

(2016) 07 PAT CK 0130

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 18474 of 2014

Sawita Kumari

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 18-07-2016

Acts Referred:

Citation : (2017) 1 BBCJ 55 : (2016) 4 PLJR 892

Hon'ble Judges : Mr. Ajay Kumar Tripathi, J.

Bench : Single Bench

Advocate : Mr. Amresh Kumar Singh, Advocate, for the Respondent No. 6; Mr. Ashok Kumar Mishra and Mr. Sita Ram Yadav, Advocates, for the Petitioner; Mr. Manoj Kr. Ambastha, G.P.14 and Mr. Tripurari Nath Ambastha, A.C. to G.P.14, for the State

Final Decision : Dismissed

Judgement

Mr. Ajay Kumar Tripathi, J. - Both the writ applications were heard together. In the case of Sawita Kumari, a direction is sought for quashing the order dated 25.06.2014, passed by the Divisional Commissioner, Munger, which is Annexure-4, by virtue of which the appeal of private respondent no.6 was allowed and the order of the District Magistrate, Begusarai was set aside with a direction for reconsideration. The private respondent no.6 in CWJC No.18474 of 2014 has also filed a separate writ application, which is CWJC No.3968 of 2016 wherein she is seeking enforcement of the order of the Divisional Commissioner, Munger and direction upon the respondent authorities to accept her joining on the post of Anganwari Sevika.

2. On 01.07.2011, the Gram Panchayat Raj, Bariyarpur short listed the name of Sawita Kumari at serial no.1 for engagement as Anganwari Sevika for Anganwari Centre No.75. This selection was challenged by Sanjita Kumari by filing CWJC No.22726 of 2011. The learned Single Judge directed the District Magistrate to hear and decide the issue. The District Magistrate, Begusarai dismissed the case of Sanjita Kumari filed against the selection of Sawita Kumari. She went in

appeal and the Divisional Commissioner, Munger set aside the order of the District Magistrate with a direction for fresh decision primarily on the ground that while calculating the percentage of marks obtained by Sawita Kumari, marks of additional paper was also added which had the effect of pushing up the aggregate percentage marks of Sawita Kumari which proved detrimental to the interest of Sanjita Kumari. Marks of additional paper was not required to be considered or added in working out the percentage as per the directive issued by the I.C.D.S. Department in the year 2011 and special reference was made to Clause 5 thereof.

3. The Court has been taken through the provision of Clause 5 of the directive which clearly states that while calculating the percentage of marks of matriculation or equivalent examination, marks of additional paper or papers will not be included.

4. In the present case, the Gram Panchayat deliberately added the marks of the additional paper of Sawita Kumari which placed her higher than Sanjita Kumari and that is where the fallacy in the selection of Sawita Kumari was found. The Gram Panchayat authorities, therefore, have made the selection in violation of the guidelines regarding such selection.

5. Even from the reading of the order of the Divisional Commissioner, it is evident that selection of Sawita Kumari has been made in violation of Clause 5 of the guidelines. 15 additional marks of extra paper was added in working out the percentage, which had effect of defeating the right of the private respondent Sanjita Kumari.

6. There is no infirmity with the decision or direction issued by the Divisional Commissioner, Munger. Even if such engagement on the post of Anganwari Sevika is on contract, the guidelines of the State has to be followed. The Court is of the opinion that it was a deliberate mischief on the part of the Panchayat to give benefit to Sawita Kumari with the object of helping her get selected as Anganwari Sevika.

7. In view of the above, the decision of the District Magistrate, Begusarai had to be interfered with and has been rightly done by the Divisional Commissioner, Munger.

8. There is no merit, therefore, in the writ application of Sawita Kumari (CWJC No.18474 of 2014) which deserves to be dismissed and is dismissed.

9. As a corollary of the above, the writ application of Sanjita Kumari (CWJC No.3968 of 2016) is required to be allowed and is allowed. A direction is issued upon the District Programme Officer (I.C.D.S.), Begusarai, respondent no.4, and the C.D.P.O., Khodawandpur, Begusarai, respondent no.5, to ensure that Sanjita Kumari derives the benefit of the Divisional Commissioner's order and she is permitted to join and work as an Anganwari Sevika. This must be done within a period of four weeks from the date of production of a copy of this order.