

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5538 of 2024

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Sapna Devi wife of Shashi Ravidas, resident of Village and P.O.- Medhkuri,
P.S.- Meshkaur, District- Nawada, Pin Code-

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary/Principal Secretary, Panchayati Raj Department, Bihar, Patna.
2. State Election Commission, Bihar, Patna through its Secretary.
3. Commissioner, State Election Commission, Bihar, Patna.
4. Secretary, State Election Commission, Bihar, Patna.
5. The District Magistrate, Nawada.
6. The Sub Divisional Officer, Rajaul, District- Nawada.
7. The District Panchayat Raj Officer, District- Nawada.
8. The Block Development Officer, Block- Meskaur, District- Nawada.
9. Abdul Rashid Khan, Son of Rayasat Khan resident of Parauriya, P.O.- Medhkuri, P.S.-Sirdalla, District- Nawada, Pin Code- 805122.
10. Bihar Rural Livelihood Promotiion Society, Vidyut Bhawan Patna through its Chief Executive Officer.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Advocate
For the State	:	Mr. Subhash Pd. Signh, GA 03
For the Resp. No. 9	:	Mr. S.B.K. Mangalam, Advocate
For the SEC	:	Mr. Ravi Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 21-03-2025

Heard learned counsel for the petitioner and
learned counsel appearing on behalf of the respondents.

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

"(i) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing of the order dated 19/02/2024 contained in memo no. 695 passed by the State Election Commissioner, Bihar, Patna, by which the election



of the petitioner against the post of Mukhiya of Bijubigha in Meskaur Block in the district of Nawada has been cancelled in terms of the provisions contained under Section 136(1) (D) read with Section 136 (2) of the Bihar Panchayat Raj Act, 2006 while holding the petitioner to be disqualified to contest the election:

(ii) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities to refrain from giving effect the aforesaid order dated to 19/02/2024 contained in memo no. 695 passed by the Commissioner, State Bihar, Election Patna and accordingly, allow the petitioner to continue in the capacity of Mukhiya Bijubigha in Meskaur Block in the district of Nawada following her election in the said capacity in accordance with law;

(iii) Issuance of a declaration holding that in terms of the provisions contained under Section 136(1) of the Bihar Panchayati Raj Act, 2006, the petitioner was duly qualified for being elected as the of the concerned Gram Panchayat and as such, she did not suffer any disqualification;

(iv) Any other relief that the petitioner may be found to be entitled to in the facts and circumstances of the present case."

3. Learned counsel for the petitioner submits that the petitioner had resigned from the post of the Community Mobiliser on 29.09.2021 and the same was accepted by the authority on the same day and after resigning from the post of Community Mobiliser, she accordingly contested the election of Mukhiya and she was elected. Subsequently, the Respondent No. 9 has filed a complaint before the State Election Commission, Bihar, Patna which was recorded as Misc. Case No. 606 of 2022 and the Election Commission after hearing the party and from perusal of the record came to the conclusion that



on the relevant date the petitioner was serving as the Community Mobiliser and as such, she was receiving payment and thus was not eligible for filing her nomination/elected as Mukhiya. Accordingly, Section 136(1)(d) read with Section 136 (2) of the Bihar Panchayat Raj Act, 2006, the post was declared vacant with further direction to the authority to take steps for fresh election on the said post.

4. Learned counsel for the petitioner submits that she had resigned from the post in question on 29.09.2021 and the same was received on the same day in the office of the concerned respondents and apart from that, from bare perusal of the office order dated 20.02.2015 with respect to Jeevika he has pointed out the payment of Community Mobiliser as mentioned in the office order dated 20.02.2015 is quoted as follows:-

Payment of the Community Mobiliser

1. During the internship period, BPIU/ VO will pay Rs. 750/- (lump sum) per month to Intern through account payee cheque.

2. After the confirmation, BPIU/ VO will review the performance of Community Mobiliser on monthly basis and release the honorarium based on their performance by account payee cheque. It should be recorded in the books of accounts



including the payment voucher.

