

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.197 of 2019

In
Letters Patent Appeal No.729 of 2015

=====

Rajda Parween Wife of Sheikh Farman Resident of village - Sonmani, P.S.-
Singhia, District - Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary Department of Social Welfare, Govt. of Bihar, Patna.
3. The Director Social Welfare Development, I.C.D.S. Directorate, Govt. of Bihar, Patna.
4. The Deputy Director Department of Welfare, Darbhanga Division, Darbhanga.
5. The District Magistrate Samastipur.
6. The District Programme Officer Samastipur.
7. The Block Development Officer Singhia, Samastipur.
8. The Child Development Officer Singhia, Samastipur.
9. The Panchayat Secretary Gram Panchayat Raj, Mahra, Samastipur.
10. The Mukhiya Gram Panchayat Raj, Mahra, Samastipur.
11. Sabana Parween Wife of Md. Shahid Resident of village - Somani, P.S.- Singhia, District - Samastipur.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s :	Mr.Mukesh Kumar, Adv.
For the Opposite Party/s :	Mr.Gyan Prakash Ojha, GA7
	Mr.Abhishely Singh, AC to GA 7

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 08.07.2024

The present application is being preferred for
review of the judgment dated 03.01.2019 passed in L.P.A No.
729 of 2015 by a Division Bench of this Court, whereby the

order of the learned Single Judge dated 05.02.2015 passed in C.W.J.C. No. 2226 of 2015 has been affirmed.

2. By filing the present review application, the petitioner has sought following reliefs:

“To set aside the order dated 30.12.2014 passed by the Deputy Director, Welfare, Darbhanga Division in Anganbari Sevika Service Appeal case no. 184 of 2013, whereby and whereunder the selection of the Petitioner as Anganbari Sevika at Anaganbari Centre no. 15 of Gram Panchayat Raj, Mahara was cancelled in view of the report of the Additional Collector, Samastipur on the ground that mother-in-law (Ward Member) Sabana Parween (Respondent no. 11) submitted has resignation during selection process and the same was duly accepted by the authorities concerned, as well as also directed to issue selection letter to Respondent no. 11, and further for issuance of writ in the nature of mandamus commanding and directing the Respondents to reinstate the Petitioner as Anganbari Sevika since the order of cancellation of Selection was not been passed in accordance with law because there was no resignation of mother-in-law of Respondent no. 11 till summoning of Aam Sabha and she acted as Ward Member even after the Aam Sabha.”

3. Briefly stated, the facts of the present case

is that applications were invited from 09.04.2012 to 16.04.2012 from Child Development Project Office, Sindhiya for the post of Anganbari Sevika. The appellant and respondent no. 11 applied for the same. Respondent no. 11, Sabana Parween secured 64.66% marks and was placed at sl. nl. 1 whereas the review-petitioner secured 51% marks and was placed at sl. no. 2. The respondent no. 11 was not declared qualified in light of Clause 4.9 of Anganwari Sevika Guidelines, 2011 (hereinafter referred to as “2011 Guidelines”) and being aggrieved by the appointment of review-petitioner, respondent no. 11 filed an appeal vide Anganbari Sevika Service Appeal No. 183 of 2013 before the appellate authority i.e. Deputy Director, Department of Welfare, Darbhanga Division, Darbhanga. The appeal of the respondent no. 11 was allowed on the ground that her relatives resignation was duly accepted and, accordingly, letter of appointment was issued in favour of the respondent no. 11 by cancelling the appointment of the review-petitioner. Being aggrieved by the order of the appellate authority, review-petitioner filed C.W.J.C. No. 2226 of 2015 and the learned Single Judge dismissed the writ petitioner. The order of the learned Single Judge was assailed in L.P.A. No. 729 of 2015, which was also dismissed vide order dated 03.01.2019. Hence,

review petition.

4. Learned counsel appearing for the review-petitioner submitted that till now there is no communication that after resignation of Smt. Rojida Khatoon (mother-in-law of respondent no. 11) the post of Ward Member is vacant, rather the correct fact is that mother-in-law of respondent no. 11 is still holding the post of Ward Member. Learned counsel submits that in view of the aforesaid fact the appointment of respondent no. 11 is not in the light of the guidelines laid down in Clause 4.9 of the 2011 Guidelines and in light of that clause review-petitioner is the eligible candidate for appointment on the post of Anganbari Sevika.

