

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3802 of 2020

Shanti Devi, W/o Munna Kumar Resident of Mohalla- Mausur Nagar, P.O.-
Sohsarai, P.S.- Sohsarai, Biharsharif, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Director Integrated Child Development Scheme (I.C.D.S.) Bihar, Patna.
3. D.M. Nalanda Biharsharif.
4. District Programme Officer Nalanda at Biharsharif.
5. Child Development Programme Officer Biharsharif, District- Nalanda.
6. Lalita Kumari, W/o Shivendra Kumar Resident of Mohalla- Mansur Nagar,
P.S.- Sohsarai, Biharsharif, District- Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Niraj Kumar, Adv.
For the Respondent/s : Ms. Kumari Amrita (GP-3)

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 05-01-2024 Heard learned counsel for the petitioner and learned
counsel for the State.

2. The present writ petition has been filed for directing the respondents to issue fresh advertisement/ notification for appointment of *Anganbari Sevika* giving relaxation in upper age limit of candidate.

3. Learned counsel for the petitioner submits that the petitioner is *Sahayika* of Mausupur Anganbari Centre Code No. 50, Ward No. 20, Biharsharif, Nalanda since 17.06.2008. Counsel also submits that the post of *Anganbari Sevika* in the said *Anganbari* Centre became vacant since 01.04.2011. Subsequently, on 26.01.2015, respondents issued an



advertisement for appointment of post of Sevika of the said *Anganbari* and the petitioner applied in pursuant to the said advertisement, but the respondent without filling up the said post and after four years issued fresh general notice for the post of *Anganbari Sevika* without giving proper relaxation in the age.

4. Learned counsel for the State 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 *Anganbari 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. After hearing the argument of both parties, it is necessary for this Court to refer to the recent judgment 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.”

6. 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.”



7. 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.”

8. Upon going through the aforesaid judgments,



this Court fully agrees with the observations mentioned above that the post of Anganbari 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.

9. In this view of the matter, this writ petition is hereby disposed of.

(Dr. Anshuman, J.)

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