Payment Matrix (for 1 Community Mobiliser)

Period (Age of the CM)	Honorarium (per SHG)	Contribution		
		SHG	VO	PROJECT
During the Internship Period	Rs. 750.00			By the Project
1 st Year	Rs. 150.00 per month per SHG (Rs. 1500/- for 10 SHGs)	Rs.10/- per month per SHG	Rs. 50/- per month (fixed)	Rest amount by the Project
2 nd Year	Rs. 175.00 per month per SHG (Rs. 1750/- for 10 SHGs)	Rs.50/- per month per SHG	Rs. 50/- per month (fixed)	Rest amount by the Project
3 rd Year	Rs. 200.00 per month per SHG (Rs. 2000/- for 10 SHGs)	Rs.100/- per month per SHG	Rs. 50/- per month (fixed)	Rest amount by the Project
4 th Year	Rs. 250.00 per month per SHG (Rs. 2500/- for 10 SHGs)	Rs.150/- per month per SHG	Rs. 50/- per month (fixed)	Rest amount by the Project
5 th Year and Onwards	Rs. 250.00 per month per SHG (Rs. 2500/- for 10 SHGs)	Rs.250/- per month per SHG		

5. Learned counsel for the petitioner draws the attention of this Court on Clause 2 of the payment of Community Mobiliser which suggests that the monthly payment of the Community Mobiliser is on the basis of honorarium based on their performance, which suggests that the Community Mobiliser is not holding a civil post and the petitioner is neither the holder of any civil post nor she is a Government Servant or



any organization in which she has been appointed on the honorarium basis and apart from that she has resigned from the post in question and her resignation was accepted by the authority concerned on the same day. He further submits that after filing of the Case No. 06 of 2022 a letter dated 08.02.2022 was issued by the District Project Manager under District Project Coordination Unit of BRLPS at Nawada and it was communicated that the Community Mobiliser is not a regular employee and Community Mobiliser are only part time staff of the village organization and even selection of the Community Mobiliser are done by the village organization and apart from that vide letter dated 29.09.2021 she had already resigned from the post of the Community Mobiliser under village organization Medhkuri and after resignation from the post in question, she has filed her nomination paper for the post of Mukhiya in the Medhkuri village Bijubigha Panchayat under the Meskaur Block in the district of Nawada.

6. Learned counsel for the petitioner relied upon the judgment which says that post of Community Coordinator by voluntary organization (Jeevika) under Bihar Rural Livelihood Promotion Society which receives fund by the World Bank as well as Government of Bihar to implement welfare



schemes. The terms and condition of the appointment were determined between the employer and the employee and it appears that that the terms and conditions of the letter dated 20.02.2015, the petitioner is not getting any salary and she is only getting honorarium based on her performance.

7. Learned counsel for the respondents submits that from perusal of the resignation letter of the petitioner which clearly suggests that the resignation of the petitioner was accepted in hypothetical manner and the resignation of the petitioner was accepted in connivance with the official respondents and on the date of filing of the nomination the petitioner was holding the post of Community Mobiliser and apart from that according to the office order dated 20.02.2015 which clearly talks about one month's notice upon discontinuance due to any reason, this was also missing in the case of the petitioner.

8. Learned counsel for the petitioner submits that even assuming that she was continuing as Community Mobiliser on the date of filing of her nomination paper/on the day she contested election, Section 136(1)(d) of the Bihar Panchayat Raj Act, 2006 will not come into picture inasmuch as the payment to the petitioner was completely through Self Help contributions



and not from any finance provided by the State Government or from any Government agency. He further relied upon the judgment dated 15.05.2014 passed in CWJC No. 15345 of 2013 (Veena Devi vs. The State Election Commission & Ors.) wherein the communication issued by the Election Commission vide letter no. 1499 dated 06.03.2011 giving instruction to all the District Magistrate and District Election Officers (Panchayat) to hold that 'the ASHA' workers are not eligible to contest the Panchayat Election was interfered with.

9. Having heard the counsel for the parties and perused the material available on record, the terms of the provisions contained under Section 136 (1) (Gha) read with Section 136(2) of the Bihar Panchayat Raj Act, 2006, the order dated 15.05.2014 passed in CWJC No. 15345 of 2013 (Veena Devi vs. The State Election Commission & Ors), office order dated 20.02.2015 of the Jeevika which suggests that the petitioner was not holding a civil post on the date of filing of her nomination paper for the post of Mukhiya and without considering the same, the respondent Election Commission has passed the impugned order dated 19.02.2024 (Annexure-12). From perusal of the Section 136 (1) (Gha) of the Act it transpires that "if such person is in service of any such



institution receiving aid from Central or State Government or any local authority” and it appears from the office order dated 20.02.2015 of the Jeevika which suggest that the Community Mobiliser is not a civil post and he has been paid on the honorarium basis and the Bihar Rural Livelihood Promotion Society receives fund from the World Bank to implement the welfare schemes.

10. In view of the aforesaid, the impugned order dated 19.02.2024 (Annexure-12) passed by the State Election Commission is not sustainable in the eye of law, by which the election of the petitioner against the post of Mukhiya of Bijubigha in Meskaur Block in the district of Nawada has been cancelled is hereby set aside.

11. Accordingly, the writ petition is allowed.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
CAV DATE	20.01.2025
Uploading Date	21.03.2025
Transmission Date	NA

