

(2024) 07 PAT CK 1556

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.8359 of 2018

Shobha Kumari

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 10-07-2024

Acts Referred:

Guidelines of Sevika and Sahayika, 2011 — Rule 5(1)

Citation : (2024) 07 PAT CK 1556

Hon'ble Judges : Anshuman, J

Bench : Single Bench

Advocate : Lal Bahadur Singh, Piyush Kumar Jha, Kumari Amrita, Malti Kumar

Final Decision : Allowed

Judgement

Anshuman, J

1. Heard learned counsel for the petitioner, learned counsel for the State as well as learned counsel for the respondent no.8.

2. The present writ petition has been filed for issuance of appropriate writ or mandamus and any other appropriate writ or writs, commands, direction/directions and for setting aside the order dated 09.01.2018 passed by the District Magistrate-cum-Collector, Aurangabad (Bihar) passed in Anganwari Seva Appeal No. 150 of 2015 (Annexure-P/3) arising out of order dated 07.01.2015 passed in Complaint Case No. 01/2015 as well as the merit list of Anganwari Centre Code No.14, Karma Bhagwan (Batwan), Ward No.6, Aurangabad Sadar, District-Aurangabad (Bihar) (Annexure-P/1) issued by the C.D.P.O. Aurangabad (Bihar) dated 27.09.2013 by which the C.D.P.O., Aurangabad (Bihar) has committed irregularities in preparation of merit list by violating the norms and Rules 5.1 of the Guidelines of Sevika and Sahayika-2011.

3. Counsel for the petitioner submits that an advertisement for appointment to the post of Aanganwari Sevika/Sahayika was published in the district of Aurangabad and copy of the merit list was prepared on the basis of marks

obtained by the candidates on 27.09.2013. Counsel for the petitioner further submits that he has raised objection before the competent authority to re-examine the entire selection process because in the selection process, the Rule of Guideline 5.1 of Anganwari Sevika/Sahayika, 2011 has not been followed and on this ground earlier respondent no.8 had been terminated by the District Programme Officer, Aurangabad vide order dated 25.10.2008 and a criminal case is also pending against respondent no.8. Counsel further submits that being aggrieved and dissatisfied with the order passed by the District Programme Officer, an Anganwari Sevika/Sahayika Selection Appeal No. 01/2014 was filed. Counsel further submits that the Anganwari Sevika/Sahayika Guidelines of 2011 is applicable in the case of petitioner and private respondent. He further submits that the respondent no.8 got highest percentage of marks and the said marks were calculated in violation of Rule 5.1 of the Anganwari Sevika/Sahayika Guidelines, 2011 which clearly states that marks of extra subject shall not be added for calculation of the percentage but ignoring the same the Collector of the District has passed order.

4. Counsel for the petitioner further submits that being aggrieved and dissatisfied with the order passed by the District Collector, Aurangabad, the petitioner preferred the present writ petition before this Hon'ble Court. He submits that this is the technical point on the basis of which he is relying his case. In support of his argument, he has annexed the mark-sheet issued by the Bihar State Education Board obtained by the private respondent by which she claims that the optional paper indicated is Economics in which private respondent has obtained 83 marks which has been calculated for counting of the percentage. Counsel at the cost of repetition submits that such calculation of marks of optional paper is in gross violation of Rule 5.1 of the Guidelines of 2011.

5. Learned counsel for the State, on the other hand, submits that in the selection process, there is no violation. It is under the Rules of Bihar School Examination Board that the optional paper becomes the main paper, if in the essential paper less marks comes. It is due to this reason, the optional paper shall be calculated towards the main and the marks which has come in the other paper shall become optional. Here in the present matter result has been prepared on the basis of same and division is being used to be fixed according to the old rule. Accordingly result was declared and therefore in the selection process this aspect has rightly been considered by the respondent authority. Counsel further submits that the private respondent no.8 was declared first division which is apparent from the marksheet itself and for declaration of result by first division, marks the said optional paper has been added. Therefore, Annexure-P/3 order of the District Magistrate be sustained and writ be dismissed.

6. Learned counsel for the private respondent no.8 submits that arguments made by the learned counsel for the State is the correct position on law. There is no illegality in the Bihar School Examination Board marksheet, as well as in the order passed by the District Magistrate, Aurangabad which is at Annexure-P/3 of

the writ petition, hence writ petition is fit to be dismissed.

7. Upon perusal of the records and hearing the parties it transpires to this Court that Bihar School Examination Board has considered and declared the result of the private respondent in first division considering the 5th paper as English paper and declared result in first division. On the mark-sheet issued by the BSEB neither petitioner nor State nor private respondent have any objection on the said mark-sheet. It transpires to this Court that the selection of Anganwari Sevika and Sahayika during the relevant period has to be guided by the Rule framed in Guidelines for appointment of Anganwari Sevika/Sahayika 2011. Clause 5.1 of the said Guidelines as follows;

The law maker had kept those things in the mind that result is being published in its own way but they have taken every precaution and therefore categorically stated in the said Rule 5.1 that the marks obtained in extra/optional subject shall not be counted for the purpose of selection. Here in the present case, the optional paper is the Economics in which more marks has come. For the purpose of declaration of the result, the Bihar School Examination Board has correctly marked as first division to the candidate but for the purpose of selection in Sevika/Sahayika, the marks obtained in the optional subject has not to be counted according to the Clause 5.1 of Rule 2011. But the Collector while passing the order impugned has not taken care of the Rule laid down under Clause 5.1 of the Rule, 2011.

8. Hence, in this view of the matter, this Court finds that the order passed by the Collector is absolutely perverse and in violation of Rule 5.1 of the Guideline of 2011 and it is due to this reason the order dated 09.01.2018 passed District Magistrate-cum-Collector, Aurangabad in Anganwari Seva Appeal No. 150 of 2015 (Annexure-P/3) is hereby set aside and matter is remanded back to the concerned Collector to pass the order afresh after granting opportunity to all concerned within 90 days from the date of production/receipt of the copy of the order considering the said Guidelines of 5.1 discussed in this order.

9. With the aforesaid direction, the writ petition stands allowed.