

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3324 of 2019

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Kiran Kumari Wife of Shailendra Kumar Jha Resident of Village- Lalapur
P.O.- Bhawanipur, P.S.- Antichak (Kahalgaon), District- Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department, Government of Bihar, Patna
2. The Commissioner, Bhagalpur Division, Bhagalpur
3. The Director, Social Welfare, Government of Bihar, Patna
4. The District Magistrate cum Chairman of Selection Committee, Bhagalpur
5. The District Programme Officer cum Member Secretary Selection Committee, Bhagalpur
6. The Child Development Project Officer, Bhagalpur
7. Ashalata Kumari Wife of Rudra Narayan Singh Resident of Village- Badanandpur, Baisa, P.S.- Kahalgaon, District- Bhagalpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rajendra Kumar Jain, Adv.
For the Respondent No.7	:	Mr.Nirbhay Prashant, Adv.
	:	Mr.Pravin Kumar Sinha, Adv.
For the State/s	:	Mr.Gyan Prakash Ojha (GA7)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 30-07-2024

Heard learned counsel for the petitioner, learned counsel for the State and counsel for the respondent No.7.

2. Counsel for the petitioner submits that the present writ petition has been filed for quashing the order contained in Memo No.962 dated 16.07.2014 issued by the District Magistrate, Bhagalpur. The further prayer has been made for quashing of the order dated 12.05.2014 passed by the Commissioner, Bhagalpur in Appeal No.74 of 2010-11 and further prayer has been made to set aside the resolution of selection committee dated 30.06.2014 and a direction was demanded by this Court to appoint the petitioner on the post of



Lady Supervisor after cancelling the appointment of respondent No.7 who is working at present.

3. Counsel submits that the private respondent has wrongly been appointed on the post of Anganwari Sevika though at the time of her appointment, she did not possess the minimum age to be appointed on the said post. He further submits that her appointment was challenged before the Commissioner and the Commissioner vide order dated 16.12.2011 found that she is not eligible for the said appointment. He submits that respondent No.7 has challenged the said order before this Hon'ble Court in C.W.J.C. No.4488 of 2012 which was disposed off vide order dated 03.04.2012. In the said order, the matter is remanded to the respondents (the Commissioner) for a fresh decision in accordance with law and in the light of discussion contained in the order.

4. Counsel further submits that the Commissioner has passed order in Misc. Appeal no.74 of 2010-11 dated 12.05.2014 in which he is directed to instruct and to conduct a fresh meeting of selection committee and consider the case of the petitioner for selection as Lady Supervisor as per the rule. In the light of the order passed by the Commissioner, a Selection Committee was formed and vide order dated 30.06.2014, a



Selection Committee has taken decision for appointment of respondent No.7 on the said post. Following the said recommendation, the order has been passed by the District Magistrate vide memo No.962 dated 16.07.2014 by which the respondent No.7 has been appointed on the post of Lady Supervisor. He submits that the petitioner has challenged the said appointment before this Hon'ble Court in C.W.J.C. No.11476 of 2011 which was disposed on 24.08.2015 with liberty to the respondent that in view of the stand taken by the respondent, the petitioner's case would be considered as annual vacancy arises.

5. Counsel further submits that against the said order, the petitioner has preferred LPA No.437 of 2016 in which vide order dated 12.07.2016, final order has been passed and appellant was permitted to withdraw the present LPA with liberty to challenge the order passed in C.W.J.C. No.4488 of 2012. Counsel further submits that in the light of the said observation, the petitioner has preferred LPA No.1883 of 2016 in which vide order dated 06.12.2018, liberty was given that the appellant may take recourse to such lawful remedy as may be available to the appellant in law. Thereafter, the petitioner has filed the present writ petition before this Hon'ble Court



challenging the order passed by the Commissioner, the order of committee and the order of Collector by which respondent No.7 is working as Lady Supervisor.

6. Learned counsel for the State submits that the writ petition of the petitioner is not maintainable due to two reasons. The first reason he has assigned that the order of Respondent No.7 on the post of Lady Supervisor has been made in the light of order passed by this Hon'ble Court which was tested in the writ petition and subsequently affirmed in the LPA Bench.

7. Counsel further submits that in the order of LPA filed by the petitioner, no such liberty was granted rather protection of the earlier order has been made and it has been observed that the order passed by the Single Judge has taken its effect and already resulted into selection rendering the issue academic, therefore the indication made in the order that whatever be the point raised by the petitioner in his LPA, is only academic question left and no result available to him. He submits that before the Hon'ble Division Bench, the counsel moved to LPA has mentioned that the appeal is pending. No name was provided in the present writ petition also throughout the pleadings, he has not mentioned that which appeal was pending and only in the name of pendency of the appeal, such



liberty was granted by the Hon'ble Division Bench.

8. Counsel for the private respondent No.7 submits that it is true that the Commissioner has removed private respondent No.7 from her post indicating that she did not possess the age of 18 years, but counsel submits that in the writ petition, C.W.J.C. No.4488 of 2012 dated 03.04.2012, the Hon'ble Court has categorically observed that except age, if the petitioner possesses all qualification, she may be selected and that has been done by the Commissioner in the light of recommendation of the committee and order passed by the District Magistrate, which was finally approved in the LPA also. As such appointment has already been challenged by the petitioner. He submits that the petitioner has actually no case, but with a view to harass the private respondent, the present writ petition has been filed.

