

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.592 of 2022

In
Civil Writ Jurisdiction Case No.9711 of 2019

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Raj Kumari Devi Wife of Naresh Kumar Yadav, Resident of Village- Makra,
P.S.- Nayagaon, District- Saran.

... .. Appellant/s

Versus

1. The State of Bihar through the Secretary, Social Welfare Department, Govt. of Bihar, Patna.
2. The Director (I.C.D.S.), Social Welfare Department, Govt. of Bihar, Patna.
3. The District Magistrate, Saran at Chhapra.
4. The District Programme Officer, Saran at Chapra.
5. The Child Development Project Officer, (C.D.P.O.), Sonapur, Saran.
6. Suman Devi Wife of Bindeshwar Sah, Resident of Village- Makra, P.S.- Nayagaon, District- Saran.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Shiv Shankar Prasad Yadav, Advocate
For the Respondent/s : Mr. Gyan Prakash Ojha (GA-7)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-12-2024

The appellant was the writ petitioner who challenged her denial of appointment on the ground of Clause 4.9 of the Anganwarii Sevika/Sahayika Guidelines for selection, 2011 which stipulated that if a candidate's relative is employed with the State Government, then she shall not be considered for such appointment.

2. The prayer of the petitioner was also that there was



an amendment brought in, which enhanced the limit of income of the employed family member to Rs. 15,000/- per month from Rs. 6,000/- in the year 2015. It was the submission of the petitioner that her brother-in-law who was was a Panchayat Teacher was earning only about Rs. 6,300/- per month; lesser than the minimum income of Rs. 15,000/-. The petitioner was aggrieved with the order of the District Programme Officer which was affirmed by the District Magistrate in an appeal. The appellate order found that the Aam Sabha which was considering the selection was held on 24.10.2014 prior to the amendment made on 07.08.2015.

3. The learned Single Judge agreed with the Appellate Authority and found that the petitioner was not qualified for appointment, since her brother-in-law was engaged as a teacher earning more than Rs. 6,000/-, as per the unamended provision which was applicable at the time of selection. The petitioner was not eligible for consideration, was the finding.

4. Learned Counsel for the appellant relied on a judgment of this Court; a learned Judge in ***CWJC No. 13210 of 2014*** dated 27.09.2022 (***Pushplata Kumari vs. The State of Bihar and Others***).

5. Reliance was also placed on ***Civil Appeal No. 208***



of 2024 decided by the Hon'ble Supreme Court on 08.01.2024 in *(Anjum Ara vs. The State of Bihar and Others)*. We extract Paragraph Nos. 8 to 10 of the said judgment:

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, after 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 Division Bench is totally unsustainable.*

10. *When the said Clause 4.9 of the 2011 Guidelines was struck down by the High Court vide judgment dated 27th September 2022, it ceased to exist. As such, it was not necessary for the appellant to challenge the validity of the same inasmuch as the same was already held to be invalid by the very same High Court. In that view of the matter, we find that the judgments and orders passed by the learned Single Judge as well as the Division Bench are not sustainable in law.*

6. Hence, the disqualification is no more operative, as Clause 4.9 of 2011 Guidelines has been struck down by the High Court. It cannot also have any application before the judgment, which struck it down since the High Court does not have the power to prospectively overrule and the striking down



of a clause applies from the inception of the guidelines.

7. On the above reasoning, we set aside the judgment of the learned Single Judge and direct the appellant to be appointed. We notice that the successful candidate was impleaded as the 6th respondent who was issued notice on 12.09.2024, which was received on 30.09.2024. The said candidate has not appeared before us, despite service of notice.

8. In the above circumstances, the appellant shall be granted appointment as Anganwari Sevika. We make it clear that the appointment of the appellant shall only be from the date of joining and she shall not be entitled to any back wages or honorarium; whichever is applicable, for the earlier period. What has been paid to the 6th respondent shall remain with the 6th respondent.

9. The appeal stands allowed.

(K. Vinod Chandran, CJ)

(Nani Tagia, J)

Anushka/-

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CAV DATE	
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