(2016) 06 PAT CK 0056

PATNA HIGH COURT

Case No: Civil Writ Jurisdiction Case No. 18184 of 2011

Kumari Hemlata	APPELLANT
Vs	
State of Bihar	RESPONDENT

Date of Decision: June 23, 2016

Citation: (2017) 1 BBCJ 1 : (2016) 4 PLJR 794

Hon'ble Judges: Mr. Rakesh Kumar, J.

Bench: Single Bench

Advocate: Mr. Shiva Shankar Sharma, Advocate, for the Petitioner; AC to GP-21, Mr. Prafull Chandra Thakur and Mr. Bhim Kumar Yadav, Advocates, for the Respondents

Final Decision: Partly Allowed

Judgement

Mr. Rakesh Kumar, J.(Oral) - Heard Sri Shiva Shankar Sharma, learned counsel for the petitioner, learned A.C. to Govt. Pleader - 21 as well as Sri Prafull Chandra Thakur, learned counsel, who was assisted by Sri Bhim Kumar Yadav, learned counsel appearing on behalf of respondent no. 7.

2. The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for quashing of an order dated 09-09-2011 passed in Anganbari Appeal No. 87 of 2011 by the Commissioner, Kosi Division, Saharsa (hereinafter referred to as the ''Divisional Commissioner''), vide Annexure - 9 to the writ petition. By the said order, the learned Divisional Commissioner has rejected the appeal preferred by the petitioner against an order dated 23-08-2011 passed in Anganbari Case No. 38 of 2010-11 by the learned District Magistrate, Saharsa (Annexure - 8 to the writ petition).

3. The petitioner has also prayed for quashing of order of the Collector in relation to Sharma Tola Kataiya (Madhya) Rajapatti Anganbari Centre. By order dated 23-08-2011, the learned District Magistrate had allowed the Anbanbari Case No. 38 of 2010-11 filed by respondent no. 7. The District Magistrate has cancelled the selection of the petitioner, as Anganbari Sevika and in place of petitioner, he

appointed respondent no. 7, as Anganbari Sevika.

4. It is case of the petitioner that she participated in Aam Sabha proceeding for her selection as Anganbari Sevika of Sharma Tola Kataiya (Madhya) Rajapatti Anganbari Centre and she was selected on 02-04-2007, vide Annexure - 3 to the writ petition. After selection, the petitioner undergone training and she obtained certificate for training, vide Annexure - 4 to the writ petition and thereafter, immediately she joined as Anganbari Sevika in the concerned Anganbari centre. While she was functioning, an objection was raised and the District Magistrate, after receipt of the report from the concerned authority, examined the case of the petitioner and he found that petitioner was correctly selected as Anganbari Sevika. However, as per learned counsel for the petitioner, subsequently the same District Magistrate, without having any jurisdiction to review its own order, has passed an order vide Annexure - 8 to the writ petition. It has been argued that once the District Magistrate in the same dispute had already adjudicated, vide Annexure - 6 to the writ petition i.e. order dated 14-07-2008 holding the appointment of the petitioner as genuine, at subsequent stage, the District Magistrate was not having any jurisdiction to review or recall its earlier order. He submits that the order of the District Magistrate was completely illegal and thereafter, he filed an appeal before the Divisional Commissioner, however; the Divisional Commissioner, without applying its mind in perfunctory manner, rejected the appeal filed by the petitioner i.e. Anganbari Appeal No. 87 of 2011, by its order dated 09-09-2011.
5. It has been argued that order of the appeal is liable to be set aside only on the ground that neither any reason has been assigned nor even any fact has been noticed by the Divisional Commissioner.

6. In this case, counter affidavit has been filed on behalf of respondent no. 3, 4 & 5 as well as separate counter affidavit has been filed by private respondent i.e. respondent no. 7.

