
(2012) 10 PAT CK 0026
In the Patna High Court
Case No : CWJC No. 9935 of 2007

Lalita Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-10-2012

Acts Referred:

Citation : (2013) 1 PLJR 244

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Pankaj Kumar Sinha and Kamal Kishore Jha, for the Appellant;
Dhirendra Nath Jha No. 5 and Mr. Shatrughna Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Navaniti Pd. Singh, J.—Petitioner challenges the cancellation of her selection as Anganbari Sevika by the District Magistrate-cum-Collector, Munger. On behalf of petitioner, it is submitted that she was duly selected by the Aam Sabha but within five months abruptly without notice her selection had been cancelled. Subsequently, respondent no. 5, Bobby (Bauby) Kumari was selected. Pursuant to interim order of this Court status quo was directed to be maintained which was ineffectual inasmuch as by then Bobby (Bauby) Kumari had already been selected and petitioner had already been dismissed. A counter affidavit has been filed on behalf of the State and the Bobby (Bauby) Kumari, pursuant to notice has appeared and also filed a counter affidavit. On behalf of State, it is stated with reference to the merit list as prepared in the Aam Sabha that in fact the petitioner had secured the lowest marks whereas respondent no. 5 had secured the highest marks. This position is not contested by the petitioner. Respondent No. 5 was excluded only on the ground that father-in-law of respondent no. 5 was a Government pensioner. It appears that pursuant to the selection process there were lots of public complaints including complaints to the Lokayukt. Upon directions being issued, the Collector got the matter examined and, consequently, finding this illegality committed in the selection process cancelled

the appointment of the petitioner. Subsequently, respondent no. 5, who had wrongly been deprived of her appointment, was appointed. Against non-appointment of respondent no. 5, respondent no. 5 had preferred a writ petition before this Court. But, during its pendency as she had got selected, she withdrew the writ petition with an observation that she be issued the appointment letter immediately.

2. Having heard the learned counsel for the petitioner, State and respondent no. 5, Bobby (Bauby) Kumari, in my view, the writ petition does not merit consideration. The very foundation of the writ petition is selection of the petitioner. As noted above, the State has brought on record the merit list which clearly shown that the petitioner was the least meritorious candidate whereas respondent no. 5 was the most meritorious candidate. This fact was not disputed by the petitioner. However, respondent no. 5 was deprived of her selection merely because her father-in-law is a pensioner. Learned counsel for the petitioner emphasizes that she was rightly disqualified. In the counter affidavit as filed by respondent no. 5 she has annexed the scheme of the Anganbari Sevika. In the scheme, it is clearly provided that a person shall not be selected as Anganbari Sevika if she is related to Mukhiya, members of Panchayat Samiti, Ward members and similar members, fair price shop dealers, kerosene oil vendors and Government or Semi-Government employee.

3. In my view, the emphasis in this entire provision is that there has to be a live connection between the person and Government or Semi-Government organization. He must be Mukhiya but not Ex-Mukhiya. He must be a member and not an ex-member. Similarly, he must be a Government employee and not a retired employee. Thus, in my view, respondent no. 5 could not have been eliminated merely because her father-in-law happened to be a pensioner. He was not in employment in Government or in State or in other Semi-Government organization. On the face of it, respondent no. 5 was wrongly deprived of his appointment by Aam Sabha and, thus, by cancelling the appointment of the petitioner who was least in the merit no injustice has been done rather the action of the authority has only restored where it was required, Another reason for not interfering in the matter is that it is well settled that by setting aside the illegal order it would revive illegality. Then, the Court would set aside both the orders or Court will not interfere at all because the Court cannot give legitimacy to illegal action. In this case, if I assume that the order of the Collector was wrong and illegal then the same is set aside then the illegality committed at the initial stage would be revived by wrongful exclusion of respondent no. 5. This cannot be permitted. Thus, I refused to entertain this application and the same is, accordingly, dismissed.