IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12462 of 2018

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Ranju Kumari Wife of Narendra Chouhan, resident of Vill.- Bhairo Beldaria, Ward No. 9, Panchayat Samai, P.S.- Mufassil, District- Nawada.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Social Welfare Dept., Bihar, Patna.
2. The District Magistrate, Nawadah.
3. The District Programme Officer (ICDS), Nawada.
4. The Child Development Project Officer, Nawada Sadar, Nawada.
5. Arti Kumari, Wife of Binod Kumar, Resident of Vill.- Bhairo Beldaria, P.S.- Mufassil, Block- Nawada, District- Nawada, Originally resident of Vill.- Manjor Block /P.S.- Warisaliganj, District- Nawada.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 15178 of 2018

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Arti Kumari @ Arti Devi W/o Vinod Kumar @ Vinod Chauhan, Resident of Village-Bhairo Beldaria, P.S.-Mufassil, District-Nawada.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Social Welfare, Bihar, Patna.
2. The District Magistrate, Nawada.
3. The District Programme Officer, Nawada.
4. The Child Development Project Officer, Nawada, Sadar.
5. Ranju Kumari, W/o Narendra Chouhan, R/o Bhairo Beldariya, P.S.-Muffasil, District-Nawada.

... ... Respondent/s

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Appearance :
(In Civil Writ Jurisdiction Case No. 12462 of 2018)

For the Petitioner/s : Mr. Sidhendra Narayan Singh, Adv.

For the State : Mr. Gyan Prakash Ojha- GA-7

(In Civil Writ Jurisdiction Case No. 15178 of 2018)

For the Petitioner/s	:	Mr. Mithilesh Kumar Upadhyay, Adv.
For the State	:	Mr. Sunil Kumar Mandal, SC-3
		Smt. Neelam Kumari, AC to SC-3
		Mr. Bipin Kumar, AC to SC-3

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date : 21-05-2021

The aforesaid two writ petitions arise out of the same selection process, hence, have been heard together with the consent of the parties and are being disposed of by this common judgment.

2. The writ petition bearing CWJC No. 12462 of 2018 (Ranju Kumari Vs. The State Of Bihar & Ors.) i.e. the first case, has been filed for quashing the order dated 18.05.2018 passed in Case No. 434 (M) 2017 by the District Magistrate, Nawada, to the extent it has been directed that fresh advertisement be issued for making fresh selection to the post of Anganwari Sevika for Anganwari Centre-Bhairo Beldaria, Code No. 256, under the Nawada Sadar Block, Distict-Nawada, since the life of the panel / merit list, being only one year, has lapsed, though the appeal of the petitioner of the

second case, namely, Arti Kumari has been dismissed.

The petitioner of the second case i.e. CWJC No. 15178 of 2018 has filed the present writ petition for quashing the order dated 18.05.2018 passed in Appeal No. 434 (M) 2017 by the District Magistrate, Nawada, affirming the order dated 30.06.2017 passed by the District Programme Officer, Nawada, whereby and whereunder the selection of the petitioner of the second case on the post of Anganwari Sevika, Anganwari Centre-Bhairo Beldaria, has been cancelled.

3. The brief facts of the case are that in the year 2016, a selection process was initiated for the purposes of making appointment on the post of Anganwari Sevika in village-Bhairo Beldaria, Nawada, at Centre No. 256, pursuant whereof, the petitioners of the aforesaid two writ petitions along with several other persons had filled their applications, whereafter a merit list was prepared and the petitioner of the second case was declared

selected by the Aam Sabha, whereupon she had joined as Anganwari Sevika at the aforesaid Anganwari Centre. The petitioner of the first case had then filed a complaint before the District Programme Officer, Nawada, on the ground that the petitioner of the second case is not a resident of the aforesaid centre. The District Programme Officer, Nawada, by a detailed order dated 30.06.2017 passed in Case No. 44 (Miscellaneous) Selection/2016, Year-2017, after considering the objection of the petitioner of the first case, the documents furnished by the petitioner of the second case as also the materials available on record, came to a finding that the petitioner of the second case is not a permanent resident of Poshak area inasmuch as the name of the husband of the petitioner of the second case is registered in the voter-list of village-Manjor Beldaria, P.S. and Circle-Warisaliganj and for omitting the same, an application was submitted before the BLO, whereafter his name had been removed from the voter-list and moreover, in one police case bearing

