

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14929 of 2013

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Bebi Kumari @ Bebi Devi W/O Sri Shrawan Kumar Yadav R/O Vill. -
Ramkol, P.S. Panjbara In The District Of Banka

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner Cum Secretary Socialwelfare Department Govt. Of Bihar, Patna
3. The Director Social Welfare Department Govt. Of Bihar, Patna
4. The District Magistrate, Banka
5. The District Welfare Officer, Banka
6. The Child Development Project, Officer, Dhoraia, District - Banka
7. The Mukhiya of Gram Panchayat Ramkol District Banka
8. Punam Kumar W/O Niranjan Yadav R/O Vill. - Ramkol, P.S. Panjbara In The District Of Banka

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar, Advocate
For the State	:	Mr. Pankaj Kumar, SC-12
		Mr. Anuj Kumar, AC to SC-12
For the Respondent No. 8	:	Mr. Ajay Mukherji, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 16-06-2025

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the private
Respondent No. 8.

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

*(i) To quash the order dated
09/08/12 (Annexure- 8) issued under the*



signature of District Magistrate, Banka whereby and where under he has approved the order dated 25.03.2010 (annexure- 6) and holds that petitioner is not entitled to appoint as Anganbari Sevika.

(ii) For commanding the respondent to select the petitioner in place of R. No. 8 as an Anganbari Sevika at Ramkol Centre in the District of Banka who is the most suitable/eligible candidate for the post.

(iii) And any other relief/reliefs for which the petitioner may found entitled in the eye of law.

3. Learned counsel for the petitioner submits that the petitioner has passed the Madhyama Examination from the Bihar Sanskrit Education Board, Patna, securing 438 marks (First Division). It is further submitted that the petitioner is an educated woman belonging to the Backward Class and is fully competent for appointment to the post of Anganbari Sevika. In response to an advertisement inviting applications for the said post, the petitioner, being a qualified candidate, participated in the selection process. A merit list was prepared in accordance with the then prevailing rules, and an Aam Sabha was duly constituted under the chairmanship of the Mukhiya of the respective Gram Panchayat. The petitioner was found to be the most suitable candidate for the post and was, therefore, selected



as Anganbari Sevika for the Ramkol Anganbari Centre.

4. Counsel further submits that there were no allegations regarding the functioning of the petitioner, she was punctual, capable, and sincere in the discharge of her duties, and on no point of time was any complaint made against her. It is also submitted that the petitioner participated in the six-day induction training. However, the private respondent filed a writ petition being CWJC No. 15715 of 2009, challenging the petitioner's selection on the basis of an allegedly false document. It was claimed therein that the date of birth mentioned in the certificate issued by the Bihar Sanskrit Education Board, Patna, did not tally with the date of birth as per the records of the Bihar School Examination Board. It has been intimated that the petitioner had failed the examination conducted by the Bihar School Examination Board and subsequently appeared in the examination held by the Bihar Sanskrit Education Board, Patna, and after hearing the parties, the said writ petition was disposed of vide order dated 16.12.2009 passed in CWJC No. 15715 of 2009, with a direction to the concerned authority to dispose of the representation within three months.

5. Counsel further submits that the private



respondent filed a representation before the District Programme Officer, Banka, pursuant to the order dated 16.12.2009 passed in CWJC No. 15715 of 2009. In response, the District Programme Officer, Banka, vide Memo No. 215 dated 25.03.2010, cancelled the petitioner's appointment. Counsel submits that the said cancellation order is beyond the jurisdiction of the District Programme Officer and, therefore, was challenged by the petitioner before this Hon'ble Court in CWJC No. 6358 of 2010. Vide order dated 13.09.2011, this Hon'ble Court set aside the order contained in Memo No. 215 dated 25.03.2010 and directed the District Magistrate, Banka, to hear the parties and pass a fresh order in accordance with law.

6. It is further submitted that, the District Magistrate, Banka, in gross violation, has approved the order passed by the District Programme Officer, contained in Memo no. 215 dated 25.03.2010 which was held by this Hon'ble Court, vide order dated 13.09.2011 in CWJC No. 6358 of 2010, as beyond jurisdiction. The said action has been challenged before this Hon'ble Court, as evident from Annexure 7 to the writ petition. Counsel further submits that the District Magistrate has concluded that the petitioner's certificates are fake and fabricated. However, it is specifically contended that this finding



of the District Magistrate was arrived at without conducting any enquiry or verification of documents. Therefore, the said conclusion may not be accepted.