5. Learned counsel appearing for the State, on the other hand, submitted that the issue of tendering resignation and its acceptance by the mother-in-law of the respondent no. 11 is no more relevant in view of the decision rendered by the Hon'ble Supreme Court of India in identical matter in Civil Appeal No. 208 of 2024 arising out of SLP (C) No. 2233 of 2023 (Anjum Ara Vs. The State of Bihar & Ors.) wherein the Hon'ble Supreme Court referring to judgment dated 27th September, 2022 passed by a Division Bench of Hon'ble Patna High Court in C.W.J.C. No. 13210 of 2014 noted that when the

said Clause 4.9 of 2011 Guidelines was struck down by the High Court vide judgment dated 27th September, 2022, it ceased to exist and allowed the appeal filed by appellant, Anjum Ara, whose appointment as Anganbari Sevika was cancelled in light of Clause 4.9 of the 2011 rules on the ground that her father was holding the post of Panchayat Teacher and directed for reinstatement of the appellant forthwith.

The relevant paragraphs along with the facts of the identical case decided by the Hon'ble Supreme Court, as referred in its decision, is being reproduced here for ready reference :

“3.1 On 17th October, 2012, District Programme Officer, Katihar published a notice for selection of Anganbari Workers/Sevika. Pursuant to the said notice, the present appellant as well as respondent no. 8 herein applied for the said post in the selection process. The appellant has secured 80.60, whereas respondent No. 8 has secured 48.60 marks. The appellant was appointed to the post of Anganbari Sevika on 2nd July, 2013.

3.2 Being aggrieved and dissatisfied with the order of appointment issued in favour of the appellant, respondent No. 8 submitted a representation before the District Programme

Officer, Katihar praying for cancellation of the order of appointment dated 2nd July, 2013 issued in favour of the appellant. She also prayed for a direction to issue an order of appointment in her favour. The same came to be rejected by the District Programme Officer, Katihar vide order dated 13th November, 2014. Being aggrieved thereby, respondent No. 8 preferred an appeal before Appellate Authority-Court of Joint Commissioner-cum-Secretary, Regional Transport Authority, Purnea. The appellate Authority, vide order dated 30th July, 2015, allowed the appeal filed by respondent No. 8 while setting aside the order of appointment dated 2nd July, 2013 issued in favour of the appellant. Being aggrieved thereby, the appellant filed a writ petition being CWJC No. 17585 of 2015 before the High Court of Judicature at Patna.

3.3.....

4.....

5. *It is submitted on behalf of the appellant that the only ground on which the appellant was held to be disqualified was that her father was a Pandhayat Teacher and he was drawing a salary of Rs. 6000/- per month. It is submitted that Clause 4.9 of Anganwari Sevika Guidelnes, 2011 (hereinafter referred to as "2011 Guidelines"), which imposed certain restrictions, was found to*

be in violation of Articles 14 and 16 of the Constitution of India by the High Court vide order dated 27th September 2022 passed in CWJC No. 13210 of 2014. It is submitted that, however, this has been ignored by the learned Division Bench.

6.....

7.....

8. *Clause 4.9 of the 2011 Guidelines imposed a restriction on such persons whose family member or members have secured appointment with the State Government or any organization of the State. The said Clause 4.9 of the 2011 Guidelines came to be challenged before the High Court by way of CWJC No. 13210 of 2014. The High Court, vide judgment and order dated 27th September 2022, vide elaborate discussion, struck down the said Clause 4.9 of the 2011 Guidelines.*

9. *The only ground on which the appellant has been non-suited was that the appellant had not challenged the said Clause 4.9 of the 2011 Guidelines before the High Court. We find that the reasoning as adopted by the learned Divisional Bench is totally unsustainable.”*

From perusal of the facts of the case decided by the Hon'ble Supreme Court and the facts of the present case as

detailed in paragraph 3 of this judgment, it is evident that both are identical and the present case is fully covered by the decision of Hon’ble Supreme Court. Moreover, the relevant Clause 4.9 of the 2011 Guidelines has already been struck down by this Court. The review-petitioner has not made out a case so as to interfere as it is devoid of any merit.

In view of the discussions made above, the review petition stands dismissed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

mcv/-

AFR/NAFR	AFR
CAV DATE	01.07.2024
Uploading Date	09.07.2024
Transmission Date	N.A.