

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.426 of 2022

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Jyoti Kumari W/o Ajeet Kumar Aryan R/v- Paharpur, Ward No- 9, Gram Panchayat Alampur Kodaria, P.S.- Bibhutipur, Dist- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
2. The District Magistrate cum Collector, Samastipur.
3. District Programme Officer, Samastipur.
4. The Sub Divisional Officer, Rosera, District- Samastipur.
5. The Block Development Officer, Bibhutipur, District- Samastipur.
6. The Child Development Project Officer, Bibhutipur, District- Samastipur.
7. The Ward Member No- 9, Gram Panchayat, Alampur, P.S. Bibhutipur, District- Samastipur.
8. Ananya Kumari W/o Chandrajeet Kumar R/v- Pahadpur Ward No- 9, Gram Panchayat Alampur, P.S.- Bibhutipur, District- Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar, Adv.
For the Respondent/s : Smt. Kumari Amrita, GP 3

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 26-11-2024

Heard Mr. Ajay Kumar, learned Advocate for the petitioner and Smt. Kumari Amrita, learned Government Pleader-3 for the State.

2. The petitioner is aggrieved by the order dated 02.11.2021 passed in Anganwadi Appeal No. 128 of 2019 by the Collector, Samstipur whereby he allowed the appeal preferred by the respondent no. 8 and set aside the order dated 19.01.2019 passed by the District Programme Officer, Samastipur in



Aganwadi Case No. 178 of 2018 and upheld the selection of the respondent No. 8 as Aganwadi Sevika of Aganwadi Centre No. 366, Alampur Gram Panchayat, District Samastipur.

3. The short facts which led to the filing of the writ petition are that pursuant to an advertisement for selection of Aganwadi Sevika and Sahiyaka, the petitioner along with others applied for the post of Aganwadi Sevika on 17.01.2018. Merit list was duly prepared for selection of Aganwadi Sevika/Sahiyaka; the name of the petitioner finds at Sl. No. 1 in the merit list with 76% of marks. Aam Sabha was held on 16.02.2018. However despite the fact, the petitioner secured first position in the merit list and found eligible to be appointed as Aganwadi Sevika she did not get appointment letter and in his place, the respondent no. 8 was selected as Aganwadi Sevika.

4. On the other hand, the respondent no. 8 obtained only 58.60 % marks, much less than the petitioner, who obtained 76% marks, nonetheless her case was placed for consideration and, as such, the petitioner filed objection before the respondent no. 6. It transpired that the petitioner has been found unsuited on account of the fact that the marriage of the petitioner was solemnised with Ajeet Kumar Aryan after the cut



off date of 16.02.2018, when the Aam Sabha was held.

5. Being aggrieved, the petitioner approached before the District Programme Officer, ICDS by filing Aganwadi Case bearing No. 179 of 2018. The said Aganwadi Case came to be allowed in favour of the petitioner and after cancelling the selection of the respondent no. 8, a direction has been given to select the petitioner in terms of the scheme, copy of the order of the District Programme Officer dated 20.07.2018 has been placed on record as Annexure-5 to the writ petition. The order of the District Programme Officer, ICDS was put to challenge by the respondent no. 8 before the Collector, Samastipur vide Aganwadi Appeal No. 128 of 2019 and finally the same came to be allowed vide order dated 06.12.2021 ignoring the materials available on record that the marriage of the petitioner was solemnised on 29.11.2017 itself, is the contention of learned Advocate for the petitioner. The order of the Collector, Samastipur is under challenge in the case in hand.

6. Learned Advocate for the petitioner contended that the certificate issued by the priest of the Bidhyapati Mandir, Samastipur, where the marriage was solemnised categorically demonstrates that the marriage of the petitioner with Ajeet Kumar Aryan was solemnised before the cut off date and as



such non-selection of the petitioner by treating her marriage on any subsequent date is out and out unsustainable and wholly without jurisdiction. The impugned order of the Collector, Samastipur is based upon hypothesis and suspicion, without any cogent material, thus the same is illegal and fit to be set aside.

