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**(2014) 02 JH CK 0023**  
**In the Jharkhand High Court**  
**Case No : L.P.A. No. 369 of 2013**

Smt. Nirmala Besra

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision :** 03-02-2014

**Acts Referred:**

**Citation :** (2014) 02 JH CK 0023

**Hon'ble Judges :** R. Banumathi, C.J.; Chandrashekhar, J

**Bench :** Division Bench

**Advocate :** V.K. Tiwary and Mr. D.D. Saha, for the Appellant; Sumit Prasad, S.C.I., for the Respondent

**Final Decision :** Dismissed

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## Judgement

1. Since the claim of the appellant (Writ Petitioner) for appointment on the post of Lady Supervisor under the Department of Social Welfare has been rejected by the learned Single Judge by order dated 01.10.2013 in W.P. (S) No. 730 of 2011, the appellant has approached this Court. Heard the learned counsel appearing for the parties and perused the documents on record.

2. The appellant was appointed on 05.01.1999 as Anganbari Sevika at Basko Pahar, Taljhari Block. She took training between 06.08.1999 to 08.11.1999. An advertisement was published in daily newspaper on 28.11.2007 inviting applications for appointment on the post of Lady Supervisor in Santhal Pargana Division under Department of Social Welfare, Family & Child Development. 25% posts were kept reserved for candidates working on the post of Anganbari Sevika. Clause-2 of the advertisement prescribed the educational qualification of Graduation with qualifying satisfactory service of atleast 10 years as Anganbari Sevika. Alternatively the candidates having qualification of Matric were required to have 15 years of qualifying satisfactory service as Anganbari Sevika. The selection was to be made on the basis of a written examination comprising of two papers both of 100 marks each in General Knowledge (G.K.) and Integrated Child Development Scheme (ICDS). Based on the recommendation of the Selection

Committee constituted at the divisional level, the Divisional Commissioner was empowered to take a decision in the matter of appointment. The appellant applied for the post and secured 130 marks. On 19.07.2010, several persons including the appellant were recommended for appointment. However, the appellant was not appointed. In the writ proceeding, a counter-affidavit was filed admitting that the appellant had obtained 130 marks along with other five candidates however, the appellant cannot be appointed, as there were only five posts in the category in which the appellant was seeking appointment and all other candidates were elder in age to the appellant.

3. The learned Single Judge held that the course adopted by the respondents cannot be faulted with as in the absence of any Rule/Regulation/Executive Instruction, appointment to a candidate who has got same marks but was elder in age has been granted and since the criteria adopted by the respondents in such a situation confirms to reasonableness, the Writ Petition was accordingly dismissed.

4. The learned counsel appearing for the petitioner submits that though the petitioner has served for a longer period on the post of Anganbari Sevika, than atleast two candidates who also secured similar marks and have been granted appointment, appointment to the petitioner has been denied on the ground that she is younger in age. Assailing the order passed by the Writ Court, the learned counsel for the petitioner submits that though, the criteria adopted by the respondent-authority may be a reasonable criteria for determining inter-se seniority of the candidates joining on the same day, it cannot be made applicable in the matters of initial appointment.

5. The learned counsel appearing for the respondents submitted that since there is no rule in this regard, the respondent-authority adopted the practice which has been adopted by other Government Departments. The learned counsel has further submitted that now a circular has been issued by the Department itself which also provides that in a situation where more than one candidate secures similar marks, the candidate elder in age would be given preference for appointment.

6. Having appreciated the rival contentions advanced by the counsel for the parties, we are of the opinion that the procedure adopted by the respondents whereunder, the candidates elder in age who also have secured similar marks have been granted appointment, appears to be reasonable. In a situation like this, granting appointment on the basis of the age of the candidate cannot be said to be wholly fortuitous.

7. In *Bimlesh Tanwar Vs. State of Haryana and Others*, a case in which in absence of any statutory rule, the practice of determining inter se seniority on the basis of the merit list was adopted. The Hon''ble Supreme Court held that the practice adopted by the respondents cannot be held to be arbitrary.

8. Referring to paragraph 18 of the judgment in *D.P. Das Vs. Union of India (UOI)*

and Others, the learned counsel for the appellant submitted that in the absence of a provision, ordinarily the length of service should be taken into account and since, the petitioner has worked on the post of Anganbari Sevika for a longer period compared to atleast two other candidates who have been granted appointment, instead of giving preference on the basis of age, the appellant should have been appointed on the post of Lady Supervisor. A plain reading of the judgment in "D.P. Das Vs. Union of India & Ors." (supra), would indicate that the issue before the Hon"ble Supreme Court was determination of inter se seniority of candidates joining on the same day, and the observation of the Hon"ble Supreme Court in paragraph-18 of the said judgment, has to be understood with reference to the matter relating to seniority. In the present case, the appellant is seeking appointment on the post of Lady Supervisor on the ground that she has longer experience on the post of Anganbari Sevika which, in our opinion, cannot be equated with the matter relating to promotion. Further, neither in the writ proceeding nor in the present proceeding, the other five persons who were appointed, have been made party. In the result, we find no merit and accordingly, the Letters Patent Appeal is dismissed.