
(2006) 05 PAT CK 0060
In the Patna High Court
Case No : CWJC No. 16074 of 2004

Nirmala Kuwar @ Nirmala Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-05-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2006) 3 PLJR 162

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Advocate : Bhola Prasad, for the Appellant; Manoj Kumar Sinha for the State and Mr. Rajendra Pd. Singh, for the Respondent

Judgement

Ramesh Kumar Datta, J.—The petitioner has filed this writ petition with a prayer for a direction to the respondents to consider her case for selection as Anganbari Sewika for Dadhapi Centre of Dadhapi Gram Panchayat, P.S. Goh, Block-Goh, District-Aurangabad, in place of respondent No. 6 who has allegedly been selected without considering the guidelines contained in Government's Circular dated 13.6.1998. The petitioner's case is that she alongwith others including the respondent No. 6 had applied for selection on the post of Anganbari Sevika of the abovementioned Centre and after consideration of their case respondent No. 6, Sakila Devi, has been selected violating condition No. 5 of the Circular contained in Letter No. 1129 dated 13.6.1998 issued by the Secretary, Welfare Department, Government of Bihar. In terms of the said condition No. 5 where the qualification is the same then the widow-abandoned women of the same category is to be given preference. The counsel for the petitioner states that both the petitioner and respondent No. 6 are matriculate but the petitioner in addition is widow and, therefore, she ought to have been appointed in preference to respondent No. 6. It is further submitted that the petitioner after the aforesaid selection of respondent No. 6 filed her representation before the competent authority but nothing has been done in the matter.

2. A counter affidavit has been filed on behalf of respondent Nos. 1 to 5 and respondent No. 3, the C.D.P.O., Goh, Aurangabad, as well as by respondent No. 6, Sakila Devi. The stand of the respondent authorities is that respondent No. 6 has rightly been selected for the post of Anganbari Sewika by the Am Sabha at its meeting held on 10.3.2003 after complying with the Welfare Department's letter No. 1129 dated 13.6.1998. It is further stated that the decision taken by the Am Sabha presided over by the Mukhiya is final and the concerned C.D.P.O. is bound to issue selection letter on the basis of the recommendation made by the Am Sabha. Further the selection of respondent No. 6 is valid, legal and in accordance with law.

3. Mr. Rajendra Prasad Singh, learned Senior Counsel appearing for respondent No. 6 contends that the Amsabha has acted in accordance with the prescribed selection procedure and has rightly selected respondent No. 6 assigning good reasons for the same. He has referred to Annexure-A to the counter affidavit filed on behalf of the State respondents containing the proceeding of the Amsabha on 10.3.2003 and the chart attached to the same from which it appears that the petitioner is a matriculate in 2nd Division whereas respondent No. 6, Sakila Devi, is a matriculate in the First Division having obtained 566 marks which is the highest among all the seven candidates for the post of Anganbari Sevika. He further points out that the Gram Sabha had clearly mentioned the reasons for selection as the respondent No. 6 being economically weaker has income of Rs. 21,000/- per month as compared to the petitioner who has income of Rs. 25,000/- per month. In the light of the aforesaid facts learned counsel submitted that the selecting authority had considered the case of the candidates, who had applied and after due consideration it has taken a decision assigning the reason for the same. According to him the reasons are assigned and, thus, the decision of the Gram Sabha is neither illegal nor its conclusions are absurd. That being the position, it is contended by him that the writ court cannot substitute its own reason and select other candidate when the selection authority has complied with the requirements of Articles 14 and 16 of the Constitution of India.

4. With respect to condition No. 5 laid down in the Circular dated 13.6.1998 he submits that the said condition lays down that only if every thing is equal then preference is to be given to a widow/abandoned woman but in the present matter two candidates, namely petitioner and respondent No. 6 do not stand on the same footing. But respondent No. 6 having a better qualification of 1st Division as a Matric and otherwise being economically weaker, therefore,- no preference could have been given to the petitioner and the Gram Sabha has rightly not considered. He further submits that the said Circular is only in the nature of guidelines and does not have a legal force so as to nullify the decision taken by the Gram Sabha after due consideration of matters.

5. Having considered the rival submissions there can be no doubt in the matter that the writ court does not interfere with the decision taken by the competent authority if the same is based on due consideration of the relevant merits of the

various candidates for selection. However, if the competent authority fails to look into a relevant condition laid down for the exercise of its power and thereby acts contrary to the manner in which the jurisdiction is to be exercised by it, it is a settled proposition of law that a writ court can interfere and set aside the order.

6. The submission of the learned counsel for the respondent No. 6 that the Circular dated 13.6.1998 is mere guidelines and not being statutory in nature does not have legal force, does not appear to be correct. It is an established proposition of law that executive power can be exercised in the absence of Legislation or statutory rules governing the field. In this regard the law has been laid down by Constitution Bench decisions of the Supreme Court in *B.N. Nagarajan and Others Vs. State of Mysore and Others*, and *Sant Ram Sharma Vs. State of Rajasthan and Another*, In that view of the matter since there are no statutory rules governing the field the State Government was competent to issue executive instructions which would have the force of law and would be binding upon the authorities who have to make the selection.

7. On a consideration of condition No. 5 laid down in Circular dated 13.6.1998 it is clear that it speaks of the same qualification. The only other condition where the said term has been used is that relating to educational qualification provided in condition No. 1. There it has been stated that the minimum educational qualification for anganbari sewika is matric pass but preference will be given to candidate having higher educational qualification. It is evident that the preference is to a higher qualification in the nature of either Intermediate pass or a graduate. Thus, whether a matriculate is in 1st Division or 2nd Division, as in the present case, in terms of condition No. 5, both have to be treated as equal and as possessing the same qualification. In such a situation a widow or abandoned woman has to be given preference over the other candidate who is also a matriculate and not having higher educational qualification.

8. So far as the preference to higher or lower income is concerned there is nothing in the said circular dated 13.6.1998 as to the weight to be given on that account. In any case there is not much difference between income of Rs. 21,000/- and Rs. 25,000/- and for the said reason a widow cannot be denied the preference as laid down in condition No. 5.

9. For the aforesaid reasons it has to be held that the selecting authority was not justified in refusing to consider the case of the petitioner on the ground that she is a widow and, therefore, entitled to preference over any other candidate having the same qualification. The admitted position is that both the petitioner and respondent No. 6 belong to backward class, both are matriculates and both have almost the same income. In the said circumstances it can hardly be doubted that the petitioner would be entitled to preference as laid down in condition No. 5. in fact from the minutes of the Amsabha dated 10.3.2003 as contained in Annexure-A to the counter affidavit of the State Government it is evident that the said aspect of the matter has not at all been taken into consideration by the Gram Sabha while considering the candidates for selection. Hence, the decision has to

be held as illegal and unjustified since a relevant material has not been taken into consideration while reaching the decision. For the reasons aforesaid the writ petition is allowed. The selection of respondent No. 6 made by the Am Sabha at its meeting dated 10.3.2003 as contained in Annexure-A and the consequential order dated 13.1.2003 as contained in Annexure-B to the counter affidavit of the respondents No. 1 to 5 is quashed and the matter is remanded to the authorities to reconsider the case of the petitioner in accordance with the aforesaid observations/principles of law as laid down in this order. The authorities are directed to reconsider the case of the petitioner within four months from the date of receipt/production of a copy of this order. However, in the facts and circumstances of the case there shall be no order as to cost.