

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17688 of 2024

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Kumkum Devi, Wife of Sri Mukesh Yadav, Resident of Village- Medni Chauki, Ward No.-9, under Panchayat- Banshipur, P.S.- Suryagarha, District- Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Social Welfare Department, Government of Bihar, Patna-1.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna-1.
3. The Collector, Lakhisarai.
4. District Programme Officer, Lakhisarai.
5. Child Development Project Officer, Surjagarha, District- Lakhisarai.
6. Rubi Devi, Wife of Sri Praveen Kumar, Resident of Village- Mednichauki, under Panchayat Banshipur, P.S.- Surjagarha, District- Lakhisarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vivekanand Vivek, Advocate Mr. Debesh Kumar Poddar, Advocate
For the Respondent/s	:	Mr. Prabhat Ranjan, AC to GP- 6

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 25-11-2024

Heard Mr. Vivekanand Vivek, learned Advocate for the petitioner and Mr. Prabhat Ranjan, learned Advocate for the State.

2. The petitioner is aggrieved by the order dated 16.08.2024 passed by the Divisional Commissioner, Munger Division in Anganbari Sewa Appeal No. 43 of 2023, as contained in Annexure-P/6 to the writ petition, as also the order dated 11.08.2023 passed by the Collector, Lakhisarai, as contained in Annexure-P/4.



3. The short facts, which led to the filing of the present writ petition are that pursuant to an Advertisement for selection of Anganbari Sevika published in the year 2013, the petitioner along with other candidates were submitted their applications. Apart from the conditions, *inter alia*, for selection of Anganbari Sevika, as laid down under the guidelines, it was mandatory that the candidate must be resident and voter of concerned Ward or the husband and father-in-law must be the resident of the ward and their names should also be in the voter list.

4. The petitioner being the resident of Village Mednichauki, in Ward No.9 under Banshipur Gram Panchayat, Prakhand Surajgarha, District Lakhisarai, her name was placed in the mapping register prepared in the year 2013, whereas the name of respondent no.6 did not find place in the said register, on account of she being resident of ward no.8. The petitioner in this regard also filed objection before the Child Development Project Officer, Surajgarha. Finally having found the petitioner eligible, the petitioner was directed to be selected on the basis of the document submitted before the Committee. On being aggrieved by the order of selection dated 30.04.2016, as contained in Annexure- P/2, the petitioner moved before the



District Programme Officer, Lakhisarai, who found the selection of the respondent no.6 improper and accordingly set aside her selection vide order dated 30.04.2016 (Annexure- P/2) and directed the CDPO, Surajgarha to ensure the selection of the petitioner.

5. Aggrieved, the respondent no.6 approached before this Court in C.W.J.C. No. 16330 of 2016, which came to be disposed of with a liberty to file an appeal before the competent authority. In pursuant thereto the respondent no.6 preferred Aanganbari Appeal Case No. 3 of 2022 before the Collector, Lakhisarai and finally the order of the District Programme Officer, Lakhisarai was set aside and the Child Development Project Officer, Surajgarha was directed to issue selection letter to respondent no.6.

6. Being aggrieved, the petitioner approached before the learned Divisional Commissioner, Munger in Aanganbari Sewa Appeal No. 43 of 2023, which also came to be rejected vide order dated 16.08.2024. While assailing the impugned order of the Divisional Commissioner as well as the District Magistrate, Lakhisarai, learned Advocate for the petitioner vehemently contended that both the authorities have failed to consider the report submitted by the authority that the



respondent no.6 was the resident of Ward No.8 at the time of preparation of mapping register and submission of the application for selection. The subsequent documents too suggest that she was not the resident of Ward No.9 and thus does not entitle to get her selection on the post of Aanganbari Sevika.

7. The attention of this Court has also been drawn to the report submitted by the Child Development Project Officer, Surajgarha, as contained in letter no.167 dated 03.04.2024 as well as letter no. 777 dated 19.06.2024 issued by the Block Development Officer, Surajgarha to the effect that at the time of selection, the respondent no.6 had been residing in Ward No.8. This is the contention of the petitioner that ignoring the aforesaid reports, the Divisional Commissioner has rejected the Service Appeal of the petitioner and confirmed the order of the District Magistrate, Lakhisarai.