7. Counsel further submits that the petitioner possesses two educational certificates, one issued by the Bihar School Examination Board and the other by the Bihar Sanskrit Education Board. It is submitted that, at least, one of these certificates ought to be treated as genuine. Counsel also submits that the petitioner has not taken any undue benefit from either certificate. He further points out that the petitioner's appointment was made prior to 2010, and at the relevant time, the minimum eligibility for the post of Anganbari Sevika was completion of 7th standard. Therefore, neither the certificate from the Bihar School Examination Board nor the one from the Bihar Sanskrit Education Board was important for the petitioner. Counsel further submits that at least one of the certificates should have been acknowledged as genuine, on which no finding has come from the District Magistrate, Banka (Collector). As such, this order is absolutely bad in law.

8. Counsel further submits that a direction be issued to the Collector, Banka, to pass a fresh reasoned order, after proper verification, determining the genuineness of at least one



of the certificates and the petitioner's date of birth, so that the petitioner may claim against the respondent authorities in accordance with law and in light of the then prevailing *Margdarshika* for the appointment of Anganbari Sevika and Sahayika.

9. Learned counsel for the State, on the other hand, opposes the writ petition and submits that this Hon'ble Court, vide order dated 13.09.2011 passed in CWJC No. 6358 of 2010, was pleased to set aside the order passed by the District Programme Officer, Banka, treating it as without jurisdiction, without entering into the merits of the case, as according to the then rule, the order of cancellation for the appointment should be passed by the Collector, not the District Programme Officer. Consequently, the matter was remitted back to the Collector, Banka, for fresh consideration.

10. Counsel further submits that the Collector, Banka, in the order impugned in the present writ petition (Annexure 8), has categorically discussed the entire factual matrix and submits that the petitioner had recorded her date of birth as 08.04.1986 in the records of the Bihar School Examination Board, where she had failed. However, in the certificate issued by the Bihar Sanskrit Education Board, her



date of birth is mentioned as 12.01.1987. It is submitted that since the petitioner is one and the same individual, her date of birth must be same across all documents, irrespective of the examining board. Counsel further submits that the act of mentioning two different dates of birth in official academic records, both attributed to the same person, clearly indicates that the forgery has been made. Therefore, the conclusion drawn by the District Magistrate, Banka, is absolutely in accordance with law.

11. Counsel further submits that the same reasoning was assigned by the District Programme Officer in his earlier order, and it is solely on that factual basis that the District Magistrate, Banka, has also approved the order passed by the District Programme Officer, as contained in Memo No. 215 dated 25.03.2010. Counsel further submits that the petitioner wants to take the plea that, as per the applicable rules at the relevant time, the minimum eligibility for appointment as Anganbari Sevika was only a 7th pass qualification, and not matriculation or its equivalent, this specific plea was never raised by the petitioner at any stage.

12. Counsel further submits that three rounds of litigation have come before this Hon'ble Court but, this factual



matrix regarding minimum educational eligibility was not taken into consideration. Counsel concludes his argument by stating that Respondent No. 8, after the removal of the petitioner, has been continuously serving the department for over ten years, and this aspect of continuity in service may also be taken into consideration by this Hon'ble Court while deciding the present writ petition.

13. Learned counsel for the private respondent No. 8 submits that, so far as merit is concerned, it has already been argued. Counsel further submits that she has been serving on the post of Anganbari Sevika for the last 10–12 years, and at no earlier stage was the plea ever taken by the petitioner that the eligibility was 7th pass at the relevant period of time. Counsel further submits that even if, for the sake of argument, the writ petition is allowed, the result would only be final selection, in any case, the petitioner could not be appointed, whereas the private respondent was appointed following due process of law. Counsel concludes his argument by submitting that the petitioner is a litigant person, and even after a lapse of about 12 years, she is still continuing with the litigation.

14. After hearing the parties, it transpires to this Court that the petitioner was appointed in the year 2007, vide



appointment letter dated 25.06.2007. She was removed from service in the year 2010, vide order contained in Memo No. 215 dated 25.03.2010, on the basis of which private respondent No. 8 was appointed and started working. Thereafter, three rounds of litigation have come before this Hon'ble Court. Firstly, in CWJC No. 15715 of 2009, secondly, in CWJC No. 6358 of 2010, and thirdly, the present writ petition being CWJC No. 14929 of 2013, which is now being finally adjudicated in the year 2025.

