

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1706 of 2019

In

Civil Writ Jurisdiction Case No.17784 of 2019

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Kumod Kumari alias Kumud Kumari wife of Sri Binod Kumar resident of Village Balaha,
P.S.- Parsauni, Distt.- Sitamarhi

..... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Director, Integrated Child Development Scheme, Welfare Department, Government of Bihar, Patna.
4. The Collector, Sitamarhi.
5. The District Programme Officer, Integrated Child Development Scheme, Sitamarhi.
6. The Child Development Project Officer, Parsauni, Dist.- Sitamarhi.
7. The Mukhiya, Gram Panchayat Raj Bishunpur Dema, PS- Parsauni, District- Sitamarhi.
8. The Panchayat Sachiv, Gram Panchayat Bishunpur Dema, PS- Parsauni, District- Sitamarhi.
9. Asha Kumari wife of Sri Rajiv Raman Singh resident of Village- Balaha, PS- Parsauni, District- Sitamarhi.

..... Respondent/s

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- A. Constitution of Aam Sabha - Complete forum of Rule 5 (क) not adhered to – Appointing Authority failed to follow Rule 5 (क) – No fault on the part of selected candidate – not proper to displace connected candidate. (Para- 6,8).**
- B. Date of Eligibility - No challenge to the date of eligibility – case is not made out - Appointment of – Anganwadi Sevika – in contradiction of Rules. (Para- 7)**
- C. Defective selection process – displacement of connected candidate found not proper – Default on part of authorities – Compensation to the appellant. (Para 9, 10).**

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... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Vaidehi Raman Prasad Singh, Advocate
For the Respondent/s : Mr. Gyan Prakash Ojha, (GA-7)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 25-01-2024

Re: I.A. No. 1 of 2023

Heard I.A. No. 1 of 2023 for condonation of delay in
filing LPA 1706 of 2019. For the reasons stated in the application



and affidavit, in the interest of litigant delay of about 25 days in filing LPA stands condoned.

2. Accordingly, I.A. No. 1 of 2023 stands allowed.

3. The present LPA is filed in assailing the order date 23.10.2019 passed in CWJC No. 17784 of 2019.

4. Pursuant to the advertisement dated 30.03.2007 for the post of *Anganwadi Sevika* appellant and 9th respondent among others participated. The advertisement stipulated last date of submission of application as 09.04.2007. Further, *Aam Sabha* was constituted for selection on 19.06.2007. Comparative merit of the appellant and 9th respondent, 9th Respondent was selected and appointed feeling aggrieved by the selection and appointment of 9th respondent appellant invoked each and every remedy available to her. The latest remedy is in filing CWJC No. 17784 of 2019 in questioning the validity of the various orders including collector, Sitamarhi order dated 19.03.2019.

5. Learned counsel for the appellant submitted that all the respective authorities including learned single judge have not apprised that the constitution of *Aam Sabha* and selection of 9th respondent and appointment is contrary to Rule 5(क) आँगनवाडी पर्यवेक्षिका/सेविका/सहायिका चयन मार्गदर्शिका Rules 5(क) reads as under:-



5.(क) पंचायत स्तरीय चयन समिति:— समेकित बाल विकास सेवा योजना के अन्तर्गत आँगनबाड़ी केन्द्र पर सेविका/सहायिका के चयन के लिए पंचायत स्तर पर एक चयन समिति होगी जिसका स्वरूप निम्नवत होगा:—