Deepnagar P.S. Case No. 66/2015, wherein the petitioner of the second case is an accused, the address of the petitioner of the second case, her husband and their family members have been stated as Milki Manjor Beldaria, P.S.-Warisaliganj, District-Nawada. The District Programme Officer, Nawada has also come to a finding that the petitioner of the second case i.e. Arti Kumari, is not a permanent resident of Anganwari Centre- Bhairo Beldaria and she is in fact resident of Manjor Beldaria, P.S.-Warisaliganj, which is also substantiated from the mapping register. In such view of the matter, the District Programme Officer, Nawada, by his order dated 30.06.2017, has cancelled the selection/ appointment of the petitioner of the second case, namely, Arti Kumari.

4. It appears that the petitioner of the second case had then filed an appeal before the learned District Magistrate-cum-Collector, Nawada, bearing Case No. 434(M)2017, however, the same has been dismissed by the impugned order dated 18.05.2018 passed by the District Magistrate,

Nawada, nonetheless, it has been directed that since the life of the panel in question was one year and the same has expired, fresh steps should be taken for making fresh selection to the post of Anganwari Sevika, pertaining to the aforesaid Anganwari Centre.

5. A bare perusal of the aforesaid order dated 18.05.2018, passed by the District Magistrate, Nawada, would show that the petitioner of the second case, namely, Arti Kumari, had canvassed before the Appellate Authority that she is original resident of village-Gumhara Bhairo Beldaria, Village Panchyat-Samay, P.S.-Mufassil, District-Nawada, her name is mentioned in the voter-list of the said village-Gumhara Bhairo Beldaria, she has her house and agricultural land at village-Manjor Beldaria, P.S.-Warisaliganj, District-Nawada and her name has been omitted from the voter-list of village-Manjor Beldaria, P.S.-Warisaliganj, District-Nawada. It appears that the petitioner of the second case had also stated before the Appellate Authority that a bare perusal of the mapping

register would show that at serial no. 4, the name of her father-in-law is mentioned and moreover, the caste certificate, residential certificate and birth certificate issued by the Government also shows that the petitioner of the second case is resident of Village-Bhairo Beldaria.

6. The District Magistrate, Nawada, in his impugned order dated 18.05.2018, has come to a finding, upon perusal of the materials on record and considering the submissions made by the petitioner of the first case that ample proof has been submitted to show that the petitioner of the second case is not a resident of village-Bhairo Beldaria but is a resident of village-Manjor Beldaria, inasmuch as the petitioner of the second case has herself admitted in her written statement that the name of her husband was mentioned in the voter-list of village-Manjor Beldaria in the year 2016, which was rectified subsequently by submitting appropriate application and further the address mentioned in the various FIRs lodged against the petitioner of the second case, her

husband and her family members also mention their address to be "village- Manjor Beldaria". The learned District Magistrate, Nawada, has also come to a finding that the ration card, pertaining to Village Panchayat-Manjor Beldaria, also mentions the name of the entire family members of the petitioner of the second case and further, the list prepared for the purposes of Prime Minister Housing Project, pertaining to village Manjor Beldaria, also contains the name of the father-in-law of the petitioner of the second case. Ultimately, the District Magistrate, Nawada, in his impugned order dated 18.05.2018, has come to a finding that the petitioner of the second case, namely, Arti Kumari, is a resident of Village-Manjor Beldaria, P.S.-Warisaliganj, District-Nawada, hence, has dismissed the appeal filed by the petitioner of the second case, however, considering the provisions contained in Clause 8 of the Anganwari Sevika/Sahayika Selection Guidelines 2016, it has been directed that since the panel in question had a life of one year, which has expired, fresh steps be

taken for making appointment on the post of Sevika at the aforesaid Anganwari Centre in question is concerned.

