

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.633 of 2022

In

Civil Writ Jurisdiction Case No.13210 of 2014

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Renu Sinha, W/o Late Niranjana Singh, resident of village Kharoj, P.O.-
Bedoli, P.S.- Bhagwanganj, Distt.- Patna.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department, Govt. of Bihar, Patna.
2. The Director, Integrated Children Development Scheme (ICDS) Directorate, Social Welfare Department, Govt. of Bihar, Patna.
3. The Commissioner, Patna Division, Patna.
4. The District Magistrate, Patna.
5. The Deputy Director, Welfare, Patna Division, Patna.
6. The District Programme Officer, Patna.
7. The Child Development Project Officer, Masaurhi, Distt. - Patna.
8. Pushplata Kumari, W/o Om Prakash Roy, R/o village Kharoj, P.O. Bedoli, P.S. Bhagwanganj, Distt. Patna.

... ... Respondent/s

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*Anganbari Sevika/ Sahaika—Clause 4.9—Guidelines—
Selection/Appointment —Ld. Single Judge held that the Fundamental Right to employment against public post cannot be taken away by any Clause imposed by the State Authorities in restricting appointment to only such of those persons, whose family members have not secured appointment of State Government or any Organisation of the State; and found the Clause to be in violation of Articles 14 and 16—Ld. Single Judge after striking down the Clause, set aside the appointment of appellant for want of merit; and had rightly directed an Order for appointment of Respondent No. 8—Alternative Remedy will not operate as a bar at least in four contingencies namely, (i) where the writ petition has been filed for enforcement of any of the fundamental rights; (ii) where there has been a violation of principles of natural justice; (iii) where the order of proceeding is wholly without jurisdiction; and (iv) the vires of an Act is challenged—power to issue prerogative writs under Article 226 of the Constitution of India is plenary in nature and is not limited by any other law—Respondent No. 8 was ousted on*

account of the embargo as provided under Clause 4.9 of Guidelines, 2011, which was struck down by the Hon'ble Court—every action of the State or its instrumentality is subject to judicial scrutiny required to be tested on the touch stone of Article 14 of the Constitution of India—appeal dismissed. (Paras 10, 11, 14 and 15)

(1998) 8 SCC 1—Relied upon.

CWJC No. 22513 of 2012—Distinguished.

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... .. Respondent/s

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Appearance :
For the Appellant/s : Mr. Suraj Narain Yadav, Advocate
For the Respondent/s : Mr. Gyan Prakash Ojha, GA-7
For Respondent No.8 : Mr. Abhay Shankar Singh, Advocate
Mr. Amit Kumar Mishra, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 23-04-2024

Heard Mr. Suraj Narain Yadav, learned Advocate
representing the appellant and Mr. Abhay Shankar Singh,
learned Advocate for respondent no.8. The State is represented
by Mr. Gyan Prakash Ojha, learned GA-7.

2. The challenge in the present Letters Patent



Appeal is to an order/judgment of this Court dated 27.09.2022 passed by the learned Single Judge in C.W.J.C. No. 13210 of 2014 whereby the learned Court has been pleased to allow the writ petition and strike down Clause 4.9 of the amended Guidelines dated 19.12.2013. The learned Court further set aside the appointment of the writ petitioner-appellant herein, who was holding the post of Angabari Sevika and directed to issue order of appointment in favour of private respondent no.8 herein.

3. Learned Counsel for the appellant, assailing the impugned order/judgment, inter alia, submitted that the learned Single Judge has committed serious error of law in striking down the amended provision of Clause 4.9 of the Guidelines issued for selection of Anganbari Sevika/Sahaika, as the writ petition was filed by ignoring the provisions prescribed in Rule 10 of 2011 Guidelines, which prescribed that any complaint against the selection of Anganbari Sevika could be filed before the District Programme Officer. Persons aggrieved by the order of the District Programme Officer, had the remedy of appeal before the Deputy Director, Welfare Department. However, despite having efficacious alternative remedy, the learned Court instead of relegating the matter to the appropriate authority adjudicated the matter and passed the impugned order.