7. On the other hand, learned Government Pleader for the State submits that the Collector, Samastipur has taken note of every aspect of the matter and it has been found that the marriage of the petitioner was solemnised on 18.02.2018. Manipulation and tampering has been found in the marriage register, based upon which certificate has been issued by the Bidhyapati Mandir. It is also the contention of the learned Advocate for the State that since there is disputed question of fact with regard the date of the marriage, the same ought not to be considered while exercising the writ jurisdiction. The petitioner has always been at liberty to approach before the Civil Court of competent jurisdiction to settle the disputed question of fact.

8. This Court has heard the learned Advocate for the respective parties and also perused the materials available on record. From the order passed by the Collector, Samastipur, *prima facie*, it appears that the claim of the petitioner that her



marriage was solemnised before the cut off date has not been found favour. The finding of the Collector, Samastipur is based upon the materials placed before him and duly discussed in this order. The marriage certificate issued in favour of the petitioner has been found forged and there was finding of apparent manipulation and tampering in the marriage register of the temple. Despite the ample opportunity granted to the petitioner on various occasions, she remained absent in the case and finally on the basis of the materials available on record, the Collector, Samastipur has passed the order and set aside the order of the District Programme Officer. This Court also finds substance in the submission of the learned Advocate for the State that there is a disputed question of fact with regard the date of the marriage of the petitioner, which otherwise also, can not be determined without taking evidences.

9. So far the post of Aganwadi Sevika is concerned, it is a post created under the scheme and not holding any civil post, thus no protection under Article 311 of the Constitution is available. It is apt and proper to refer the judgment rendered by this Court in the case of *Parvati Devi @ Parvati Singh Vs. The State of Bihar and Ors.*, reported in *2024 (1) BLJ 178* held as follows:



“5. This Court would also refer to a judgment rendered by the Hon’ble Apex Court, reported in *(2007) 11 SCC 681 (State of Karnataka and others v. Ameerbi and Others)*, wherein it has been held that the post of *Anganwadi* workers are not statutory post and they have been created in terms of the Scheme as also the *Anganwadi* workers are not holders of civil post since they do not carry on any function of the State as they do not hold post under a statute, their posts are not created, recruitment rules ordinarily applicable to the employees of the State are not applicable in their case, hence, the State is not required to comply with the constitutional scheme of equality, as enshrined under Articles 14 and 16 of the Constitution of India.

6. This Court also deems it fit and proper to refer to a judgment rendered by the learned Division Bench of this Court in the case of **Babita Kumari v. The State of Bihar and others**, reported in **2016 SCC Online Pat 9434**, paragraphs no. 7 and 8 whereof are reproduced herein below:-

“7. Having considered the rival contentions, we do not find any merit in the present appeal. The charges against the appellant were very clear as would be apparent from the show cause dated 22.02.2012, which was issued in light of the findings in the enquiry report as well as the



relevant documents/registers which were required to be maintained at the Centre. Reply given by the appellant, copy of which has been brought on record, does not indicate any justification and rather it has been stated that on 24.09.2011 at the time of Inspection, the children were still coming and on 07.10.2011, she herself had gone to call the children and during that time the inspection was held. It was further stated by the appellant that on 30.09.2011 she had become ill due to being drenched by rain. We find that such explanation is vague and evasive and does not inspire confidence. The spirit and object of running Anganbari Centers cannot be over-emphasized and the purpose is to ensure the welfare of children from the lowermost and deprived strata of society. Any lapse in execution of the said scheme has to be taken very seriously. Closure of even one day entails the beneficiaries going without their meals, which cannot be overlooked. Thus, we do not find any infirmity in the decision of the authorities cancelling her selection as well as the procedure adopted by them prior to passing such order.

8. For the reasons aforesaid, the Letters Patent Appeal, being devoid of merit, stands dismissed.”



10. Considering the aforesaid facts and the settled legal position, this Court does not find any merit in the writ petition. Suffice it to observe that while exercising power of judicial review, the Court is only required to see the legality of the decision making process and the error of law or the jurisdictional error, which may lead to manifest illegality. Moreover, there is also disputed question of facts, which demands an elaborate examination of evidence to establish the right of the parties and thus ordinarily, such issue ought not be decided by this Court, while exercising writ jurisdiction.

11. On all this counts, this Court does not find any reason to interfere in the impugned order. Accordingly, the writ petition stands dismissed. However, the petitioner is at liberty to approach before the Civil Court of competent jurisdiction to settle the disputed question of fact, if so advised.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	29.11.2024
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