

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6875 OF 2021

(Arising out of Special Leave Petition(C) No.32215 of 2017)

Kumari Rekha Bharati

...Appellant

versus

The State of Bihar & Ors.

...Respondent(s)

J U D G M E N T

R. SUBHASH REDDY, J.

1. Leave granted.

2. This Civil Appeal is directed against the order dated 26.04.2017, passed by the High Court of Judicature at Patna in Letters Patent Appeal No. 1988 of 2016. By the aforesaid order, Order dated 07.09.2016 passed in CWJC No.2120 of 2014 by the learned Single Judge, was confirmed. The learned Single Judge has allowed the writ petition filed by the 9th Respondent, by quashing the order dated 20.03.2013 passed by the Collector, Muzaffarpur and

the order dated 30.10.2013 passed in Appeal No. 246 of 2013 by the Commissioner, Tirhut Division, Muzaffarpur.

3. In the year 2006, an advertisement was issued by the Mukhiya / Panchayat Secretary, Gram Panchayat Mirapur (Kumrapakar) Panchayat, inviting applications for appointment of Anganwadi Sevika in Panchayat Centre No.43/09 of Gram Panchayat Mirapur, Block Muraul, district Muzaffarpur. For the aforesaid purpose, a merit list was prepared in which 9th Respondent herein, was placed at Sl.No.01 and the appellant was at Sl.No.02.

4. In first round of litigation, when the appellant was appointed, the same was questioned by the 9th Respondent by filing a complaint. Based on the complaint, the appointment of the appellant was cancelled by the District Programme Officer, Muzaffarpur vide order dated 09.01.2008. When the cancellation was challenged, High Court in CWJC No.3408 of 2008, while quashing the termination of the appellant, issued directions to the District Magistrate to pass appropriate orders after hearing both the parties. Pursuant to the order of the High Court, the District Magistrate, Muzaffarpur has

passed orders on 20.03.2013 relying on clause 3 (Anga) of guidelines dated 03.10.2006, holding that the 9th Respondent herein, was ineligible for appointment, on the ground that at the relevant time, her father was a government teacher. The order of the District Magistrate, Muzaffarpur was confirmed by the Appellate Authority i.e. Commissioner, Tirhut Division, Muzaffarpur vide order dated 30.10.2013.

5. As against the order of cancellation of the appointment, as confirmed by the Appellate Authority, 9th Respondent herein, has filed a writ petition before the High Court. The writ petition was allowed by the learned Single Judge by order dated 07.09.2016 passed in CWJC No.2120 of 2014. The order of the learned Single Judge was subject matter of Letters Patent Appeal No. 1988 of 2016. By impugned order dated 26.04.2017, the Division Bench of the High Court dismissed the appeal filed by the appellant herein, confirming the order of the learned Single Judge. Thus, the appellant in Letters Patent Appeal before the High Court, is appellant before this Court in the present appeal.

6. We have heard Mr. Kumar Dushyant Singh, learned counsel appearing for the appellant and Mr. Saket

Singh, learned counsel appearing for the respondent Nos.1-8. Respondent No.9 though served, has not chosen to appear.

7. Appointments of Anganwadi Sevikas, during the relevant time, was governed by guidelines which were issued in the shape of a policy contained in Margdarshika - 2006. Clause 3 of the guidelines deals with the qualifications / conditions for selection to the post of Anganwadi Sevika. The relevant guidelines for the purpose of this appeal in Clause 3(E) read as under:

"3.Qualifications / Conditions for selection of Anganwadi Sevikain:

A.

B.

C.

D.

E. Public Servant, Head, Member of Panchayat Samiti / Ward Member / Member of District Council, etc., themselves or their relatives, sellers of the various public articles (such as Public Distribution System vendor, Mobile Kerosene Oil Dealer, Inter-Departmental post office employee, etc.) relatives such as daughter / wife / daughter-in-law of the Govt. and semi-govt. Servants, will not be selected for this post."

