

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16129 of 2024

Sumanti Kumari, Wife of Dilip Kumar, Resident of Village- Sagarpur, Ward No.- 12, P.O.- Khudwan, P.S.- Obra, District- Aurangabad (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
2. The Divisional Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Aurangabad (Bihar).
4. The Additional Collector-cum- Additional District Magistrate, Aurangabad (Bihar).
5. The District Programme Officer, Aurangabad (Bihar).
6. The Child Development Project Officer, Obra, P.O.- Obra, District- Aurangabad (Bihar).
7. The Ladies Supervisor, Obra Block, P.O.- Obra, District- Aurangabad (Bihar).
8. Nilam Kumari, Wife of Shashi Kishor Nirala, Resident of Village- Sagarpur, Ward No.-12, P.O.- Khudwan, P.S.- Obra, District- Aurangabad (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Uma Kant Mishra, Advocate
For the Respondent/s : Mr. Dhurjati Kumar Prasad, GP-14

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 22-10-2024

Heard Mr. Uma Kant Mishra, learned counsel for the petitioner and Mr. Dhurjati Kumar Prasad, learned counsel for the State.

2. The petitioner is aggrieved by the order dated 12.09.2024/18.09.2024 (Annexure-P-9) passed by the Divisional Commissioner, Magadh Division, Gaya in Anganbadi Revision/Appeal Case No. 171 of 2022, whereby the



appointment of the petitioner from the post of Anganbari Sevika has been dispensed with and in her place, the private respondent has been ordered to be appointed.

3. In pursuant to an advertisement published in the newspaper on 22.12.2017 for selection of Anganbari Sevika in Gram Panchayat Raj Khudwan, the petitioner having found herself eligible submitted application for the post of Anganbari Sevika of Ward No. 12 on 09.01.2018 along with other candidates. After proper scrutiny of the papers/documents a panel for appointment of Anganbari Sevika was prepared. The name of the petitioner stood at serial no.1, whereas the private respondent no.8 secured second position. The meeting of Aam Sabha was held on 08.06.2018 in presence of all the concerned authorities. However, despite having requisite qualification and fulfilling all the eligibility criteria, the claim of the petitioner has been ignored and the private respondent no.8 has been selected for the said post, is the contention of learned counsel for the petitioner.

4. Being aggrieved, the petitioner preferred Anganbari Sevika/Sahaika Appointment Appeal Case No. 67 of 2018 before the District Programme Officer, Aurangabad. The respondent-District Programme Officer, Aurangabad having heard the parties allowed the appeal vide order dated



26.07.2019, cancelling the appointment of private respondent no.8 and directed for selection of the petitioner. The afore-noted order was put to challenge before the Additional District Magistrate, Aurangabad in Anganbari Sevika/Sahaika Appointment Appeal Case No. 74 of 2020, however, it came to be dismissed by the order dated 08.04.2021 affirming the order of the District Programme Officer. The private respondent being dissatisfied with the orders afore-noted, moved before this Court in C.W.J.C. No. 12007 of 2021; the writ petition also came to be dismissed with a liberty to the private respondent to avail the remedy in accordance with law.

5. In pursuant thereto, the petitioner filed Anganbari Revision Appeal Case No. 171 of 2022 before the Divisional Commissioner, Magadh Division, Gaya. Finally, it came to be allowed vide order dated 12.09.2024/18.09.2024, taking note of the fact that at the time of selection, the petitioner was not married and thus set aside the order passed by the District Programme Officer as well as the Additional Collector cum Additional District Magistrate. This is the order which is under challenge before this Court.

6. Learned counsel for the petitioner while assailing the order of the Divisional Commissioner has drawn the attention of this Court to Annexure-P-2 series containing the



Marriage Certificate issued by the Mahavir Mandir and the certificate of Marriage Registration in support of the claim of the petitioner that her marriage was solemnized on 08.12.2017. It is further contended that the public representative of the concerned village has also issued certificate to the effect that the marriage of the petitioner was solemnized on 08.12.2017 and, as such, the impugned order of the Divisional Commissioner setting aside the concurrent finding of the District Prgoramme Officer as well as the Additional Collector cum Additional District Magistrate, is wholly unsustainable in law as well as on facts.

