

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20742 of 2014

Meena Devi W/o Sunil Kumar, resident of Mohalla- Mandai, Ward No. 24
New Ward No.30, Town, P.O. and P.S. - Sasaram, District- Rohtas.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Social Welfare, Directorate, Indira Bhawan, Patna.
3. The Deputy Director, Welfare, Patna Division, Patna.
4. The District Magistrate , Sasara, Rohtas.
5. The District Programme Officer (Welfare), Sasaram, District- Rohtas
6. The District Welfare Officer, Sasaram, District - Rohtas
7. The Sub Divisional Officer, Sasaram, District- Rohtas
8. The Block Development Officer, Sasaram , District- Rohtas
9. The Child Development Project Officer, Sasaram, District- Rohtas
10. Ward commissioner Ward No.24 (New Ward No. 30), Nagar Parishas, Sasaram
11. Munni Devi W/o Gopal Prasad Prajapati, resident of village- Mandai, Ward No.24, Town, P.O. and P.S.- Sasaram, District- Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Santosh Kumar Singh, Advocate
For the State	:	Mr. Bijoy Kr. Sinha, AC to AAG V
For respondent no.11	:	Mr. Binod Murari Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 08-07-2024

Heard Mr. Santosh Kumar Singh, learned counsel
appearing on behalf of the petitioner; Mr. Mr. Bijoy Kr. Sinha,
learned AC to AAG V for the State and Mr. Binod Murari
Mishra, learned counsel for respondent no.11.

2. Petitioner has *inter alia* prayed for following reliefs
in the paragraph No.1 of the writ petition:-

*“That this application is being filed for quashing
of the order passed by Deputy Director, Welfare, Patna
Division, Patna contained in Memo No.789 dated*



05.09.2014 whereunder and whereby the selection of the petitioner to the post of Anganwari Sevika at Centre No.115 situated in Ward No.24 of Sasaram Nagar Parishad has been cancelled without providing any opportunity of being heard to the petitioner as also and without considering the fact that the case of respondent no.11 Munni Devi has already been finally dismissed by this Hon'ble Court vide order dated 16.09.2010 passed in CWJC No.12645 of 2005 which was affirmed by the Division Bench of this Hon'ble Court vide order dated 26.07.2011 passed in LPA No.1043 / 2011 as well as yet another writ application filed by respondent no.11 bearing CWJC No.567/2013 which was dismissed on 11.01.2013. Further for a direction upon the respondents to reinstate the petitioner on the post of Anganwari Sevika at Centre No.115 situated in Ward No.24 in Sasaram Municipality alongwith entire consequential benefits."

3.The facts in brief giving rise to the present writ petition are that in the year 2004, under the direction of ICDS Directorate an advertisement was issued for selection to the post of Anganwari Sevika and Sahayika relating to Centre No.115, Mandai Ward No.24 and new Ward No.30, P.S. Sasaram. The selection process had completed on 23.08.2004 in the general meeting, in which concerned Ward Commissioner did not preside over the selection committee and the same was presided over by the former ward commissioner but after making selection, no order was issued for a long time. The then Child Development Project Officer was under the order of transfer. The new officer joined on 1 st November 2004. A few



days before the new officer took charge of the post, the selection letter was issued to the respondent no.11 on 20th October 2004. The new officer, having joined on 1st November 2004, having noticed the illegality committed by the outgoing Child Development Project Officer, the same was reported to the District Programme Officer. The Ward Commissioner also made a complaint in respect of the selection of the respondent no.11. In view of the said illegality committed in selection made on 23rd August 2004, a fresh selection was made in Aam Sabha in presence of the Ward Commissioner and the District Programme Officer on 23.05.2005. After following the due process, the said Aam Sabha unanimously selected the petitioner and vide letter no.189 dated 28.10.2005 under the signature of C.D.P.O. Sasaram, petitioner was granted selection letter and the same was challenged before this Court by respondent no.11 by filing CWJC No.12645 of 2005. The writ petition was dismissed vide order dated 16.09.2010, considering the fact that the Ward Commissioner being the part of the selection process was not present and as such the earlier selection process was rightly cancelled. Aggrieved by the order passed by this Court dated 16.09.2010, respondent no.11 (hereof/Munni Devi) had preferred LPA No.1043 of 2011. After considering the fact of



