

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.903 of 2018

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Sarita Kumari, wife of Suresh Kumar resident of Village - Sorkahi, P.O. -
Sahsi, P.S. - Alauli, District - Araria.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Social Welfare Department, Govt. of Bihar, Patna.
3. The Director, I.C.D.S. Social Welfare Department, Govt. of Bihar, Patna.
4. The Divisional Commissioner, Munger Division, Munger.
5. The District Magistrate, Khagaria.
6. The District Program Officer, Khagaria.
7. The Sub-Divisional Officer, Khagaria.
8. The Block Development Officer, Alauli, District - Khagaria.
9. The Child Development Project Officer, Alauli, District - Khagaria.
10. The Mukhiya, Gram Panchayat Raj, Sahsi, Block - Alauli, District -
Khagaria.
11. The Panchayat Secretary/Gram Panchayat Raj, Sahsi, Block - Alauli, District
- Khagaria.
12. Suman Kumari Verma Wife of Ashok Kumar resident of Village - Sorkahi,
Ward No. 5, P.O.- Sahsi, P.S. - Alauli, District - Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arun Kumar, Adv.
For the State	:	Smt. Kumari Amrita- GP-3
For the Respondent no.12:	:	Mr. Vivekanand Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 21-02-2024

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the respondent
no.12.

2. The present writ petition has been filed for
quashing of the order dated 13.12.2017/23.12.2017 (annexed as



Annexure-5) passed in Service Appeal No. 08/2017 by the respondent no.4 (Divisional Commissioner, Munger) by which respondent no.12 namely, Suman Kumari Verma has been allowed by setting aside the order dated 01.09.2008 of the District Magistrate, Khagaria passed in Misc. Case No. 4/2008-09 and also for cancelling the selection of the petitioner and direction has been given to make appointment of respondent no.12.

3. Learned counsel for the petitioner submits that the petitioner is permanent resident of Village-Sorkahi, Ward No.5, Gram Panchayat, Sahsi, P.S. & Block-Alauli, District-Khagaria and she belongs to the family of below poverty line and one of the beneficiary family having the name of the petitioner's father, namely, Chandi Lal Mahto mentioned in the B.P.L list having point 6 and she got selection as *Anganwadi Sevika* for *Anganwadi* Center Code No. 128 under Resolution dated 21.02.2007 of the *Aam Sabha*. Counsel also submits that the petitioner has completed her necessary training. Counsel further submits that private respondent no.12 has made complaint before the District Magistrate, Khagaria who has inquired the matter to the executive magistrate and after receipt of inquiry, report entertained and her complaint being Misc.



Case No. 4/2008-09 before District Magistrate in which the claim of the petitioner was rejected. Thereafter, the private respondent has preferred writ petition in Civil Writ Jurisdiction Case No.15683/2008 in which liberty was granted to file appeal within two weeks before the Divisional Commissioner, Munger. In the light of the directions made by this Hon'ble Court, the said appeal was entertained *vide* Service Appeal No. 08/2017 and after hearing the party, it was decided *vide* order dated 13.12.2017/23.12.2017 by setting aside the order dated 01.09.2008 passed by learned Collector in Misc. Case No. 4/2008-09.

4. Learned counsel for the petitioner submits that the order passed by the Divisional Commissioner, Munger is defective order and not in accordance with law, due to the reason that selection was made in the light of 2006 rule under which, rule 11 has specified certain ingredients. Those ingredient are lacking in the final order and therefore, this order is bad in law.

5. Learned counsel for the private respondent on the other hand submits that after considering the entire factual matrix in the light of the compliance of order made by this Hon'ble Court, the Divisional Commissioner, Munger has



discussed all those points which has been raised by the petitioner before the D.P.O. and Appellate Authority decided the appeal in favour of the respondent no.12 and categorically directed to cancel the appointment of the petitioner and directed to appoint the respondent no.12 on the said post. Counsel also submits that the said order passed by the Divisional Commissioner, Munger is completely in accordance with law and it is not in violation of rule 11 of the guidelines of 2006.

6. In the light of the submissions made by the parties, particularly on this technical point whether this order suffers from defects as raised by both the parties that as this order suffers from defects of lacking of the ingredients of clause 11 of rule 2006 or not, it is necessary to look into the operative part of the order. The operative part of the order is at page no.47 of the writ petition annexed as Annexure-5 which states as follows:-

“अतः उपरोक्त वर्णित तथ्यात्मक विवेचना एवं वैधानिक स्थिति के आलोक में समाहर्ता, खगडिया द्वारा विविध वाद संख्या-04/2008-09 में दिनांक 01.09.2008 को पारित आदेश को निरस्त किया जाता है। बाल विकास परियोजना पदाधिकारी, अलौली को आदेश दिया जाता है कि विपक्षी संख्या-7 (सरिता



कुमारी) को चयन मुक्त करते हुए
अपीलार्थी को उक्त आंगनबाड़ी केंद्र की
सेविका के रूप में नियोजित कर कार्यरत
करने की कार्रवाई तत्काल सुनिश्चित
करें। सेवा अपील स्वीकृत।

आदेश की प्रति समाहर्ता, खगड़िया एवं
बाल विकास परियोजना पदाधिकारी,
अलौली को भेजें।”

7. It also transpires to this Court that admittedly, both the petitioner and respondent no.12 are presently not working, but appointment letter has been issued only to the petitioner only and there is no appointment letter made to the respondent no.12. Even after passing the order by the Commissioner, no appointment letter is available to the private respondent no.12 and according to law, it is also clear that appointment letter can be issued only and only by the Selection Committee who is the competent authority under the rule to issue the appointment letter and direction has not been given by the Commissioner to the Appointing Committee, rather, it is to be given to the Child Development Project Officer.

8. In the light of the submissions made, this Court is of the firm view that the order passed by the Commissioner is lacking certain ingredients as this order has been passed in favour of the respondent no.12 and not in favour of the



petitioner. If, this order was in favour of the petitioner, then there is no need of any amendment in the order. But, since the order was in favour of the respondent no.12, then it definitely requires certain ingredients to be inserted in the said order. But, in the interest of justice, instead of remanding back the matter, this Court hereby directs to the C.D.P.O, Alauli to do and follow up all the process within 60 days from the date of production of the order so that the letter of removal in favour of the petitioner and letter of appointment in favour of the respondent no.12 may be issued from the competent authority.

9. With the aforesaid observations and directions, the order passed by the Commissioner is hereby modified up to that extent and this writ petition is hereby disposed off.

(Dr. Anshuman, J.)

Divyansh/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	23.02.2024
Transmission Date	NA