9. Upon perusal of all the documents on record, various orders passed by this Court as well as upon hearing the pleadings, it is necessary to quote all those relevant paragraphs for just decision of this case, which was filed by the private respondent Ashalata Kumari after her removal, this Hon'be Court in C.W.J.C. No.4488 of 2012 passed order on 03.04.2012 whose operative part is as follows:-



“Appointment of an Anganwari Sewika is not on a Government post but as an Agent. Under the Indian Contract Act a person below the age of 18 years is incapable of entering into a contract. The petitioner states at Paragraph-7 that she was above 15 years of age when she was appointed as Anganwari Sewika. To that extent there may not be merit in the writ application. But, the Court cannot loose sight of the fact that the petitioner has valuable experience of several years behind her. She fulfills the requirements for appointment on the post of Lady Supervisor. The respondents have had no grievances against her discharge of duties as an Agent. It would only be in the interest of the scheme to utilize her past experience. Whatever may have been the infirmity in the appointment as an Anganwari Sewika under the Contract Act can easily be said to have been waived or abandoned by the respondents. They cannot have it both ways by utilizing her under age service and rejected it for other purposes

A pragmatic approach on the part of the respondents dictates that if the petitioner fulfills other requirement for appointment on the post of Lady Supervisor, her candidature should be considered in accordance with law. The age at which she may have been appointed as an Anganwari Sewika has no direct nexus or relationship to appointment in a Government service when the earlier relationship was of a



principal and agent alone.

The order of the Commissioner dated 16.12.2011 is set aside and the matter is remanded to the respondents for a fresh decision in accordance with law and the discussion contained in the present order.

The writ application stands disposed.”

10. In the light of the observations made by this Court, the order dated 12.05.2014 has been passed by the Commissioner who has framed a committee. The committee has given his own finding which is Memo No.890 dated 30.06.2014 and finally a fresh order has been passed by the District Magistrate.

11. It also transpires that the said orders have been challenged by the petitioner in C.W.J.C. No.11476 of 2011 in which the order has been passed on 24.08.2015 and findings of the Hon'ble court are as follows:-

“So long Annexure-12, which is the order of the learned Single Judge, stands, Ashalata Kumari cannot be removed from her post because any indulgence shown to the petitioner will have the effect of either diluting or overriding the order rendered by another coordinate Bench. The Court, therefore, would not show any indulgence to the petitioner by giving a direction for appointment by removing Ashalata Kumari.



The respondents, however, in the counter affidavit have taken stand that at present there is no vacancy available which is required to be filled up. However, the case of the petitioner would be considered as and when vacancy arises.

Let the respondents do the needful in view of the stand taken in the counter affidavit with regard to the petitioner as and when vacancy arises. No other relief can be granted to the petitioner beyond the observation indicated above.

Writ application is disposed of with above observation.”

12. From the said order, it transpires that the court, therefore, would not show any indulgence to the petitioner by giving a direction for appointment by removing Ashalata Kumari, but only granted liberty that the petitioner would be a case as and when vacancy arises. The order passed by the Hon'ble Single Judge in C.W.J.C. No.11476 of 2011 has been duly affirmed in LPA No.437 of 2016 in which the petitioner seeks permission to withdraw the present writ petition with liberty to challenge the order passed in C.W.J.C. No.4488 of 2012 by which the appointment of respondent No.7 has been made. The LPA order which has been challenged against the order passed in C.W.J.C. No.4488 of 2012, this Court has restrained to interfere in the decision of Hon'ble Single Bench



and given its finding as follows:-

“A plain reading of the order of the learned Single Judge would confirm that there was no discussion on the inter-party rights rather the learned Single Judge taking note of the fact that the private respondent had been wrongly excluded from consideration chose to remand the matter to the respondent authorities for taking a fresh decision in accordance with law.

It is not in dispute that following remand a selection process took place and which resulted in appointment of the private respondent vide order bearing Memo No. 962 dated 16.7.2014, a copy of which is enclosed with the counter affidavit of the private respondent. It is not in dispute that this order of selection of appointment of the private respondent has never been put to question before any court. In other words, the order passed by the learned Single Judge has taken its effect and has already resulted in a selection rendering the issue academic.

In the circumstances, Mr. Sinha prays for disposal of the appeal to enable the appellant to take recourse to such lawful remedy as may be available to the appellant in law.

The appeal is disposed of accordingly.”

13. Upon perusal of the operative part of this decision, it transpires that the Hon’ble Division Bench has categorically held that the order passed by learned Single Judge in C.W.J.C.



No.4488 of 2012 has already been taken effect and has already been resulted in a selection rendering the issue academic, but on the request of appellant that there is appeal pending, observation has been given in the last paragraph.

14. From the pleadings made in the present writ petition, it transpires to this Court that there is no appeal pending and there is no such pleading, and hence, challenging the said order by the petitioner again by filing the writ petition is basically unnecessary interference and creating disturbances with a view to harass the respondent No.7.

15. In this view of the matter, the present writ petition is hereby dismissed, subject to payment of Rs.10,000/- imposed upon the petitioner, which shall be deposited to Patna High Court Legal Service Committee.

16. Accordingly, the present writ application stands dismissed.

(Dr. Anshuman, J.)

Prakashmani/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.08.2024
Transmission Date	NA