7. The learned counsel for the petitioner of the first case i.e. Ranju Kumari, has submitted that she is aggrieved by the impugned order dated 18.05.2018 passed by the District Magistrate, Nawada, only to the extent that directions have been issued for conducting fresh selection process for making appointment on the post of Sevika at the aforesaid Anganwari Centre, on the ground that the life of the panel/ merit list has lapsed. The learned counsel for the petitioner of the first case has submitted that since Clause 10.3 of the Guidelines 2011, pertaining to the selection of Sevika/Sahayika, has been amended vide letter dated 17.05.2013 issued by the Welfare Department, Government of Bihar (Annexure-1 to the writ petition) and therein, it has been prescribed that in case, the District Programme Officer finds irregularities / illegalities in the appointment of a Sevika / Sahayika, then he shall

cancel the appointment and shall issue orders for appointment of the second candidate in the merit list. It is thus submitted that since the petitioner is the second candidate in the merit list, she ought to have been appointed as Anganwari Sevika at the aforesaid Anganwari Centre, once the appointment of the petitioner of the second case had been cancelled by the District Programme Officer, Nawada, by his order dated 30.06.2017, and the same has also been upheld by the District Magistrate, Nawada, by his order dated 18.05.2018. The learned counsel for the petitioner has also submitted that merely because a period of one year has lapsed and the panel in question has expired, on account of pendency of the litigation, relief cannot be declined to the petitioner of the first case in view of the law laid down, on the said issue, by the Hon'ble Apex Court in the case of ***State of UP vs. Ram Swarup Saroj***, reported in ***2000 (3) SCC 699***, paragraph no. 10 whereof is reproduced herein below:-

"10. Similarly, the plea that a list of

selected candidates for appointment to the State services remains valid for a period of one year only is primarily a question depending on facts and yet the plea was not raised before the High Court. Secondly, we find that the select list was finalised in the month of November, 1996 and the writ petition was filed by the respondent in the month of October, 1997, i.e., before the expiry of one year from the date of the list. Merely because a period of one year has elapsed during the pendency of litigation, we cannot decline to grant the relief to which the respondent has been found entitled to by the High Court. We may place on record that during the course of hearing of SLP before this Court, on 29.9.1999 we had directed the learned Additional Advocate General for the State of U.P. to bring on record on affidavit the status of present recruitment of the judicial officers and the present vacancy position in the subordinate judiciary. In the affidavit of Joint Secretary, Department of Appointment, State Government, Uttar Pradesh sworn in on 4.11.1999 and filed before this Court it is stated that as on

> 14.10.1999 there were 231 vacancies existing in the cadre of Munsif Magistrates (now Civil Judge, Junior Division/Judicial Magistrates). That being the factual position we see no reason why the direction made by the High Court should be upset in an appeal preferred by the State of Uttar Pradesh.

8. The learned counsel for the petitioner of the second case i.e. Arti Kumari, has submitted that both the District Programme Officer, Nawada and the District Magistrate, Nawada have not considered the documents produced by the petitioner of the second case in their right perspective inasmuch as the various documents annexed to the present writ petition would show that the name of the father-in-law of the petitioner is present in the mapping register and she is definitely a resident of Anganwari Centre-Bhairo Beldaria, hence both the Orders dated 30.06.2017, passed by the District Programme Officer, Nawada, as also the one dated18.05.2018, passed by the District Magistrate, Nawada, are fit to be set aside.

