

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16962 of 2023

Saroj Devi Wife of Lallan Kumar Choudhary, Resident of Village - Hanuman Nagar (Bhaur), Ward No. 11, Post and Office - Bhaur (Lohat), Gram Panchayat Bhaur, Block and Police Station - Pandaul, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar, Through the Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
2. The Director Integrated Child Development Service (In Short I.C.D.S.), Social Welfare Department, Government of Bihar, Patna.
3. The Divisional Commissioner, Darbhanga Division, Darbhanga.
4. The Collector, Madhubani, District Madhubani.
5. The District Programme Officer, Madhubani, Police Station - Town (Madhubani), District- Madhubani.
6. The Child Development Project Officer, (C.D.P.O.), Pandaul Police Station Pandaul, District- Madhubani.
7. Smt. Poonam Kumari - 2 Lady Supervisor (L.s.) cum Member Sachiv, Chayan Samittee, Anganbari Centre No. 306, Ward No. 11, Hanuman Nagar, P.O. and Gram Panchayat Bhaur, Lohat, P.S and Block Pandaul, District- Madhubani.
8. Sri Ganesh Mandal, Ward Member cum Chairman Chayam Samittee, Anganbari Centre No. 306 Ward No. 11, under Gram Panchayat Bhaur, Lahat, Block and Police Station Pandaul, District- Madhubani.
9. Smt. Moni Kumari, Wife of Abhishek Kumar Jha @ Rajeev Jha, Resident of Village - Hanuman Nagar, Ward No. 11, P.O. and Gram Panchayat Bhaur, Lahat, Block and Police station Pandaul, District- Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Gajendra Kumar Jha, Adv.
For the Respondent/s : Mr. S.K. Mandal (Sc 3)

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 02-05-2024

Heard learned Advocate for the petitioner as well as
learned counsel for the State.



2. The petitioner has invoked the extraordinary jurisdiction under Article 226 of the Constitution of India for the following reliefs:-

“ 1. (i) For quashing the ex-parte order dated 02.07.2022 passed by the respondent Divisional Commissioner, Darbhanga in Ang. 9 of 2022 (Annexure: P/13) so preferred/ filed by the private respondent no.9, against the order dated 04.05.2021 in Misc (Anganbari) Case No. 34 of 2020 (Annexure: P/7) passed by the District Programme Officer, Madhubani (Respondent no.5) whereby and where under the respondent Divisional Commissioner acted unauthorizedly in entertaining the appeal/ revision and thereby directed to ensure appointment of appellant/ respondent no.9 (herein) as Sevika at Centre No. 306 under Child Development Project Office Pandaul with immediate effect.

ii) For further order or direction for declaring/ holding that the Divisional Commissioner has no authority to maintain/ entertain/ adjudicate matter regarding appointment/ selection of Anganbari Sevika/ Sahayika in view of guideline/ margdarsika 2016 (Annexure: P/1) also in view of the saving clause of I.C.D.S. letter no. 286 dated 10 27.05.2019 (Annexure: P/10).



iii) Also for quashing the order dated 21.05.2022 as well as subsequent order dated 19.08.2023 passed by the respondent Collector, Madhubani who instead of adjudicating the Anganbari Appeal on its merit could observed that against the order of District Programme Officer, appeal will be before the Divisional Commissioner, contrary to the Rules/ Margdarsika 2016 which provide appeal before the Collector of the District also in term of publication of vacancies prior to 24.05.2019/ 27.052019.

iv) For further order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

3. Indisputably a notice was issued by the Director, I.C.D.S., Bihar, Patna for selection of Anganwari Sevika/Sahayika on 11th May, 2019 as per the following schedule:-

