 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.”

6. Upon going through the aforesaid judgments, this Court fully agrees with the observations mentioned above



that the post of Anganwadi Sevika is not a post in the Government service, and as such the private respondents cannot claim protection under Article 311 of the Constitution of India. The State is not required to comply with the constitutional scheme of equality, as enshrined under Articles 14 and 16 of the Constitution of India. This Court also agrees with this view that the aggrieved party may approach the Civil Court for damages.

7. In this view of the matter, I find no merit in the present writ petition. Accordingly, it is dismissed.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	15/01/2024
Transmission Date	NA