9. Per contra, the learned counsel appearing for the State, Sri Sunil Kumar Mandal, has referred to the Anganwari Sevika / Sahayika selection Guidelines, 2016 and has drawn the attention of this Court to Clause 10 thereof, which prescribes that the validity of the panel shall be for a period of one year from the date of selection, however, it has been submitted that there is no provision for issuance of an order of appointment of the second candidate in the merit list on the post of Sevika, in case the District Programme Officer, upon a complaint made to him, cancels the appointment of the selected Sevika, thus the only course open is to issue fresh advertisement for making fresh selection on the post of Sevika. It is also submitted that the Guidelines dated 17.05.2013, being referred to by the learned counsel for the petitioner of the first case, has got no force inasmuch as the new Guidelines have come in the year, 2016 and the selection process in question has also been initiated in the year, 2016 in terms of the aforesaid 2016 Guidelines. The learned

counsel appearing for the State, Sri Sunil Kumar Mandal, has also referred to a Judgment reported in (1994) 2 PLJR 852 (**Brahm Deo Singh and Ors Vs. The State of Bihar and Ors**), paragraphs No. 4 to 9 whereof are reproduced herein below:-

> 4. Keeping in view the rival contention made at the Bar the questions that fall for my consideration are:
>
> (i) Whether the panel prepared in 1983 still survives?
>
> (ii) Whether the inclusion of the name of a person in the panel vests a right of appointment in him; and,
>
> (iii) Whether an empanelled person can claim a right of being appointed in respect of even future vacancies?
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> 5. Coming to the first question, now it is well settled that a panel prepared for filling up the post in a cadre can be kept alive only for a reasonable period otherwise it may lead to unjust exercise of executive power offending Articles 14 and 16 of the Constitution of India. This matter has been dealt with by the Supreme Court in the case of **State of**

Uttar Pradesh v. Ram Gopal, A.I.R. 1981 S.C. 1041, paragraph 15 whereof reads as under:

> There is no denying the fact that the rules regulating the conditions of service are within the executive power of the State or its legislative power under the proviso to Art 309 but even so, such rules have to be reasonable, fair and not grossly unjust, if they are to survive the test of Articles 14 and 16 of the Constitution. A rule which contemplates that unless the list of 300 persons is exhausted no other person can be selected, obviously is unjust and it deprives other persons in the same situation of the opportunity of being considered for promotion.

6. Keeping in view the law laid down by the Supreme Court in the case of State of Uttar Pradesh v. Ram Gopal (Supra) this Court in the case of **Dr. Sheo Shankar Chand v. State of Bihar** reported in 1990 (1) P.L.J.R. 298 has held that a panel prepared for appointment can be used even after expiry of 12

months for making appointment only under some very exceptional circumstances. This matter has also been considered again by this Court in C.W.J.C. No. 2296 of 1991 (**Nilima Verma v. State of Bihar and Ors.**) disposed of on 5.3.1993 wherein Honble S.B. Sinha, J. after taking into account the Government instructions in this regard has specifically held that the life of the panel expires on completion of one year from the date of its publication. In this view of the matter, in my opinion, no writ of mandamus can be issued directing the Respondents to consider the case of the Petitioners for appointment against any existing vacant post from the expired panel.

7. The second question relating to right of a person already selected has been dealt with by Constitution Bench of the Supreme Court in the case of **Shankarsan Dash v. Union of India** : A.I.R. 1991 SC 1612. In paragraph 7 it has been held as follows:

> It is not correct to say that if a number of vacancies are notified for appointment and adequate number

of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by the Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha : : AIR 1973 SC 2216 :

(1974) 1 SCR 165 Miss Neelima Shangla v. State of Haryana : (1986) 4 SCC 268 : AIR 1987 SC 169, or Jitendra Kumar v. State of Punjab : : AIR 1984 SC 1850 : (1985) 1 SCR 899

8. In the present case the Petitioners have no where stated that any person ranking below them in the panel has been appointed. Therefore, no relief can be granted to the Petitioners on this ground as well.