8. On the other hand, learned Advocate for the State countering the submissions of the petitioner submitted that while passing the impugned order, the District Magistrate, Lakhisarai as well as the Divisional Commissioner, Munger directed for spot verification and after verification it has been found that respondent no.6 belongs to Ward No.9 and her husband and father-in-law are the permanent resident of such



Ward. The aforesaid fact has also been verified and confirmed by the Sarpanch of Ward No.9. Since the name of the husband and father-in-law of respondent no.6 had already been in the mapping register and in the voter list, thus no illegality has been found in the process of selection of respondent no.6.

9. Having considered the submissions advanced on behalf of the learned Advocate for the respective parties and taking note of the fact that while exercising the power of judicial review, this Court is only required to see the legality of the decision making process or any error of law and the jurisdictional defect, which led to a manifest injustice. There is no irregularity pointed out by the learned Advocate for the petitioner with regard to the decision making process.

10. So far the contention of the petitioner is concerned, suffice it to observe that the disputed question of fact, which cannot be satisfactorily decided without taking evidence, the Court ought not to decide the same in a prerogative writ jurisdiction under Article 226 of the Constitution of India. Moreover, the Court on various occasion held that the *Anganbari Sevika* is not a statutory post under the Government and thus they do not have any protection under Article 311 of the Constitution of India.



11. This Court while considering the similar issue in the case of *Parvati Devi @ Parvati Singh Vs. The State of Bihar and Ors.*, reported in **2024 (1) BLJ 178** 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.

12. This Court also deems it apt and proper to refer a judgment rendered by the learned Division Bench of this Court in the case of **Neetu Kumari v. The State of Bihar and Others**, reported in **2011 (4) PLJR 20**, paragraphs no. 4 to 6 whereof are reproduced herein below:-

“4. In our considered view, the post of Anganbari Sevika is not a post having security



of tenure or protection under Article 311 of Constitution of India. Considering the very nature of engagement which provides of honorarium, we are of the view that in case the appellant still feels aggrieved, she may approach the Civil Court for damages.

5. There is nothing at stake in such a scheme other than honorarium. For such contractual engagements the relief of reinstatement is not appropriate and even if there is breach of the scheme or any other principle of law, the claim should ordinarily be permitted, if found good on merits, only for damages.

6. The appeal is dismissed.”

13. Similarly, this Court in the case of **Urmila Kumari Vs. the State of Bihar and Ors.** reported in **2024(1) BLJ 361** has observed as follows:-

“9. Another aspect of the matter is that the post of *Anganbari Sevika* is neither a post having security of tenure nor a civil post, hence it is sufficient that after due notice to the petitioner and hearing her, an order is passed, whereafter adequate opportunity is granted by the appellate authority and in case the incumbent is still aggrieved, she may approach the learned Civil Court of competent jurisdiction. In this connection, it would be apt to refer to a judgment rendered by a co-ordinate Bench of this Court in the case of **Seema Kumari vs. The State of Bihar**



& Ors., reported in **(2015) SCC Online Pat 7267**, paragraphs nos. 9 to 11 whereof, are reproduced herein below:-

“9. As noted above, the Anganbari Sevika is not a government servant and has no protection under Article 311(2) of the Constitution of India so as to envisage the concept of regular departmental proceeding. The petitioner was given a notice. She was informed about the allegation against her. She had filed her show-cause reply which was considered by the District Programme officer and when the order went against her, she had also been given adequate opportunity by the appellate authority who, in fact, had himself got the matter verified by referring the matter to the Bihar Sanskrit Board.

10. In that view of the matter, this Court would not find any error in the impugned order of termination of the services of the petitioner when it is found that the petitioner had got appointment by producing a document in support of qualification which was found to be incorrect/forged.

11. Thus for the reasons indicated above, this application must fail and is, accordingly, dismissed.”

14. In view of the aforesaid facts and the settled



legal position, this Court does not find any substance in the writ petition. Accordingly, the present writ petition stands dismissed.

15. It is made clear that since there is a disputed question of fact as has been raised before this Court, the petitioner is always at liberty to approach the competent authority/Court for rederessal of her grievance.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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