It was also the contention of the appellant that the writ petitioner, a member of joint family and the elder brother of her husband as well as his wife being in service of Central Government posted in the same district, she has rightly not been selected in terms of the guidelines. The preference for better qualification is the ultimate and absolute requirement of selection of the Anganbari Sevika. Moreover, the post of Anganbari Sevika is not a public post under the Government and thus not protected under Article 311 of the Constitution of India; it was also the contention of the appellant.

4. Mr. Abhay Shankar Singh, learned Counsel representing the respondent no.8 advertg to the facts of the case submitted that the writ petitioner-respondent no.8 herein being one of the eligible candidate for selection of Anganbari Sevika had applied along with others pursuant to advertisement issued by the competent authority. The employment unit considering the qualification and other requirements in terms of the guidelines, found the writ petitioner to be most eligible and thus she was placed in the final merit list at serial no.1. The private respondent no.8-appellant was placed at serial no.2. Despite securing 1st position in the merit list, the writ petitioner was ousted from the consideration zone by the Child



Development Project Officer, Masaurhi, Patna in terms of Clause 4.9 of the 2011 guidelines, which came into effect with effect from 19.12.2013. The English translated copy of Clause 4.9 of the 2011 Guidelines is extracted herein below:

“4.9 Wife/Daughter-in-law/other relative of Government (Central Government and State Government)/Semi-Government Male Employee posted in the concerned Panchayat/Block/Circle/Sub-division and District will not be selected to the post of Sevika. (Relative means- mother (step/adopted son and daughter/sister-in-law (i.e. wife of elder and younger brother), daughter, sister). And along with this, in the case of Government (Central Government and State Government)/Semi-Government Female Employee/Officer, the wife, daughter-in-law, daughter of the own brother of her husband and sister-in-law (husband's sister), will be ineligible for selection to the post of Sevika/Sahayika.”

5. Aggrieved by the decision of the selection committee, the writ petitioner filed C.W.J.C. No. 13210 of 2014 contending therein that the embargo of the relative not being in any Government/Semi Government service for consideration of selection as Anganbari Sevika under the amended guidelines 2011 was an exercise, which was unjust, unreasonable, unfair and arbitrary. The aforementioned embargo had without there being any nexus with the object sought to be achieved. Therefore, the



same was violative of fundamental rights, as granted under Articles 14, 16 and 21 of the Constitution of India. It was also the contention of the learned Advocate for the writ petitioner that the issue of prohibiting any Government/Semi Government employee's relative from the zone of consideration for the purpose of selection as Anganbari Sevika/Sahaika had earlier also came up for consideration before this Court. There had been similar embargo under the earlier Government Guidelines, 2006 stipulating restriction under Clause 3(३) and this Court was pleased to hold the said restriction to be unjust, unreasonable and arbitrary and as such struck down the said Clause 3(३) of the Guidelines, 2006. The order of the learned Single Judge has been affirmed by the Division Bench of this Court in L.P.A. No. 1439 of 2010.

6. The learned Single Judge having considered the contention of the writ petitioner noted hereinabove has found Clause 4.9 of the guidelines imposed by the State authorities in restricting appointment to only such of those persons, whose family members have not secured appointment of State Government or any organization of the State, is not sustainable. The learned Court held that the fundamental right to employment against public post cannot be taken away in such a



manner and thus found the impugned Clause to be in violation of Articles 14 and 16 of the Constitution of India. The learned Single Judge after striking down the aforementioned clause has rightly directed to issue order for appointment as Anganbari Sevika in favour of writ petitioner after setting aside the appointment of respondent no.8-appellant herein for want of merit, was the contention of the learned counsel for the writ petitioner.

7. Similar issue, arising out of C.W.J.C. No. 17585 of 2015 giving rise to L.P.A. No. 1853 of 2016 also came up before the Hon'ble Supreme Court in Civil Appeal No. 208 of 2024 (Anjum Ara Vs. State of Bihar & Ors) reported in (2024) 4 SCC 246 wherein the Hon'ble Supreme Court taking note of the judgment and order of learned Single Judge of this Court in C.W.J.C. No. 13210 of 2014, which is impugned herein, has set aside the judgment and order of the learned Single Judge and Division Bench whereby the claim of the applicant was negated in terms of Clause 4.9 of the Guidelines, 2011. The Hon'ble Supreme Court specifically held that it was not necessary for the appellant to challenge the validity of Clause 4.9 of Anganwari Sevika Guidelines, 2011 as the same was already held to be invalid by the same High Court.