9. Similarly, in respect of the right of a person empanelled for appointment to certain post in respect of vacancies accruing in future it has been held by the Apex Court in the case of **Rakesh Ranjan Verma v. State of Bihar** : AIR 1992 SC 1348 that mere existence of vacancies alone is not sufficient to create a right in favour of empanelled persons, unless Government considers it necessary as to how many posts were required to be filled in any year in order to carry out its functions and duties."

10. I have heard the learned counsel for the parties and perused the materials available on

record. This Court finds that the selection process for appointment of Anganwari Sevika for Anganwari Centre-Bhairo Beldaria, Code No. 256, under Nawada Sadar Block was initiated in the year 2016, pursuant to coming into force of the new Sevika / Sahayika Selection Guidelines 2016, pursuant whereof, applications were invited for appointment on the post of Anganwari Sevika to the aforesaid Anganwari Centre, whereupon the petitioners of the aforesaid two cases as also others had applied and then a merit list was prepared and an Aam Sabha was called on 17.09.2016, in which the petitioner of the second case, namely, Arti Kumari, was declared to have been selected by the Selection Committee and an appointment letter dated 17.09.2016 was issued to her. However, the petitioner of the first case, namely, Ranju Kumari, had challenged the appointment of the petitioner of the second case by filing appropriate complaint before the District Progamme Officer, Nawada, who, by his order dated 30.06.2017, had cancelled the appointment

of the petitioner of the second case, which was challenged by the petitioner of the second case in appeal before the District Magistrate, Nawada, however, the appeal of the petitioner of the second case was dismissed by the impugned order dated 18.05.2018. This Court finds that the District Programme Officer, Nawada, has considered the case of the parties before him at length and has come to a finding that the petitioner of the second case, namely, Arti Kumari, is not a permanent resident of Anganwari Centre-Bhairo Beldaria, hence, had cancelled her appointment on the post of Anganwari Centre and had directed for organizing Aam Sabha for completing the process of selection to the post of Sevika, in accordance with law. However, the said order dated 30.06.2017 was challenged by the petitioner of the second case before the District Magistrate, Nawada, who has also come to a finding that the petitioner of the second case, namely, Arti Kumari, is not a permanent resident of Anganwari Centre-Bhairo Beldaria, hence, has rejected her appeal by

the impugned order dated 18.05.2018, however, it has been further directed that the selection process for making appointment on the post of Sevika to the aforesaid Anganwari Centre be undertaken afresh by way of issuing of fresh advertisement. This Court finds that there is a concurrent finding of facts, which is apparent from a bare perusal of the order dated 30.06.2017 passed by the District Programme Officer, Nawada and the order dated 18.05.2018 passed by the District Magistrate, Nawada, with regard to the fact that the petitioner of the second case namely, Arti Kumari, is not a permanent resident of Anganwari Centre-Bhairo Beldaria, hence, the same cannot be interfered with inasmuch as firstly, disputed question of facts cannot be adjudicated in a writ petition under Article 226 of the Constitution of India and secondly, there are ample materials on record, as are also discernible from the aforesaid orders dated 30.06.2017 and 18.05.2018, that the petitioner of the second case namely, Arti Kumari, is not a permanent resident of Anganwari Centre-

Bhairo Beldaria, hence, I find that her appointment has been rightly cancelled by the impugned orders dated 30.06.2017 and 18.05.2018. It would be apt to refer to a recent Judgment rendered by the Hon'ble apex Court in the case of **Punjab National Bank v. Atmanand Singh**, reported in (2020) 6 SCC 256, paragraphs no. 19 to 22 whereof are reproduced herein below:-

> "19. The appellant Bank has rightly invited our attention to the Constitution Bench decision of this Court in *Thansingh Nathmal* [*Thansingh Nathmal* v. *Sudt. of Taxes*, AIR 1964 SC 1419] . In para 7, the Court dealt with the scope of jurisdiction of the High Court under Article 226 of the Constitution in the following words :
>
> > "7. ... The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily

be exercised subject to certain self-imposed limitations. *Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed.* The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be by-

passed, and will leave the party applying to it to seek resort to the machinery so set up."

