

**(2008) 11 PAT CK 0043**  
**In the Patna High Court**  
**Case No : LPA No. 233 of 2006**

Archana Devi, Mostt. Ranju @ Mostt. Sanju Kumari and  
Jaymala Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 25-11-2008

**Acts Referred:**

**Citation :** (2009) 57 BLJR 873 : (2009) 2 PLJR 206

**Hon'ble Judges :** R.M. Lodha, C.J.; Kishore K. Mandal, J

**Bench :** Division Bench

**Advocate :** Rajendra Prasad Singh, Rajeev Kumar Singh and Onkar Kumar, for the Appellant; Rajesh Kumar Singh, JC to AAG-II for Respondent Nos. 1 to 6, Rajiv Kumar Verma and Manoj Kumar Jha, for Respondent Nos. 7 to 10, for the Respondent

**Final Decision :** Allowed

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## Judgement

1. This letters patent appeal is directed against the order dated 24th February, 2006, whereby the Single Judge disposed of the writ petition by holding that the writ petitioners (present respondent Nos. 7 to 10) were duly selected Anganbari Sevika and further directed the State authorities to send the petitioners for training.

2. For the sake of convenience, we shall refer the present respondent Nos. 7 to 10, "writ petitioners" and the present appellants, "the private respondents".

3. The controversy arises, in the facts and circumstances, which may be briefly indicated by us. The petitioners filed the writ petition for issuance of writ of mandamus to the State government and its functionaries by directing them to send the petitioners for training and pay honorarium to them. According to them, they were duly selected in the meeting of Aam Sabha, Gram Panchayat, Tumaul held on 31st of December, 2003 under the Chairmanship of Mukhiya and the supervision of Chief Development Programme Officer (C.D.P.O), Ghanshyampur.

The selection list is said to have been prepared in the presence of C.D.P.O., and Panchayat Mukhiya. The appointment letters to the petitioners were issued on 2nd of January, 2004.

4. (According to the petitioners, having been duly selected as Anganbari Sevika, they were entitled to be sent for training but that was not done by the State functionaries nor they were paid any honorarium. It is in this backdrop that the petitioners, as indicated above, prayed for a direction to the government functionaries to send them for training and for payment honorarium.

5. It may be stated here that in the writ petition nothing was said nor indicated in respect of appointment or selection of private respondents as Anganbari Sevika. As a matter of fact, vide interlocutory application (IA. No. 2748 of 2005) made on 24th May, 2005, it was brought to the notice of the court that C.D.P.O., Ghanshyampur has appointed fresh candidates as Anganbari Sevika in Grampanchayat - Tumaul and appointment orders have also been issued to them. It was further averred in the application that C.D.P.O., Ghanshyampur has also issued letters for sending the fresh appointed candidates for training. It was, thus, prayed in the interlocutory application that the fresh appointment of Anganbari Sevika be cancelled. It appears that based on that application, the private respondents were impleaded as party - respondents. The private respondents did not file any counter affidavit but counter affidavit was filed by the C.D.P.O. In his counter affidavit, C.D.P.O. admitted that in the Aam Sabha meetings of Tumaul Panchayat held on 30th December, 2003 and 31st December, 2003, the selection of Anganbari Sevika was done and selection letters were issued to the selected candidates.

6. It was, however, submitted that several complaints were received against the selection and, accordingly, the Sub-divisional Officer, Biroul vide his letter dated 22nd January, 2004 asked the Block Development Officer, Ghanshyampur to hold an inquiry into the matter. The Block Development Officer, Ghanshyampur held the inquiry and it was found that the selection process held on 30th December, 2003 and 31st December, 2003 suffered from gross - irregularities and, consequently, recommended vide his letter dated 21st February, 2004 for the necessary action. Upon receipt of the inquiry report, the District Magistrate, Darbhanga vide his letter dated 31st July, 2004 instructed the C.D.P.O., Ghanshyampur to get the matter placed before Aam Sabha for rectification and fresh selection. Accordingly, C.D.P.O., Ghanshyampur asked Mukhiya, Gram Panchayat Tumaul, vide his letter dated 12th August, 2004 to convene the Aam Sabha again, but Mukhiya failed to do so for a long time. The matter was reported by the C.D.P.O. to the District Programme Officer, Darbhanga and based on that, the meeting of Aam Sabha was convened under the Chairmanship of Block Development Officer, Ghanshyampur on 8th December, 2004. The Aam Sabha in its meeting held on 8th December, 2004 recalled the selection process which took place on 30th December, 2003 and 31st December, 2003 and selected the private respondents as Anganbari Sevika. The C.D.P.O. submitted that in the

circumstances the prayer made by the petitioners for direction to the concerned authority for sending them for training did not survive.

7. The single judge heard the counsel for the petitioners and the government counsel and, as indicated above, held that selection of the petitioners in the meeting of Aam Sabha held on 30st December, 2003 and 31st December, 2003 stands and, consequently, directed the concerned authorities to send the petitioners for training. The principal reason that weighed with the single judge in holding that the selection of the petitioners stands was that the investigation by the Block Development Officer was not found to be authorised.