the case and the manner in which the Aam Sabha dated 23.08.2004 by which the present petitioner was selected, the Division Bench found not to interfere with the order dated 16.09.2010 passed by the learned Single Judge, as by the time, the fresh selection process was held on 23.05.2005 and the said information was taken note of by the learned Single Judge in its order dated 16.09.2010 and the writ petition was dismissed after hearing the respondent no.11, who was the petitioner of the said writ petition. Aggrieved by the selection of the petitioner held on 23.05.2005, respondent no. 11 approached before the District Magistrate-cum-Collector, Sasaram, Rohtas. Thereafter, the Child Development Project Officer made inquiry and vide letter dated 18.02.2012, he sent the inquiry report to the District Magistrate stating therein that petitioner was not qualified as qualified as respondent no.11 and had also taken into consideration the fact that the petitioner's economic condition was weak not as weak as the respondent no.11 and she had fulfilled all the requisite criteria as laid down in the governing guidelines. Thereafter, In view of the provision contained in para 10.7 of the guide book of selection of Sevika/Sahayika 2011 and letter no.2354 dated 17.05.2013 of the Government of Bihar, Department of Social Welfare, the District Magistrate



vide letter no.1679 dated 20.05.2014 referred the appeal to the Commissioner, Department of Welfare, Patna Division Patna where case was registered, who *vide* order dated 27.08.2014, for cancelling the selection of the petitioner.

4. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was selected in the meeting held for selection of Anganwari Sevika and Sahayika, relating to Centre No.115, Mandai Ward No.24 and new Ward No.30, P.S. Sasaram and the respondent no.11 had challenged the same before this Court by filing CWJC No.12645 of 2005. This Court after taking into consideration that the petitioner was subsequently selected in the year 2005, had dismissed the writ petition filed by respondent no.11 *vide* order dated 16.09.2010 and thereafter respondent no.11 had availed appeal before this Court by filing LPA No.1043 of 2011. The Division Bench has upheld the order passed by the learned Single Judge and had dismissed the appeal filed by the respondent no.11 *in limine* after considering the entire facts of the case and governing guidelines. Respondent no.11 in spite of said fact that this Court had not interfered with the subsequent selection of the petitioner in the year 2005, had availed the remedy before the District Magistrate and the District Magistrate after the inquiry



conducted by the Chiled Development Project Officer, sent the appeal of respondent no.11 before the Deputy Director, who had terminated the petitioner from the post of Anganwari Sevika.

5. The main contention of the petitioner is that once the selection process of the year 2005 was not interfered by this Court, nor the respondent no.11 had challenged the same before this Court and no illegality was pleaded on behalf of respondent no.11 or by the State Government and, as such, the Deputy Director has exceeded his jurisdiction, by not considering the fact that Division Bench of this Court had dismissed the Appeal filed by the respondent no. 11. The petitioner was reinstated and functioning on the post of Aanganwari Sevika, thereafter, till the illegal order passed by the Divisional Commissioner.

6. *Per contra*, Mr. Binod Murari Mishra, learned counsel appearing on behalf of the respondent no.11 submitted that merely reference of the fact that the petitioner was selected as a result of fresh selection of candidates and the said fact has been affirmed by the Division Bench in LPA No.567 of 2013 but the same was not decided on merit and thereafter the Deputy Director has passed the order on the basis of enquiry held, which reveals that petitioner was having third division in



matriculation, whereas respondent no.11 was successful with second division in matriculation, therefore, the order passed by the Deputy Director dated 27.08.2014 is not required to be interfered with, being legal in the eye of law.

7. Mr. Bijoy Kr. Sinha, learned AC to AAG V for the State submitted that though a clear statement has not been made in the counter affidavit, however, from perusal of paragraphs no.7 to 9, it would appear that at the time of dismissal of the writ petition filed by the respondent no.11, the second selection process had already completed in the year 2005 itself and the writ petition was dismissed on 16.09.2010 and order was affirmed vide L.P.A. No. 1043 of 2011. The State, thereafter, reinstated the petitioner.