“

क्र०	कार्य	निर्धारित समय सीमा
1	रिक्ति वाले केन्द्रों से संबंधित सूचना का NIC के वेब-साईट पर अपलोड किया जाना	दिनांक 24.05.2019 तक
2	विज्ञापन का प्रकाशन	दिनांक 25.05.2019 तक
3	आवेदन पत्रों की प्राप्ति	दिनांक 25.05.2019 से 08.06.2019 तक
4	औपबंधिक मेधा सूची का प्रकाशन	दिनांक 10.06.2019
5	आपत्ति दर्ज करने की अवधि	दिनांक 11.06.2019 से 13.06.2019 तक
6	आम सभा	दिनांक 15.06.2019 से 20.06.2019 तक पूर्ण कर लिया जाना है।



4. From the schedule of the letter dated 11th May, 2019, quoted above, it was directed that the eligible candidates could file application during the period between 25th May, 2019 to 8th June, 2019. The petitioner was an Anganwari Sahayika before publication of above Advertisement dated 11th May, 2019. She filed an application on 8th June, 2019 for being appointed as Anganwari Sevika.

5. It is needless to say that Anganwari Sevika/Sahayika are selected in a meeting called Aam Sabha. In the instant case Aam Sabha was first convened on 17th February, 2020. In the said Aam Sabha no decision could be taken. Subsequent Aam Sabha was convened on 6th March, 2020 and merit list was published mentioning the names of one Puja Kumari, Saroj Devi (petitioner) and Moni Kumari (respondent no. 9). As Puja Kumari was a resident of a place outside the Ward, her selection was cancelled. She was not considered for selection and appointment. The petitioner was given selection letter in the meeting itself dated 6th March, 2020. The District Programme Officer, Madhubani passed a reasoned order in Miscellaneous Case No. 34 of 2020, assigning the reason for selection of the petitioner as Anganwari Sevika. The petitioner received two days' training conducted by the I.C.D.S.



and joined as Anganwari Sevika. Finally on 29th May, 2021 the competent authority of the Social Welfare Department issued selection letter to the petitioner.

6. The private respondent no. 9 preferred an appeal before the District Magistrate, Madhubani challenging the appointment of the petitioner to the post of Anganwari Sevika. The District Magistrate did not accept the application filed by the respondent no. 9 challenging the appointment of the petitioner. On the other hand, he directed the respondent no. 9 to prefer an appeal/revision, as the case may be, before the Divisional Commissioner, Darbhanga. Accordingly, she preferred an appeal before the Divisional Commissioner, Darbhanga and the Divisional Commissioner, Darbhanga passed an order dated 2nd July, 2022 directing the Child Development Project Officer (C.D.P.O.), Pandaul and District Programme Officer, Madhubani to appoint respondent no. 9 with immediate effect as Anganwari Sevika in Ward No. 11.

7. The said order dated 2nd July, 2022 is assailed by the writ petitioner in the instant writ petition with appropriate relief as stated above.

8. Learned Advocate on behalf of the petitioner submits that Anganwari Sevika/Sahayika Selection Guideline, 2019 came



into force w.e.f. 27th May, 2019 by virtue of Memo No. ICDS/40010/10-2007-286, dated 27th May, 2019. It is clearly stated in the above mentioned Memo. that previous guidelines of 2015 (Town) and 2016 (Village) in respect of appointment of Anganwari Sevika/Sahayika were repealed by the guideline of 2019. It is also directed that in respect of the centers for which Advertisement was already made, the guideline of 2019 for the purpose of appointment of Anganwari Sevika and Sahayika shall not be applicable and the guideline of 2019 shall be made applicable in respect of the Advertisement for selection of Anganwari Sevika and Sahayika, published on or after 27th May, 2019. In the instant case Advertisement was published on 25th May, 2019. Therefore, the guideline of 2019 which came into force w.e.f. 27th May, 2019 shall not be applicable. It is also contended on behalf of the petitioner that in the Advertisement it is clearly stipulated that the candidates would have to file application during the period between 25th May, 2019 and 8th June, 2019. From Annexure-P/4 - provisional list it appears that the candidates whose name were appearing in Serial Nos. 1 and 2 made their application on 14th June, 2019 and 19th June, 2019 i.e. after 8th June, 2019. The State respondents did not come forward to explain if the last date of filing of the application was extended by a



subsequent notification. Only on these grounds the candidature of Puja Kumari and Moni Kumari, respondent no. 9, ought to have been rejected. The petitioner whose name is appearing in Serial No. 3 made her application on 8th June, 2019. Prior to her application she was Anganwari Sahayika of the same Ward for which Advertisement for selection of Anganwari Sevika was issued on 11th May, 2019.