8. The selection of Anganbari Sevika/Sahayika is regulated by the government circulars issued from time to time. The government circular dated 13th June, 1998 is comprehensive and it provides the entire procedure to be followed for such selection. That the State government has issued the circular on 15th December, 2003 whereby District Magistrate/Sub-divisional Officer/ District Welfare Officer have been authorized to inquire into the allegations of illegalities in selection of Anganbari Sevika/Sahayika is not in dispute. The said circular provides that during the course of inquiry if selection of Anganbari Sevika/Sahayika is found to have been made in dis-regard and breach of the directives issued by the State government, then this should be informed to the Gram Panchayat Mukhiya who would place such finding with regard to irregularities and illegalities in selection before the Aam Sabha and in the light of the decision taken by the Aam Sabha, fresh selection of Anganbari Sevika/Sahayika shall be made.

9. The question for consideration by us is: whether the inquiry held by the Block Development Officer to enquire into illegalities in selection process held in the meetings of Aam Sabha on 30st December, 2003 and 31st of December, 2003 suffers from patent lack of authority justifying restoration of the decision taken by the Aam Sabha on 30th December, 2003 and 31st December, 2003 in respect of selection of Anganbari Sevika/Sahayika, although such selection was recalled by Aam Sabha itself in its subsequent meeting held on 8th December, 2004 ?

10. The material that has come on record would show that the Sub-divisional Officer, Biraul received some complaints from the members of Panchayat Samiti in respect of illegalities in the conduct of the proceedings of Aam Sabha held on 30th December, 2003 and 31st December, 2003. Accordingly, by his letter dated 22nd January, 2004, he asked the Block Development Officer, Ghanshyampur to enquire into the said illegalities.

11. That the Sub-divisional Officer has been authorized to hold inquiry into the allegations of irregularities and illegalities in the appointment of Anganbari Sevika/Sahayika is not in dispute. As per the circular dated 15th December, 2003, if during the course of inquiry, it is found that the selection of Anganbari Sevika/Sahayika has taken place in violation of the government directives, then such inquiry report shall be brought into notice of the Mukhiya, who in turn,

would place such report before the Aam Sabha for an appropriate decision.

12. Strictly speaking, in view of circular dated 15th December, 2003, the inquiry ought to have been conducted by the Sub-divisional Officer. However, in our considered view, this aspect pales into insignificance for more than one reason.

13. For one, in the subsequent Aam Sabha meeting held on 8th December, 2004, no objection seems to have been taken by any one including the petitioners who were present that the inquiry held by the Block Development Officer was unauthorized or incompetent. For want of any objection in this regard in Aam Sabha meeting, it has to be assumed that Aam Sabha as well as the petitioners waived the objection with regard to lack of authority or competence of the Block Development Officer in holding such inquiry. This aspect has been altogether overlooked by the Single Judge.

14. For two, the minutes of the meeting held on 8th December, 2004 show without doubt that gross illegalities took place in selection of the Anganbari Sevika in the meeting held on 30th December, 2003 and 31st December, 2003 in as much as the selected candidates (petitioners) were neither found to be belonging to below poverty line category nor certificates in that regard were produced by them before the Aam Sabha. In other words, the candidates selected as Anganbari Sevika (petitioners) in the meetings held on 30th December, 2003 and 31st December, 2003 were not even eligible for being appointed as Anganbari Sevika.

15. For three, Aam Sabha being apex body having convinced itself that there were irregularities and illegalities in the selection of Anganbari Sevika in its meetings held on 30th December, 2003 and 31st December, 2003 recalled its decision taken in that meeting and selected new candidates in its meeting held on 8th December, 2004. Nothing has been shown by the petitioners that Aam Sabha meeting held on 8th December, 2004, whereunder their selection as Anganbari Sevika was cancelled and private respondents were selected as Anganbari Sevika, suffered from any illegality or irregularity. If Aam Sabha meeting held on 8th December, 2004 did not suffer from any illegality or irregularity and that is not in issue, the decision taken in that meeting cannot be said to be illegal or not in accord with law. In that situation, the decision of the Aam Sabha taken on 30th December, 2003 and 31st December, 2003 cannot stand in the light of the subsequent decision taken by Aam Sabha on 8th December, 2004.

16. One more aspect needs to be noticed that although an interlocutory application was made by the petitioners bringing on record the factum of fresh selection of Anganbari Sevika having taken place during the pendency of the writ petition, the petitioners did not choose to amend the writ petition putting in issue the legality and validity of the meeting and proceedings dated 8th December, 2004 of the Aam Sabha, whereby private respondents was selected as Anganbari Sevika and the selection of the petitioners was cancelled. As a matter of fact, for

want of any challenge to the proceedings of the Aam Sabha meeting held on 8th December, 2004, the prayer made by the petitioners in the writ petition, which was only confined to direction being issued to the government functionaries to send them for training and pay them honorarium did not survive. The single judge ought to have dismissed the writ petition on this ground alone. As a matter of fact, the single judge has granted the reliefs to the petitioners which were not even prayed for in the writ petition.

17. In what we have discussed above, letters patent appeal deserves to be allowed and is allowed. The order passed by the Single Judge on 24th February, 2006 is quashed and set aside. Resultantly, the writ petition filed by the petitioner stands dismissed. The parties shall bear their expensae litis.