8. The pointed argument of the learned counsel appearing for the appellant is that the father of Respondent No.9 was a government servant and was

serving as teacher in a government school, as such, 9th Respondent was not eligible for appointment in view of Clause 3 of the Guidelines dated 03.10.2006. It is contended that though appointment of 9th Respondent was rightly cancelled by the Collector, Muzaffarpur and the said order was confirmed by the Appellate Authority i.e. Commissioner, Tirhut Division, Muzaffarpur, the learned Single Judge interfered with such orders in the petition filed under Article 226 of the Constitution of India without assigning valid reasons. It is submitted that learned Single Judge has misconstrued the relevant guidelines and allowed the writ petition of the 9th Respondent. On the other hand, it is the case of the respondents that 9th Respondent is married daughter of a government servant and her matrimonial home is in the district of Muzaffarpur, whereas, her paternal home is situated in the district of Vaishali. It is, further, submitted that the father of 9th Respondent was posted somewhere in the district of Vaishali as a teacher, therefore, sub-clause 'E' of Clause 3 of the guidelines was rightly interpreted by the learned Single Judge, and allowed the Writ Petition. It is submitted that said order is also confirmed in LPA.

It is submitted that there are no grounds to interfere with the impugned order passed by the High Court.

9. Having heard the learned counsel for the parties, we have perused the impugned order and other material placed on record.

10. It is not in dispute that at the relevant time, selections were governed by guidelines, issued by the concerned department on 03.10.2006. From a reading of Clause 3 of the guidelines, it is clear that relatives such as daughter/wife/daughter-in-law of the government servant is ineligible for appointment as Anganwadi Sevika. The learned Single Judge has interpreted Clause 3 of the guidelines and held that the said guidelines are to be applied only for unmarried daughters. Further, it is held that the 9th Respondent after her marriage is residing in the district of Muzaffarpur, which is her matrimonial home. In view of her case that her paternal home is in the district of Vaishali, the High Court was of the view that she is eligible for appointment in the district of Muzaffarpur, as her father was working as a teacher in the district of Vaishali.

11. The learned Single Judge of the High Court by interpreting the guidelines has held that, though the paternal home of the 9th Respondent is in the district of Vaishali but after her marriage, she is residing at her matrimonial home in the district of Muzaffarpur, as such she is to be treated as eligible candidate. Such interpretation runs contrary to Clause 3 of the guidelines. For the purpose of considering the eligibility the guideline as indicated under sub-clause (E) is to be construed as it reads. No distinction can be drawn between a married daughter and unmarried daughter for the purpose of considering the eligibility as per the guidelines. It is quite common in rural areas, the paternal home and maternal home may be in the same village sometimes. When the criteria is notified in the guidelines such guidelines have to be interpreted as it is without deviating the same keeping in mind the facts of a particular case. Even the Division Bench has not considered the guidelines in proper perspective and affirmed the judgment of the learned Single Judge.

12. It is brought to our notice that such Clause 3(E) of the guidelines was struck down subsequently by the

High Court on 06.05.2010. As much as the selection relates to the year 2006, we have to consider the guidelines which were applicable during the relevant time. At the same time in view of the subsequent development, no direction can be granted to appoint the appellant, and selections are to be made by issuing fresh notification.

13. For the aforesaid reasons, this Civil Appeal is allowed. The impugned order is set aside. Consequently, Civil Writ Jurisdiction Case No.2120 of 2014 stands dismissed with a further direction to the respondent authorities to issue fresh notification, inviting applications for appointment to the post of Anganwadi Sevika for the centre in question, and make fresh selection as per the guidelines which are in force now. It is made clear that the appellant and 9th Respondent are not precluded for applying pursuant to fresh notification. If they apply, their claims also be considered along with other candidates. Till such fresh notification is issued and selections are made, 9th Respondent is entitled to continue as Anganwadi Sevika.

14. The civil appeal is allowed with the directions, as indicated above.

.....J
(R. SUBHASH REDDY)

.....J
(HRISHIKESH ROY)

New Delhi.
November 15th, 2021.