7. Mr. Dhurjati Prasad, learned counsel for the State has taken this Court through the impugned order passed by the Divisional Commissioner and submitted that while passing the impugned order, the Divisional Commissioner has taken note of the fact that the wedding card of the petitioner clearly shows the date of wedding was scheduled on 25.04.2018. The priest of the Mahavir Mandir was also asked to submit the document in support of solemnization of the marriage, but he failed to produce any of the document; all the more, the Mahavir Mandir had never been registered with the Bihar State Board of Religious Trust. Having considered all the afore-noted facts, the Divisional Commissioner has found that the marriage of the



petitioner was solemnized on 25.04.2018 and, as such, at the time of selection, she was not married and accordingly set aside both the orders as afore-noted. It is further contended that be that as it may, admittedly the claim of the petitioner is based upon the date of her marriage, which has been disputed by the statutory authorities, thus with respect to a disputed question of fact, she ought to avail the remedy of Civil Court of Competent Jurisdiction.

8. Having heard the learned counsels for the respective parties and taking note of the materials available on record, before parting with the final outcome, it would be apt and proper to observe that the Hon'ble Supreme Court in the case of **State of Karnataka and Others v. Ameerbi and Others [(2007) 11 SCC 681]** while considering the case of the Anganbari Workers has ruled that the persons working as Anganbari Sevika do not hold civil post and their applications are not maintainable. The post of Anganbari Workers are not the statutory post and they are created under the scheme and, as such, they do not have any protection under Article 311 of the Constitution of the India.

9. The similar proposition has also been enunciated by the judgment of this Court in the case of **Parvati Devi @ Parvati Singh vs. the State of Bihar and Ors. [2024(1) BLJ**



178], wherein the learned Court highlighting the decision of the Hon'ble Supreme Court in the case of **Ameerbi** (supra) held as follows:

“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.”

10. Apart from the afore-noted settled legal position,



this Court also finds that the case in hand, there is a disputed question of fact, requiring evidence to establish the same and, as such, while exercising the writ jurisdiction under Article 226 of the Constitution, this Court normally ought to refrain itself to delve into the matter of disputed question of fact and decide the issue.

11. To appreciate the principles of law, it would be apposite to quote the observations of the Hon'ble Supreme Court in the case of **Real Estate Agencies v. State of Goa and Others [(2012) 12 SCC 170]**.

“17. However, there is no universal rule or principle of law which debars the writ court from entertaining adjudications involving disputed questions of fact. In fact, in the realm of legal theory, no question or issue would be beyond the adjudicatory jurisdiction under Article 226, even if such adjudication would require taking of oral evidence. However, as a matter of prudence, the High Court under Article 226 of the Constitution, normally would not entertain a dispute which would require it to adjudicate the contested questions and conflicting claims of the parties to determine the correct facts for due application of the law. In *ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.* [(2004) 3 SCC 553] , the precise position of the law in this regard has been explained in paras 16, 17 and 19



of the judgment in the course of which the earlier views of this Court in *Gunwant Kaur v. Municipal Committee, Bhatinda* [(1969) 3 SCC 769] and *Century Spg. & Mfg. Co. Ltd. v. Ulhasnagar Municipal Council* [(1970) 1 SCC 582] has been referred to.”

12. On both the counts, this Court does not find any merit in the present writ petition. However, the petitioner is always at liberty to get the dispute resolved by a Civil Court of Competent Jurisdiction, which shall finally decide the issue left over.

13. The writ petition stands disposed off with the liberty aforesaid.

(Harish Kumar, J)

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CAV DATE	NA
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