20. Similarly, another Constitution Bench decision in *Suganmal* [*Suganmal* v. *State of M.P.*, AIR 1965 SC 1740] dealt with the scope of jurisdiction under Article 226 of the Constitution. In para 6 of the said decision, the Court observed thus :

"*6*. On the first point, we are of opinion that though the High Courts have power to pass any appropriate order in the exercise of the powers conferred under Article 226 of the Constitution, such a petition solely praying for the issue of a writ of mandamus directing the State to refund the money is not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a suit against the authority which had illegally collected the money as a tax. ... *We do not find any good reason to extend this principle and, therefore, hold that no petition for the issue of a writ of mandamus will be normally entertained for the purpose of merely ordering a refund of money to the return of which the petitioner claims a right*."

(emphasis supplied)

And again, in para 9, the Court observed as follows : (AIR p. 1742)

> "*9*. We, therefore, hold that normally petitions solely praying for the refund of money against the State by a writ of mandamus are not to be entertained. *The aggrieved party has the right of going to the civil court for claiming the amount and it is open to the State to raise all possible defences to the claim, defences which cannot, in most cases be appropriately raised and considered in the exercise of writ jurisdiction*."

21. In Gunwant *Kaur* [*Gunwant Kaur* v. *Municipal Committee, Bhatinda*, (1969) 3 SCC 769] relied upon by Respondent 1, in para 14, the Court observed thus :

> "*14*. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in

considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. *When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition*. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons."

22. We restate the above position that when the petition raises questions of fact of complex nature, such as in the present case, which may for their determination

require oral and documentary evidence to be produced and proved by the party concerned and also because the relief sought is merely for ordering a refund of money, the High Court should be loath in entertaining such writ petition and instead must relegate the parties to remedy of a civil suit. Had it been a case where material facts referred to in the writ petition are admitted facts or indisputable facts, the High Court may be justified in examining the claim of the writ petitioner on its own merits in accordance with law."

11. This Court would also refer to a Judgment rendered by the Hon'ble apex Court in the case of **State of U.P. v. Lakshmi Sugar & Oil Mills Ltd.**, reported in (2013) 10 SCC 509, paragraphs no. 20 whereof is reproduced herein below:-

"20. The order passed by the District Consolidation Director/Collector, Hardoi also concurred with the view taken by the officers below and held that there was no evidence on record to show that the subject land was ever held or occupied for agricultural purposes or that any agricultural activity was ever carried out on the same. These concurrent findings of fact,

> in our opinion, could not have been reversed by the High Court in its writ jurisdiction. The High Court obviously failed to appreciate that it was not sitting in appeal over the findings recorded by the authorities below. It could not reappraise the material and hold that the land was held or occupied for cultivation and substitute its own finding for that of the authorities. Inasmuch as the High Court did so, it committed an error. It is noteworthy that the revenue record clearly belied the assertion of the respondent Company and described the land as “parti kadim tilla” which meant that the land has not been cultivated for a long time and is in the form of a hillock."

12. Similarly it would be apropos to refer to a Judgment rendered by the Hon'ble apex Court in the case of **Krishnanand Vs. Director of Consolidation**, reported in (2015) 1 SCC 553, paragraphs no. 7 to 14 whereof is reproduced herein below:-

> "7. A plain reading of the impugned order [*Kamla Devi* v. *Director of Consolidation*, WP No. 5289 (Consolidation) of 1983, decided on 6-5-2013 (All)] shows that the High Court

had committed an error in reappreciating the evidence by setting aside the findings of fact, which is normally impermissible in the exercise of its jurisdiction under Article 226 of the Constitution of India. The learned counsel for the respondent however relied on two decisions of this Court, which on a close scrutiny do not help the case of the respondents. The said decisions are considered hereinbelow.