8. Referring to the aforementioned decision of the Hon'ble Supreme Court, the learned Counsel for the private respondent thus contended that virtually the matter has already been affirmed by the Hon'ble Supreme Court and as such no interference is required.

9. At this juncture, learned counsel for the appellant placed reliance upon a decision of learned Single Judge of this Court in C.W.J.C. No. 22513 of 2013 in support of his contention that the object of running Anganbari Centres cannot be over emphasized on the qualification of a candidate, rather the purpose is to ensure the welfare of children from the lower most and deprived strata of society. The Anganbari Sevika is not a civil post and is neither engaged in Government service nor are holding any post in Government service, hence the protection under Article 311 of the Constitution of India shall not be available.

10. We have heard the rival submission of the respective parties and also perused the materials available on record. So far the contention of the appellant with respect to alternative remedy is concerned the same has no merit and is fit to be rejected. Alternative remedy as has been consistently held by the Hon'ble Supreme Court as well as this Court will not



operate as a bar at least in four contingencies namely, where the writ petition has been filed for enforcement of any of the fundamental rights or where there has been a violation of principles of natural justice or where the order of proceeding is wholly without jurisdiction or the vires of an Act is challenged. The discretion to entertain or not to entertain a writ petition is to be guided by self-imposed restriction depending upon the facts of the case. It is well settled that the power to issue prerogative writs under Article 226 of the Constitution of India is plenary in nature and is not limited by any other law. The Hon'ble Supreme Court in the case of ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors [(1998) 8 SCC 1]*** referring to various other decisions in paragraph no. 20 has observed as follows:

“20. Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.”



11. Now coming to the other issues, admittedly the writ petitioner having secured higher qualification was placed at serial no. 1 in the merit list whereas the appellant had been placed at serial no.2. The writ petitioner has been ousted on account of the embargo as provided under Clause 4.9 of the Guidelines, 2011, which inter alia stipulates that in case the wife of the brother's husband is in the Government job in the same district then selection of those applicant is barred for the post of Anganwari Sevika/Sahaika. Such embargo prohibiting an eligible candidate to participate in selection process only because of such candidate being relative of a Government/Public servant who is not even a member or part of the selection unit, in the opinion of this Court is in clear conflict with the Articles 14 and 16 of the Constitution of India.

12. Denial of equal opportunity to a person on a ground, which has no nexus with the object sought to be achieved, apart from being in the teeth of Articles 14 and 16 of the Constitution of India cannot be sustained in the eyes of law. The selection/appointment to any post under the State can only be made after a proper advertisement and inviting application from eligible candidates after judging the *inter se* merit of candidates, who have applied in response to the advertisement.



Any selection made giving a complete go-bye to the merit of a candidate on a ground alien to service jurisprudence is not tenable and thus we find no infirmity in the judgment/order of the learned Single Judge.

13. So far as the reliance placed by the learned Counsel for the appellant on a judgment rendered by the learned Single Judge in C.W.J.C. No. 22513 of 2013 is concerned, the same is not applicable in the present case. The question before the learned Single Judge was related to termination of an Anganbari Sevika on account of certain irregularities, which termination order was affirmed by the learned Single Judge after having found that the petitioner has not acted in terms of the guidelines and several irregularities have been found at the time of inspection. The learned Court held that the spirit and object of running Anganbari Centres cannot be understated as the purpose is to ensure the welfare of children from the lower most and deprived strata of society. Any lapse in execution of the said scheme has to be viewed very seriously.

14. It would be worth to observe that every action of the State or its instrumentality is subject to judicial scrutiny required to be tested on the touch stone of Article 14 of the Constitution. Any prescription or the Guidelines, regulating



the eligibility and the selection procedure dehors the constitutional provisions, is fit to be struck down. In the case in hand the impugned embargo has rightly been struck down, which offended the fundamental right of “Equality of opportunity in matters of public employment” as guaranteed under Article 16 of the Constitution of India.

15. In view of the discussions made hereinabove, this Court does not find any merit in the present L.P.A. Accordingly, the same stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	30.04.2024
Transmission Date	NA