1.	संबंधित पंचायत के मुखिया—	अध्यक्ष
2.	संबंधित पंचायत के उप मुखिया—	उपाध्यक्ष
3.	बाल विकास परियोजना पदाधिकारी/जिला पदाधिकारी द्वारा प्रतिनियुक्त पदाधिकारी (इनकी उपस्थिति अनिवार्य होगी)	विशेष आमंत्रित सदस्य
4.	आँगनबाड़ी केन्द्र के पोषक क्षेत्र से संबंधित ग्राम पंचायत के वार्ड सदस्य	सदस्य
5.	पंचायत की अनुसूचित जाति/जनजाति की एक महिला सदस्या (पंचायत द्वारा मनोनित)	सदस्य
6.	निकटम प्राथमिक विद्यालय/मध्य विद्यालय के प्रधानाध्यापक/प्रभारी शिक्षक	सदस्य
7.	पंचायत सेवक	सदस्य सचिव।

नोट: पंचायत समिति स्तर पर उपर्युक्त कंडिका 5 के आलोक में अनुसूचित जाति की दो या दो से अधिक सदस्या उपलब्ध हों तो प्रश्नगत आँगनबाड़ी क्षेत्र को प्रतिनिधित्व करने वाली सदस्या अथवा उम्र में वरीय सदस्या समिति की सदस्या होगी। अनुसूचित जाति की सदस्या उपलब्ध नहीं होने पर क्रमशः अत्यंत पिछड़ा वर्ग अथवा पिछड़ा वर्ग अथवा समान्य वर्ग की सदस्या समिति की सदस्या होगी।

6. Such a person was not participated even though it is mandatory and so also (उप मुखिया) was also not participated. In other words, complete forum in terms of Rule 5(क) was not adhered insofar as selection and appointment of 9th respondent - *Asha Kumari*. The other ground taken is that appellant - *Kumod Kumari* has passed Intermediate on 31.05.2007, and she is entitled to award of 10 more marks and it has not been awarded.



7. *Per contra* learned counsel for the respondents resisted the aforementioned contention and submitted that appellant is not entitled to 10 marks for Intermediate with reference to acquisition of such qualification on 31.05.2007. For the reasons that the last date of submission of application with reference to Advertisement dated 30.03.2007 was 09.04.2007. On this point, learned counsel for the appellant submitted that one week earlier to the *Aam Sabha* date is required to be taken into consideration for the purpose of eligibility criteria and award of marks. However, the appellant has not questioned the validity of fixation of last date or read with date of sitting of *Aam Sabha* on 19.06.2007 or in the alternative she should have sought for a direction to read down the eligibility criteria as on 09.04.2007 and it should have been as on 12.06.2007 with reference to date of *Aam Sabha* sitting on 19.06.2007. In the absence of such challenge to the fixation of date of eligibility, the appellant has not made out a case.

8. No doubt, the appellant has made out a case insofar as constitution of *Aam Sabha* with reference to 5(क) cited (supra). At the same time, Respondent No. 9 is working for the last about one and half decade and she is more merited than the appellant with reference to date of *Aam Sabha* read with last date of submission



of application. If the appellant had questioned the validity of last date for the purpose of eligibility criteria and for award of certain marks for the Intermediate in that event, we would have examined the merits and demerits of appellant and 9th Respondent insofar as award of marks to various issues. Hence, appellant has not made out a case.

9. The appellant is before various forum from 2007-2008 till date. Therefore, it is necessary to pay compensation for the reasons that concerned officials like Selecting and Appointing Authority have failed to follow Rule 5(क). Even if it is curable defect still the appellant has not made out a case on comparative merit with selected and appointed candidate.

10. Having regard to the defect in the initial stage in respect of Constitution of *Aam Sabha* with reference to Rule 5(क), ordinarily it would go to the root of the matter and we should have set aside the entire selection process for want of proper forum in the light of Rule 5(क). However, it is not proper for this Court to displace 9th respondent for no fault on her part and when the fault is on the part of the official respondent. Therefore, we quantify the compensation at Rs. 1,00,000/- (Rupees One Lakh Only). Rupees One Lakh compensation shall be paid by the official respondents



to the appellant within a period of eight weeks from the date of receipt of this order.

11. Accordingly, the present LPA No. 1706 of 2019 stands disposed of.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

jyoti/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.01.2024
Transmission Date	NA