8. Having considered the rival submissions made on behalf of the parties, the point for consideration before this Court is, as to whether, the information contained in order dated 16.09.2010 passed in CWJC No. 12645 of 2005 to the effect that proper meeting for fresh selection of candidate was made, to which the petitioner was selected and the said information was taken into account by the Division Bench of this Court in LPA No.1043 of 2011 *vide* order dated 26.07.2011 and the LPA preferred by the respondent no.11 was dismissed *in limine*,



whether respondent no.11 had waived off her right and thereafter she cannot be permitted to challenge the selection of the petitioner in Aam Sabha meeting dated 23.05.2005, which was held almost five years before the order dated 16.09.2010 passed in CWJC No. 12645 of 2005 and order was affirmed in L.P.A. No. 1043 of 2011 and the petitioner was reinstated as 'Anganwari Sevika'.

9. The facts goes to show that on the basis of new guidelines, which came in the year 2011, the respondent no. 11 filed a complaint against the petitioner before the District Magistrate for termination on the ground that she obtained 2nd Division in Matriculation while the petitioner had obtained 3rd Division in Matriculation and, as such, in light of guidelines of year 2011, the petitioner is required to be removed from the post of 'Anganwari Sevika' and she claimed for her reinstatement. The District Magistrate sent the letter no. 2354 dated 17.05.2013 to the Deputy Director, who also relying on the guidelines of the year 2011 and by only mentioning the fact that respondent no. 11 had preferred CWJC No. 12645 of 2005, which got dismissed and the order was affirmed in L.P.A. No. 1043 of 2011. The said fact has not been discussed in the order passed by the Deputy Director and without discussing the case of the



petitioner had passed the ex-parte order terminating the service of the petitioner, who was selected on the basis of selection process dated 23.05.2005 had already taken and same was not interfered by a co-ordinate Bench of this Court and the Division Bench of this Court in LPA No, 1043 of 2011 had affirmed the same.

10. The Apex Court in the case of **Kranti Associates Private Limited and Another v. Masood Ahmed Khan and Others**, reported in **(2010) 9 SCC 496** in Para-47 has held as under:

47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.



(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor* [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija v. Spain* [(1994) 19 EHRR 553] EHRR, at 562 para 29 and *Anya v. University of Oxford* [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

“adequate and intelligent reasons must be given for judicial decisions”.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due



process”.

11. Recently Apex Court in the case of **Esteem Properties Pvt. Ltd. Vs. Chetan Kamble and Others** reported in **2022 SCC Online SC 246**, while hearing appeal preferred against the judgment passed by the Bombay High Court in a Public Interest Litigation has held in Paragraph 33 as under:

33.....“*Apex Court has clearly advocated the importance of natural justice and an opportunity of hearing to be afforded to the affected party in any administrative and quasi-judicial proceedings umpteen number of times*”

12. The law is well settled that the competent authority before imposing any penalty specified in the Rule or Guidelines as in the present case has to pass a detailed order and such order has to be a speaking order, meaning thereby such order can only be passed after providing sufficient opportunity of hearing to the aggrieved persons.

13. I am of the opinion that the interference at such a belated stage by the respondents no. 3 and 4 can only be considered to be a coulrable exercise of power. The Deputy Director without giving any notice to the petitioner before her removal from the post of Anganwari Sevika, is against the law laid down by the Apex Court in case of *Kranti Associates*



Private Limited (Supra). This Court finds that the petitioner has not been provided with the opportunity of hearing and the impugned order contained in Memo No.789 dated 05.09.2014 having been passed ex-parte against the petitioner and for the reasons discussed hereinabove is hereby set aside and quashed.

14. The writ petition is, accordingly, allowed. The petitioner is directed to be reinstated back to the post of 'Anganwari Sevika'.

15. In above terms, the writ petition is disposed of. No order as to cost.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	N.A.F.R.
CAV DATE	NA
Uploading Date	15.07.2024
Transmission Date	NA