7. By way of referring to counter affidavit of State, learned A.C. to Govt. Pleader - 21 submits that it is not a case that the District Magistrate suo motu has passed the order. However, he submits that complaints were lodged before the Lokayukta regarding irregularities committed in selection of Anganbari Sevika and finally, the Divisional Commissioner by specific direction asked the District Magistrate to conduct a detailed enquiry and only thereafter, a detailed enquiry was conducted and during enquiry, irregularity was noticed and thereafter, the District Magistrate cancelled the selection of the petitioner. He submits that there is no illegality or irregularity in the order of the District Magistrate, however; he was not in a position to satisfy the Court as to whether order of the Divisional Commissioner is sustainable in the eye of law due to the simple reason that order of the Divisional Commissioner is non-speaking.

8. Learned counsel for the private respondent i.e. respondent no. 7 submits that the order of the District Magistrate is in accordance with law. He submits that private respondent i.e. respondent no. 7 was having much higher marks than the petitioner and by committing illegality, the selection committee had earlier selected the petitioner and as such, the learned District Magistrate has rightly passed the impugned order and directed for appointing the private respondent.

9. In reply, learned counsel for the petitioner has raised his alternative argument to the extent that in any event, the District Magistrate at the time of cancelling selection of the petitioner was not having any authority to appoint the private respondent, in view of guidelines for Selection of Anganbari Sevika/Sahaika, 2006. He submits that in case of cancelling selection of an Anganbari Sevika, the District Magistrate was only required to ask the concerned Mukhiya to make further selection.

10. After hearing the parties and considering the facts & circumstances of the case, primarily I am of the view that the Divisional Commissioner has grossly erred in rejecting the appeal of the petitioner without assigning any reason. It is appropriate to quote below the order dated 09-09-2011 passed in Anganbari Appeal No. 87 of 2011 by the Commissioner, Koshi Division, Saharsa:-

"The advocate for appellant said she is working for 3 years. She belongs to the area and to the majority caste. The Collector in his elaborate order logically argued that O.P. (5) is inter passed, with more marks and belongs to the area. There are no arguments adequate to admit the case. Case not admitted"

11. On bare perusal of the aforesaid order, there is no reason to allow such order. Certainly nothing has been indicated regarding case of the petitioner and in perfunctory manner, the said order has been passed. Accordingly, order dated 09-09-2011 passed in Anganbari Appeal No. 87 of 2011 is hereby set aside.

12. So far as order of the District Magistrate is concerned, on examining the record, it is evident that the District Magistrate has not passed order suo motu, but the District Magistrate had conducted a detailed enquiry, as per direction given by the Divisional Commissioner. So, in that event, he was duly competent to examine the matter after conducting a detailed enquiry. Once the matter was remitted back to the District Magistrate by the superior authority, he was well competent to pass the impugned order and as such, the plea of learned counsel for the petitioner that same District Magistrate was not having any authority to pass the order afresh on the same issue is not sustainable and accordingly, the argument advanced by the learned counsel for the petitioner in this context stands rejected.

13. So far as submission of the learned counsel for the petitioner with regard to passing order to appoint respondent no. 7 as Anganbari Sevika in place of petitioner by the District Magistrate is concerned, the Court is in agreement with the learned counsel for the petitioner. Once the statutory provision provides to do a thing in a

particular manner, certainly the thing has to be done in same manner, not in any other way. The provision of guidelines for Selection of Anganbari Sevika/Sahaika of 2006 categorically prescribes that after cancelling the selection on any complaint, the District Magistrate can ask the concerned Mukhiya to pass an order afresh.

14. To the extent whereby the District Magistrate has passed the order to appoint respondent no. 7 is concerned, is hereby set aside and the matter is left over to the concerned selection committee i.e. Mukhiya and Panchayat Secretary. In any event, the final decision is to be taken by the selection committee within a period of three months from the date of receipt/production of a copy of this order. Since respondent no. 7 is already continuing, even though the order of the District Magistrate to that extent has been set aside, she (respondent no. 7) will continue for further three months from the date of receipt/production of a copy of this order so that final decision may be taken by the competent authority i.e. concerned Mukhiya and Panchayat Secretary.

15. With above observation, the writ petition stands partly allowed.