
(2009) 12 PAT CK 0036
In the Patna High Court
Case No : CWJC No. 11421 of 2007

Sunita Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

Citation : (2011) 1 PLJR 613

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Judgement

Mihir Kr. Jha, J.—Heard the learned Counsel for the parties.

2. In this writ application the prayer of the Petitioner reads as follows:

To issue a writ in the nature of mandamus commanding the Respondents particularly Respondent No. 3 not to issue any appointment letter in favour of private Respondent (Respondent No. 7) and alternative prayer is if any appointment letter has been issued or produced the said letter be quashed and consider the appointment of the Petitioner at the post of Anganbari Sewika.

3. Counsel for the Petitioner would submit that as the Petitioner was not in a possession of the appointment letter issued in favour of Respondent No. 7, she had made her alternative prayer that either her selection and appointment should be restrained or alternatively if such appointment has already been made the Respondent be directed to produce such appointment letter for its being considered be quashed.

4. Counsel therefore now submits that not only appointment letter of Respondent No. 7 has been produced but the entire norms of her selection has been revealed which would go to show that the selection and appointment of the Respondent No. 7 is unsustainable both on facts and in law. In this context he has raised a number of objections but his main objection is that Respondent No. 7 was directly related to Sarpanch of that very Gram Panchayat in which she has been

appointed as an Anganbari Sewika.

5. Counsel in this context has relied upon the guidelines by the State Government which according to him prohibits appointment of a person related to Mukhiya, Ward Member and several other categories of persons. Counsel thereafter has also proceeded to take help from the documents produced in the counter affidavit to show that date of birth of Respondent No. 7 recorded in Admit Card of Intermediate Examination is 15.1.1978 and yet she had claimed to be passed her Prabeshika Examination equivalent to matriculation from Hindi Vidyapith, Deoghar, Jharkhand, in 1988 at an age of merely ten years which is apparently impossible. Counsel would, therefore, submits that the whole case of appointment of Respondent No. 7 smacks infirmity and illegality and is fit to be a subject matter of scrutiny by the Collector of the District.

6. Counsel for the State, on the other hand, with the help of averments made in the counter affidavit has submitted that whatever has been alleged by the Petitioner as against the appointment of Respondent No. 7 on the post of Anganbari Sewika is incorrect inasmuch as the guidelines itself classified relatives, namely, daughter, wife, daughter-in-law or grand-daughter-in-law would not be referable to wife of the younger brother (BHAWO). Counsel for the State as with regard to the possibility of Respondent No. 7 to have been appointed on the basis of her attaining prescribed qualification at an age of ten years has submitted that there is no averments to this effect in the writ petition.

7. After giving careful considerations to the aforesaid submissions one thing becomes clear that Respondent No. 7 is not only related to Sarpanch but also is clearly covered under Clause 3(Ang) of the guidelines which, in fact, is only illustrative in nature and, therefore, the relatives mentioned therein have been only explained by way of example by using the word "YATHA" which would become more clear from the whole text of this concerned provisions reading as follows:

vkaxuokM+h Isfodkvksa ds p;u ds fy, vgZrk;sa @ "krsZ & d- vk?xuokM+h Isfodk dh U;wure "kS{kf.kd ;ksX;rk izosf"kdK mRrhZ.k gSa flQZ vuqlwfr tkfr @ vuqlwfr tutkr ds Isfodkvksa ds fy, U;wure ;ksX;rk izosf"kdK vuqrhZ.k gS A

[k- vkaxuokM+h Isfodk dh mez p;u gsrq vkgqr vke lHkk dh o"kZ ds izFke tuojh dks U;wure 18 o"kZ rFkk vf/kdre 40 o"kZ gksxh A

x- vkaxuokM+h Isfodk ml Vksyk @ xkao @ eksgYyk dh LFkk;h fuoklh gksxh ftl Vksyk @ xkao @ eksgYyk esa vkaxuokM+h dsUnz vofLFkr gks ;kfu mls vkaxuokM+h dsUnz dh Isok {ks= dk fuoklh gksuk vfuok;Z gS A

?k- vkaxuokM+h Isfodk Vksyk @ xkao @ eksgYyk dh cgq gksxh A dqaokjh yM+fd;ksa dk p;u bl in ds fy, ugha fd;k tk;sxk A Isfodk ,oa mlds ifr dk uke mDr Vksyk @ xkao @ eksgYyk ds fy, ernkrk lwph esa gksuk pkfg, A ernkrk lwph esa uke ugha gksus dh fLFkr esa Isfodk ,oa mlds ifr dks mDr Vksyk @ xkao @ eksgYyk ds fuoklh ds fy, pquko vk;ksx dk QksVks izek.k i= ;k p;u gsrq vkosnu

tek djus ds fnu rd vapykf/kdkjh }kjk fuxZr vkoklh; izek.k i=] tks N% ekg iwoZ ls
igys dk fuxZr u gks] nsuk vfuok;Z gksxk A

M+ yksd lsodksa] eqf[k;k] iapk;r lfefr ds lnL; @ okMZ lnL; @ ftyk ifj"kn~ ds lnL;
vkfn Lo;a ;k mlds fj"rsnkj A fofHkUu ljdkjh lkefxz;ksa ds fo?srkvksa] tSls
tu&forjk izk.kkyh fo?srk ?kqeUrq fdjklr sy ds fo?srk A fMyj A vUrjfoHkxh;
Mkd[kkuk dehZ A bUVjfMikVZesUVy iksLV vkWfQl bEiykbZ A bR;kfn ljdkjh ,oa
v)Zljdkjh lsodksa ds fj"rsnkj ;Fkk csVh @ iRuh iq=o/kq ikS=c/kq dk p;u bl in ds
fy, ugh fd;k tk;sxk A

8. Thus, in the opinion of this Court the wife of younger brother cannot be excluded from the prohibition because the same is also covered by the expressions related to in different categories of persons. Clause 3 Anga in facts covers a number of categories and thus the relatives referable to a Government and Semi-Government servant cannot be borrowed for other public servants. In other words, when Mukhiya, Member of Panchayat Samiti, Member of Ward, Member of Zila. Parishad either himself or relatives as a whole have been prohibited from being considered for appointment on the post of Anganbari Sewika the wife of a younger brother would also be included in such prohibition introduced by the State Government in its guidelines. The submission of the learned Counsel for the State that such relatives even in case of a Sarpanch, who is also a member of Panchayat would be only daughter, wife, daughter-in-law or granddaughter-in-law is not acceptable to this Court because they are in fact for other category of the persons namely Government/Semi-Government servants.

9. This Court however in absence of Respondent No. 7 would not record any conclusive findings specially when there is also an issue involving her attaining qualification of the prescribed examination allegedly within ten years of her age. It would thus be better that the whole matter is examined afresh by the prescribed authority i.e. the District Magistrate-cum-Collector, Patna who would examine the selection and appointment of Respondent No. 7 and pass a reasoned order within a period of six months from the date of receipt of a copy of this order alongwith a representation to be filed by the Petitioner but only after affording opportunity of personal hearing to the writ Petitioner, Respondent No. 7 and the concerned representative of Gram Panchayat.

10. As this Court is satisfied that no person like Respondent No. 7 could not have passed matriculation examination at an age of 10 years, as also she is directly related to the Sarpanch being wife of his younger brother, this Court would restrain her from working till the aforesaid inquiry is completed by the Collector of the District and the matter relating to infirmity in the appointment of Respondent No. 7 is disposed of.

11. With the aforesaid observation and direction this writ application is finally disposed of.