15. This Court, after considering the above discussion, finds that the petitioner has mentioned two different dates of birth, one in the records of the Bihar School Examination Board and another in the Bihar Sanskrit Education Board. Therefore, the finding of the District Magistrate that forgery was committed is correct. However, this Court also agrees with the argument made by learned counsel for the petitioner that at least one of the certificates should be treated as genuine. Accordingly, this Court holds that the first date of birth mentioned in the Bihar School Examination Board certificate, i.e., 08.04.1986, shall be treated as the correct date of birth, as in the year 1986, there was no hurdle, therefore, earlier date of birth be treated as correct, but the another point is that the petitioner ought to be granted liberty to raise the issue and



challenge the appointment of respondent No. 8 on the ground that, at the relevant time, the minimum educational qualification required for appointment to the post of Anganbari Sevika was 7th pass and not matriculation. But this point was never been raised by the petitioner at any early stage.

16. This Court hereby observes that litigation must come to an end, and it is for this reason that Section 11 of the Code of Civil Procedure, 1908, has been enacted, which is also applicable in writ jurisdiction. This view regarding the applicability of the doctrine of res judicata in writ petitions has been followed in *Association for Democratic Reforms v. Election Commission of India and Anr.*, reported in (2025) 2 SCC 732, where it has been categorically held in paragraph Nos. 107 to 111, which state as follows:—

“107. It is pertinent to reiterate that the doctrine of res judicata is applicable to writ petitions under Article 32 and Article 226 as well. The inclusion of the term “public right” in Explanation VI of Section 11 of the Civil Procedure Code, 1908 aims to avoid redundant legal disputes concerning public rights. Given this clarification, there is no room for debate regarding the application of Section 11 to matters of public interest litigation presented through writ petitions.

108. In Daryao v. State of U.P.



[Daryao v. State of U.P., 1961 SCC OnLine SC 21 : (1962) 1 SCR 574] , a Constitution Bench of this Court emphasised that the rule of res judicata is founded on significant public policy considerations rather than being a mere technicality. It was clarified that petitioners seeking to challenge a decision must present new grounds distinct from those previously raised in order to escape the bar of res judicata. The Bench articulated this as follows:

“31. ... We are satisfied that a change in the form of attack against the impugned statute would make no difference to the true legal position that the writ petition in the High Court and the present writ petition are directed against the same statute and the grounds raised by the petitioner in that behalf are substantially the same.”

109. Another Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra [Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715 : 1990 SCC (L&S) 339] followed the aforesaid dictum to hold that the principles of res judicata are not foreign to writ petitions. A reference may be made to the following paragraph :

“35. ... It is well established that the principles of res judicata are



applicable to writ petitions. The relief prayed for on behalf of the petitioner in the present case is the same as he would have, in the event of his success, obtained in the earlier writ petition before the High Court. The petitioner in reply contended that since the special leave petition before this Court was dismissed in limine without giving any reason, the order cannot be relied upon for a plea of res judicata. The answer is that it is not the order of this Court dismissing the special leave petition which is being relied upon; the plea of res judicata has been pressed on the basis of the High Court's judgment which became final after the dismissal of the special leave petition. In similar situation a Constitution Bench of this Court in Daryao v. State of U.P. [Daryao v. State of U.P., 1961 SCC OnLine SC 21 : (1962) 1 SCR 574] held that where the High Court dismisses a writ petition under Article 226 of the Constitution after hearing the matter on the merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same reliefs filed by the same parties will be barred by the general principle of res judicata. The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration



of justice, so much emphasised by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32. An attempted change in the form of the petition or the grounds cannot be allowed to defeat the plea”

110. No doubt, res judicata bars parties from re-litigating issues that have been conclusively settled. It is true that this principle is not rigid in cases of substantial public interest and constitutional courts are empowered to adopt a flexible approach in such cases, acknowledging their far-reaching public interest ramifications.

111. However, this standard is applicable only when substantial evidence is presented to validate the irreversible harm or detriment to the public good resulting from the action impugned. The Court must come to the conclusion that the petition is not just an old wine in a new bottle, but rather raises substantial grounds not previously addressed in litigation. Only under these circumstances may it consider such a petition; otherwise, it is within its authority to dismiss it at the threshold.”



17. From the aforesaid, it clearly indicates that points about entitlement of appointment of petitioner on the basis of certificate of 7th class, which ought to be raised, not raised, cannot be raised. Therefore, this Court is of the firm view that the points which were not raised by the petitioner during the course of the long litigation cannot be allowed to be raised at this stage.

18. In view of the present facts and circumstances, this Court is not inclined to allow the writ petition. Accordingly, the present writ petition stands dismissed.

(Dr. Anshuman, J.)

Aman Kumar/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.06.2025
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