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**(2011) 12 PAT CK 0087**  
**In the Patna High Court**  
**Case No : CWJC No. 13952 of 2011**

Sunita Kumari Poddar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 01-12-2011

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

**Citation :** (2012) 2 PLJR 633

**Hon'ble Judges :** Ajay Kr. Tripathi, J

**Bench :** Single Bench

**Advocate :** Pankaj Kumar Sinha and Diwakar Sinha, for the Appellant; S.S. Shabbar Hussain for the State, for the Respondent

**Final Decision :** Allowed

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## Judgement

Ajay Kr. Tripathi, J.—The arbitrariness in the conduct of the State in matter of rejection of the claim of the petitioner for consideration for appointment on the post of a Lady Supervisor under the ICDS Scheme being run by the State of Bihar is evident from the stand which is being taken now to deny the benefit to the present petitioner. Petitioner does not happen to be the sole person affected by such decision of not considering her claim but there are hundreds of them spread across the- State and disputes of such kind are trickling into Court with certain regularity. Petitioner was engaged by the State of Bihar under the concept of ICDS Scheme formulated years ago in the early 1980"s. That was the time when persons having minimum qualification of matriculation used to be engaged on the post of Anganbari Sevika on a paltry sum of hundred rupees. Such appointment made decades ago was never subject-matter of any dispute at any point of time till the occasion for consideration of their claim for appointment on the post of Lady Supervisors arose. Petitioner is a claimant under the so-called 25 per cent quota which is supposed to be filled up from the pool of talent available from Anganbari Sevikas. In the present case petitioner was engaged as a Sevika as far back as on 1.4.1983. She has worked and performed her duties

without there being any complaint of a kind in all these years. Impediments are sought to be created only now when certain posts of Supervisors from "the pool of Anganbari Sevikas are required to be filled up on the ground that petitioner was less, than 18 years of age at the time of initial engagement two decades ago. This led to filing of the present writ application.

2. In the counter affidavit which has been filed on, behalf of the State, the reason indicated especially in paragraph 10 is that when the petitioner was initially engaged on the post of Anganbari Sevika, she was only 17 years and two months of age. Since she had not attained 18 years on 1.4.1983, therefore, initial engagement or appointment per se was bad in law.

3. The question, therefore, which arises for consideration by this Court, is whether such a stand taken by the State can stand judicial scrutiny on the touchstone of Article 14 of Constitution of India.

4. The stand of the petitioner is that right from her initial engagement till the time she became an applicant, her engagement on the post of Sevika was never an issue. In fact, those were the days when it was difficult to find a lady volunteer to occupy such a post for a pittance and only requirement at that point of time was basic minimum qualification of matriculation which the petitioner had. Her age reflected in the matriculation certificate was known to the authorities which made recruitment and there was no hide and seek with regard to her age at the time when such recruitment was made. She has continued to work in that capacity right from the year 1983 even till now and therefore creating an impediment in the way of the petitioner for consideration on the post of Supervisor now is only a ploy to defeat the claim of the petitioner arbitrarily and not based on any sound legal principle. Since appointment on the post of Anganbari Sevika was not on a substantive post, so there was no hard and fast rule in place.

5. The stand of the State that if the initial engagement was illegal, then the reason for rejection of the consideration of the claim of the petitioner cannot be said to be illegal. The decision, therefore, not to recruit her because of her being underage on the date of her initial engagement in 1983 cannot be said to be arbitrary.

6. The submission of the State, per se, is arbitrary in the opinion of this Court because it is not open to the State to challenge its own act on a decision taken in favour of the petitioner 20 years ago. There is no material in the counter affidavit to show that there was any fraud or misrepresentation played by the petitioner in begetting her engagement on the post of a Sevika and that there is neither any assertion that anybody down the chain of hierarchy was responsible for the illegality committed, if it was one, at all.

7. One thing which is evident from the conduct of the State is that the objection on the issue of ineligibility on the ground of under-age is held out only when the petitioner became a claimant for appointment on the post of a Supervisor, which

is a kind of promotional post. Continuance of the petitioner on the post of a Sevika is not an issue and it is not being made an issue because the State probably does realize in the heart of hearts that serious challenge to such continuance and engagement now may not stand judicial scrutiny. If that is so then such an action taken by the State two decades ago cannot be permitted to challenge now as some kind of right being created in favour of the" petitioner for consideration, under the principle of legitimate expectation cannot be ruled out.

8. In the given facts and circumstances, the Court has no hesitation in coming to a conclusion that the reason for rejection of the claim for consideration for appointment on the post of Supervisor is not only arbitrary and violative of Articles 14 and 16 of the Constitution of India but it is also hit by Principle of Legitimate Expectation, coupled with the fact that conduct of the State also prevents them from challenging the action taken by them more than two decades ago.

9. The Court is also constrained to record that the respondents are not only duty bound to consider the claim of the petitioner for such appointment even at this stage but will also have to re-think on their decision/steps which has been taken by denying such benefit of consideration on the ground that a claimant was less than 18 years of age when she was initially engaged. In some cases 20 years and other cases even three decades.

10. Writ application is allowed with a direction upon the respondents to consider the claim of the petitioner for appointment on the post of Supervisor irrespective of the so-called infirmity of her being less than 18 years of age when she was engaged as Anganbari Sevika, within a period of eight weeks from today. Writ is allowed.