9. Learned Advocate for the petitioner also submits that in the guideline of 2016 which was subsequently amended in 2018, it was stipulated that the candidates who previously worked as Anganwari Sahayika in the same Ward will get and weightage of 10 marks (Clause-8A of the Amended Guideline, 2018). Therefore, I.C.D.S., Pandaul, Madhubani published final list stating the name of the petitioner in Serial No. 2 after giving weightage of 10 marks. Vide Annexure-8-I, the petitioner was given appointment. It is also contended on behalf of the petitioner that under the Guideline of 2016 read with the amended Guideline of 2018, the District Magistrate is the appellate authority and the Divisional Commissioner has no jurisdiction to take up any revision or appeal against any order passed by Aam Sabha or the I.C.D.S. as the case may be. Thus, it is contended on behalf of the



petitioner that the impugned order dated 2nd July, 2022 is bad in law and the same is liable to be quashed.

10. The learned Advocate on behalf of the State respondents, on the other hand, submits that the forwarding letter dated 27th May, 2019 clearly states that the previous guidelines of 2016 and 2018 shall be made applicable only in respect of the selection of Anganwari Sevika and Anganwari Sahayika and for no other purpose, the said guidelines are made applicable.

11. It is also submitted by him that the issue is no longer res integra in view of the unreported decision of this Court passed in ***C.W.J.C. No. 731 of 2020 (Husna Begum @ Husna Khatoon Vrs. The State of Bihar & Ors.)*** decided on 22nd August, 2023. The learned counsel for the respondents relied to paragraph-6 of the said unreported decision wherein a Coordinate Bench observed as follows:-

“6. The court has considered this aspect of the matter earlier. The letter of the ICDS dated 27.05.2019 is clear in its intent that from the date of coming into existence of the letter i.e. 27.05.2019, all earlier guidelines stand repealed. The saving clause is only with respect to a process of selection initiated under an earlier guidelines so as to enable it to continue and attain its logical conclusion. Other than the process of selection, the remedies, etc., will be guided by the 2019 Guidelines, as is clear from its intent. ”



12. Even if the arguments advanced by the learned counsel for the respondents is accepted, it is found from the documents filed by the petitioner that the petitioner was selected on the basis of the previous guidelines of 2016 and 2018 as the second candidate after getting weightage mark of 10 as she was Anganwari Sahayika of the same Ward previously.

13. Indisputably, the candidate, who topped the merit list could not be considered as she was an outsider and not a resident of the Ward. Therefore, her name was deleted and as per the merit list the petitioner rightly got appointment letter as Anganwari Sevika.

14. The Divisional Commissioner, Darbhanga without hearing the petitioner, on the basis of an ex parte order dated 2nd July, 2022, quashed the letter of appointment of the petitioner and directed that the respondent no. 9 shall be appointed as Anganwari Sevika with immediate effect (tatkāl prabhav).

15. In view of such circumstances, the impugned order dated 2nd July, 2022 is illegal, arbitrary and violative of the principles of natural justice.

16. Due to the reason what has been stated above, this Court is of the view that the petitioner is entitled to the relief as prayed for.



17. Accordingly, writ in the nature of certiorari be issued cancelling the order dated 2nd July, 2022, passed by the Divisional Commissioner, Darbhanga.

18. The writ in the nature of mandamus be issued directing the State respondents to permit the petitioner to carry on his work as Anganwari Sevika as per the letter of appointment issued in her favour on 29th May, 2021 (Annexure-P/8-i).

19. This disposes of the instant writ petition on contest.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	NAFR
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Uploading Date	
Transmission Date	

