

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5424 of 2018

Nitu Kumari Wife of Brij Mohan Yadav, Resident of Village- Jagdishpur, Post Office- Lachchnar, Police Station and Block- Sikandara, District- Jamui.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Department of Social Welfare, Government of Bihar, Patna.
2. The Director, I.C.D.S., Bihar, Patna.
3. The District Magistrate, Jamui, District- Jamui.
4. The District Programme Officer, Jamui.
5. The District Welfare Officer, Jamui.
6. The Child Development Project Officer, Sikandara, Block- Sikandara, District- Jamui.
7. Rinku Kumari, Wife of Mukesh Paswan, Resident of Village- Jagdishpur, Post Office- Lachchnar, Police Station and Block- Sikandara, District- Jamui.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Arun Kumar, Advocate
For the Respondent/s	:	Mr. Sunil Kumar Mandal, SC-3
For Respondent No.7	:	Mr. Nagendra Sharma, Advocate
		Mr. Amar Prakash, Advocate

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 15-04-2024

Heard learned counsel for the petitioner, learned
counsel for respondent No.7 and learned counsel for the State.

2. The present writ petition has been filed for the
following reliefs:-

(i). A writ in the nature of certiorari setting aside
order dated 17.1.2018 passed in Anganwari Appeal Case No. 13
of 2015 passed by learned District Magistrate, Jamui, as



contained in Annexure-7 whereby and whereunder appeal preferred by petitioner against the order passed by learned District Programme Officer, Jamui, has been rejected considering the materials available on record as well misconstruing the legal position in this regard.

(ii) For setting aside the order dated 9.12.2013 passed by learned District Programme Officer, Jamui, under which on the complain made by Private Respondent the selection of petitioner as Anganwari Sevika of the Centre No. 133 situated at Jagdish Mushahari Tola illegally been cancelled.

(iii) For a direction upon the Respondent concerned to reinstate the petitioner on the post of Anganwari Sevika of the concerned centre with all benefits.

(iv) Any other order/orders for granting any other relief/ reliefs for which the petitioner is found entitled to in the facts and circumstances of the case.

3. Learned counsel for the petitioner submits that he has filed the writ petition challenging the order dated 17.01.2018 passed by the Collector in Anganwari Appeal Case No.13 of 2015 on the ground that the private respondent has no eligibility to participate in the appointment process, but she has been permitted to appear in the selection process, which is



absolutely perverse in the light of Rule-4.5 of the Guideline of 2011. Counsel for the petitioner relied on the judgment of Hon'ble Supreme Court in the case of **Yogesh Kumar and Others Vs. Govt. of NCT, Delhi and Others** reported in (2003) 3 SCC 548, paragraph-8 of the judgment is relevant which reads as follows:-

“8. This last argument advanced also does not impress us at all. Recruitment to public services should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the rules allows entry to ineligible persons and deprives many others who could have competed for the post. Merely because in the past some deviation and departure was made in considering the B.Ed candidates and we are told that was so done because of the paucity of TTC candidates, we cannot allow a patent illegality to continue. The recruitment authorities were well aware that candidates with qualification of TTC and BEd are available yet they chose to restrict entry for appointment only to TTC-pass candidates. It is open to the recruiting authorities to evolve a policy of recruitment and to decide the



source from which the recruitment is to be made. So far as BEd qualification is concerned, in the connected appeals (CAs Nos. 1726-28 of 2001) arising from Kerala which are heard with this appeal, we have already taken the view that BEd qualification cannot be treated as a qualification higher than TTC because the nature of the training imparted for grant of certificate and for degree is totally different and between them there is no parity whatsoever. It is projected before us that presently more candidates available for recruitment to primary school are from BEd category and very few from TTC category. Whether for the aforesaid reasons, BEd qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider BEd candidates for the vacancies advertised as eligible. In our view, the Division Bench of the Delhi High Court was fully justified in coming to the conclusion that BEd candidates were rightly excluded by the authorities from selection and appointment as primary teachers. We make it clear that we are not called upon to express any opinion on any BEd



candidates appointed as primary teachers pursuant to advertisements in the past and our decision is confined only to the advertisement which was under challenge before the High Com and in this appeal.”

4. Counsel submits that the case of the petitioner has been rejected only on the ground that the *Bhaisur* of the petitioner was running a Public Distribution Shop. Counsel submits that partition has already been taken place three years ago and in this regard document was produced before the authority but the authority had not considered those documents at all.

5. Counsel for the private respondent submits that the private respondent belongs to the majority (Bahulyavarg) of that area and, therefore, selection has been made correctly. Counsel for the private respondent further submits that private respondent is working since 2014 without any complaint and with full sanctification of the authority. Therefore, permission may be granted to continue her in service.

6. Learned counsel for the state, on the other hand, has taken different stand at all and submits that neither petitioner nor private respondent was selected in accordance



with strict guidelines of Anganwari Sevika/Sahayika Rules, 2011 as the allegation against the petitioner is that close relative (*Bhaisur*) is running a public distribution shop in violation of rule 4.10 of the guidelines and private respondent is working in violation of rule 4.5 of the said rules.

7. In the light of the submissions made, it transpires to this Court that the claim of both the petitioners are in violation of guidelines of Anganwari Sevika/Sahayika Rules, 2011.

8. In this view of the matter, it is directed to the State to remove private respondent No.7 on the said post and fresh process for selection be initiated and concluded within six months.

9. With this direction, this writ petition is disposed off.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
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