8. In *Babubhai Muljibhai Patel* v. *Nandlal Khodidas Barot* [(1974) 2 SCC 706 : (1975) 2 SCR 71] this Court observed that: (SCC pp. 715-16, para 10)

> "*10*. ... The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 [of the Constitution] merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on

> that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition.... If, however, on consideration of the nature of the controversy, the High Court decides ... that it should go into a disputed question of fact and the discretion exercised by the High Court appears to be sound and in conformity with judicial principles, this Court would not interfere in appeal with the order made by the High Court in this respect."

9. It may be noted that *Patel case* [(1974) 2 SCC 706 : (1975) 2 SCR 71] was a case where the High Court went into certain disputed facts regarding whether the no-confidence motion, in question, has been merely passed, inter alia, it had been contended by the President of the meeting that the no-confidence motion had failed for want of two-thirds majority of the total number of councillors. He had accordingly filed an affidavit. The High Court had come to the conclusion that the Collector had no jurisdiction to make such inquiry and that the order of the Collector was void on the ground that it had been made in violation of the principles of natural justice. In fact there

was not even a semblance of natural justice. The High Court proceeded to consider the material on record including the evidence of deponents who had been cross-examined, and came to the conclusion that 17 councillors had voted for the no-confidence motion against the appellant in the meeting held on 6-5-1973. In these circumstances, the exercise of the jurisdiction by the High Court was justified on the ground that the entire concept of a democratic institution would thus have been set at naught, if the appellant would have continued as President of the Municipality even though he had ceased to enjoy the support of a requisite number of councillors. This Court observed that the purpose underlying the petition would have been completely defeated in case Respondent 1 had been relegated to the ordinary remedy of a suit and that such remedy was neither adequate nor efficacious. Thus the circumstances of the case were entirely different from the present case.

10. Similarly, we do not find that the circumstances existing in the other case relied on by the learned counsel for the respondents are relevant to the present case. In *NTPC Ltd.* v. *Mahesh Dutta* [(2009)

8 SCC 339 : (2009) 3 SCC (Civ) 375] , the dispute was as to the taking of possession of acquired land in case of urgency under Section 17 of the Land Acquisition Act and this Court observed: (SCC p. 351, para 26)

> "*26*. ... whether actual physical possession had been taken in compliance with the provisions of Section 17 of the Act or not would depend upon the facts and circumstances of each case."

This Court also observed that depending upon the fact situation obtaining in each case; the High Court had the power to determine whether possession of the acquired land was actually taken over or not. Eventually, this Court held that a presumption existed in view of Section 114 of the Evidence Act, 1872, having regard to the issue of certificate and that, therefore, the High Court was right in holding that possession has actually been taken. This Court upheld the power of the High Court to enter into a disputed question of fact depending upon the circumstances of the case. There is no doubt that depending upon the circumstances of the case, the High Court could determine a question of fact. It must necessarily do so in the nature

of the case referred to above.

11. Considering the present case, we find that the Consolidation Officer, Sultanpur by the order dated 3-2-1982; the Assistant Settlement Officer, Consolidation, Sultanpur by order dated 21-5-1982; and Deputy Director of Consolidation, Sultanpur by order dated 17-8-1983 had taken a certain view. The Consolidation Officer, Sultanpur had passed the final order dismissing the respondent's objection and treated her as a trespasser in view of the revenue record available. The respondent filed an appeal before the Assistant Settlement Officer, Consolidation, Sultanpur, who dismissed the said appeal. The respondent then preferred a revision before the Deputy Director of Consolidation, Sultanpur, which too was dismissed. Thus, three authorities had come to the conclusion that the respondent is a trespasser. However, the High Court in the writ petition filed by the respondent reappreciated the entire evidence on record as if it was hearing an appeal and came to the following conclusion:

> “However, I am of the view that they have failed to appreciate that the receipts of money order establish the money

transaction happened between Ram Samujh and Ram Adhar. The entry of Clause 9 shows the possession of Ram Samujh over the land in dispute, may not be as owner of the land. Statements of the witnesses prove that the property was acquired through the money sent by Ram Samujh when their family was joint and since Ram Adhar was living at home, it was recorded in his sole name. Possession of both the parties was recorded over half of the each share.

Thus, from the aforesaid facts, the possession of both the parties over the land in dispute to the extent of respective share is well proved. The acquisition of land by the joint fund of family having been living in the joint family is also established."

12. The High Court has committed an error in reversing the findings of fact arrived at by the authorities below in coming to the conclusion that there was a partition. No doubt, the High Court did so in exercise of its jurisdiction under Article 226 of the Constitution. It is a settled law that such a jurisdiction cannot be exercised for reappreciating the evidence and arrival of

findings of facts unless the authority which passed the impugned order does not have jurisdiction to render the finding or has acted in excess of its jurisdiction or the finding is patently perverse. In the present case, though the High Court reversed the concurrent findings of the authorities below and came to the opposite conclusion on matter of facts, the High Court did not do so on the ground that the authorities below acted in excess of their jurisdiction or without jurisdiction or that the finding is vitiated by perversity.

13. We are of the view that the High Court ought not to have entered into reappreciation of evidence and reversed the findings of fact arrived at by the three authorities below, especially since the authorities had neither exceeded their jurisdiction nor acted perversely. The High Court has nowhere stated that it was of the view that there is any perversity, much less the High Court failed to demonstrate any such circumstances.

14. In the circumstances, we are of the view that the appeal deserves to be allowed and is accordingly allowed. The impugned order [*Kamla Devi* v. *Director of Consolidation*, WP

No. 5289 (Consolidation) of 1983, decided on 6-5-2013 (All)] of the High Court is thus set aside."

13. Now coming to the issue regarding propriety of the directions issued by the District Magistrate, Nawada, by his order dated 18.05.2018, to the effect that fresh steps be taken for the purposes of making selection on the post of Sevika at the aforesaid Anganwari Centre, this Court finds that there is no provision in the Anganwari Sevika / Sahayika Selection Guidelines, 2016 to offer appointment to the second candidate in the merit list, once the appointment of the first selected candidate has been cancelled by the District Programme Officer / the District Magistrate concerned.

14. This Court finds that Clause 10 of the Anganwari Sevika / Sahayika selection Guidelines, 2016 stipulates that the validity of the panel shall be for a period of one year from the date of selection, however, admittedly there is no provision in the entire Anganwari Sevika / Sahayika

selection Guidelines, 2016 regarding mechanical issuance of an order of appointment qua the second candidate in the merit list, on the post of Sevika, in case the District Programme Officer, upon a complaint made to him, cancels the appointment of the selected Sevika, thus this Court is of the opinion that in such cases, as the present one, the only recourse open to the respondent State authorities is to issue a fresh advertisement for making fresh selection on the post of Sevika at the Anganwari Centre in question. As far as reliance of the learned counsel for the petitioner of the first case on the letter dated 17.05.2013, issued by the Welfare Department, Government of Bihar whereby Clause 10.3 of the Guidelines 2011 had been amended, is concerned, the same has stood abrogated with the coming into force of the new Guidelines i.e Anganwari Sevika / Sahayika selection Guidelines, 2016, in terms whereof, the selection process in question had been initiated in the year, 2016.

Hence, I find that the District Magistrate,

Nawada, by his order dated 18.05.2018, has rightly directed for conducting the selection process afresh by issuance of fresh advertisement for the purposes of making appointment on the post of Anganwari Sevika at the aforesaid Anganwari Centre.

15. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove as also considering the Law laid down by the Ld. Courts in the cases of Brahm Deo Singh and Ors. (Supra), Ram Gopal (Supra), Shankarsan Dash (Supra) Nilima Verma (Supra), Atmanand Singh (Supra), Lakshmi Sugar & Oil Mills Ltd. (Supra) and Krishnanand (Supra), I do not find any merit in both the writ petitions, accordingly, both the aforesaid writ petitions are dismissed, being bereft of any merit.

(Mohit Kumar Shah, J)

Ajay/-

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