

In The Court of Commissioner, Saran Division, Chapra
Aanganbari Appeal No. 357/2012

Komal Gupta

Vrs.

The State of Bihar & ors.

ORDER

This aforementioned case has been taken up for hearing pursuant to the direction given by the Hon'ble High Court while disposing of CWJC No. 11447/2014 on 18.02.2019. Furthermore, a petition has also been filed by a learned advocate on behalf of the petitioner of CWJC No. 11447/2014 in this Court on 15.03.2019. Thereafter, a notice was issued to sole petitioner of the writ case, Sweta Kumari as well as private respondent No.9 Komal Gupta of the said writ case vide memo No. 84/v dt.25.03.2019 to ensure their presence before this Court on 26.04.2019. But, the case was finally heard on 05.07.2019.

In order to appreciate the issues arising in the case, it is necessary to set out the relevant facts herein below.

Initially one Komal Gupta W/o Ajay Prakash, R/o Vill-Baterdih Tola Chainpur, P.S.-Barauli, Dist-Gopalganj was selected as an Aanganbari Sevika for Addl. Aanganbari centre No.17 in the Aamsabha held on 27.02.2012. Thereafter, one Sweta Kumari who was also an applicant for the post of sevika for the said centre, filed a complaint petition before D.M. Gopalganj wherein she alleged that gross irregularities have been committed in selection process by violating the instructions laid down for the selection of Sevika and Sahayika for the said centre. This led to ordering of an inquiry into the matter by learned D.M. Gopalganj and the said inquiry was conducted by a senior Dy. Collector. The concerned officer submitted his report wherein he mentioned that the selected candidate Komal Gupta was physically handicapped and on that basis she was awarded 5 bonus marks as she has got 8% physical disability. This led to initiation of a case vide Aanganbari Appeal No. 39/2012 by D.M. Gopalganj and the said case was disposed of vide order dt. 18.09.2012 whereby and whereunder the service of Komal Gupta was terminated and initiation of fresh selection process was ordered for the said centre. On being aggrieved by the said order of D.M., Komal Gupta preferred an appeal before this Court vide Aanganbari Appeal No. 357/2012. The said appeal case was admitted on 29.01.2013 and again vide order dt. 02.07.2013, the selection process for that centre was to be kept in abeyance till the final order is passed by this Court. The said appeal case was finally allowed by this Court vide order dt. 26.02.2014. Feeling aggrieved by the said order dt. 26.02.2014 Sweta Kumari approached the Hon'ble High Court by way of filing CWJC No. 11447/2014 and the said writ case was disposed of vide order dt. 15.03.2019 with a direction to decide the appeal after due notice to respondent No.09 and after hearing the parties in accordance with law expeditiously.

Since Sweta Kumari was the sole petitioner in the aforesaid writ case she has been treated here as petitioner during the rehearing of this case and private respondent No. 09 in the writ case has been treated as respondent.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of Sweta Kumari at the very outset of his argument submitted that as the irregularities committed in selecting Komal Gupta as Sevika



for the said centre by ignoring the claim of his client, she should have been heard by this Court. He further forwarded his detailed arguments with respect to selection of Sevika for that centre. The learned counsel primarily raised his objection to the handicapped claim of Komal Gupta and subsequently her selection. He also argued that as the selected candidate could not produce the physical disability certificate till the last day of submission of application for the said centre, her claim could not have been considered at all by the selection committee. In support of his arguments he also referred to the instruction and provisions enshrined in ICDS Guidelines 2011. He also submitted that as per provisions of ICDS Guidelines -2011, Mrs. Komal Gupta can not take benefit of five additional bonus number because her handicapped certificate has been issued on 25.1.2012 after the last date for submission of application which was fixed as 20.01.2012. He also submitted that Mrs. Komal Gupta with the connivance of the CDPO, Barauli obtained illegally the five additional bonus numbers. He lastly said that Sweta Kumari is the most eligible candidate for the appointment on Aanganbari Sevika at the said Aanganbari centre and the order dt. 18.09.2012 of D.M. Gopalganj is just, proper and in accordance with the provisions of ICDS Guidelines.

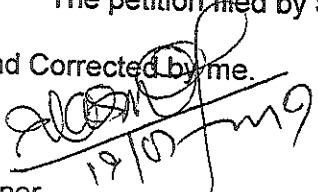
The learned counsel appearing on behalf of Komal Gupta at the very outset of his argument strongly opposed the arguments advanced by the learned counsel for Sweta Kumari and submitted that the learned counsel can not raise the points now which have not been raised before the learned D.M. He further submitted that as per law and several judgments of the Hon'ble High Court it is settled position in law that "No new facts or points can be raised first time in appellate stage" He also argued that the Hon'ble High Court has remanded the case back to this Court with a direction to only hear the petitioner of the writ as she has not been given opportunity of hearing before this Court earlier for the reason that she was not made a party in the said case. The learned counsel further argued that the Hon'ble High Court has not quashed the early order of this Court dt. 26.02.2014. It has further been argued by the learned counsel that the only point that as per section 8.6 of the guidelines, it was necessary for the selection committee to prepare the merit list within three days of last day of submission of application. In this case last day for submission of application was 20.01.2012 and merit list was prepared on 27.01.2012 and on this discrepancy, the merit list can not be cancelled and whatever delay has been caused in preparation of the merit list was mainly due to engagement of CDPO in other official works. The learned counsel also opposed the reason cited by the learned counsel for Sweta Kumari with respect to submission of physically handicapped certificate after the due date of submission of application form. The learned counsel said that the delay has mainly been caused due to late delivery of the said certificate as the physically handicapped certificate are issued mainly by the medical board constituted for the purpose. The learned counsel finally argued that physically handicapped upto 8% has been held by the medical board in case of his client and accordingly bonus marks were given to Komal Gupta and the same is in accordance with the prescribed instructions in the guidelines. He lastly said that the earlier order passed by this Court is legal, valid and having no infirmity as such there is no need of reviewing the earlier order of this Court.

Considering the whole facts of the case, submissions made by the learned counsel for the contesting parties Sweta Kumari and Komal Gupta respectively, perused the case record and the earlier order dt. 26.02.2014 of this Court as well as the various provisions contained in the guidelines issued by the deptt. for the selection of Sevika and Sahayika, it is seen that the only claim of Sweta Kumari is that she has been denied opportunity of hearing by this Court while disposing of the Aanganbari Appeal No. 357/2012 and the order passed in the said appeal adversely affected her. The bonafide of the claim of Sweta Kumari can not be considered now as the same is related to the date of issuance/deposition of physically handicapped certificate only by Komal Gupta. In fact the said contentious issue involved in the case has already been decided by this Court earlier. The pleadings forwarded by the learned

counsel for Sweta Kumari in support of his claim regarding the validity of the physically handicapped certificate is no way acceptable now in view of the fact that bonus mark to the selected candidate Komal Gupta has been awarded by the selection committee keeping in view the instruction contained in the guidelines issued by the ICDS for selection of sevika and sahayika for Aanganbari centre. The learned counsel for Sweta Kumari failed to point out any specific illegality in the earlier order of this Court. As such the earlier order passed by this Court is upheld accordingly.

The petition filed by Sweta Kumari on 25.03.19 is also disposed of accordingly.

Dictated and Corrected by me.


19/03/19
Commissioner
Saran Division, Chapra.


19/03/19
Commissioner
Saran Division, Chapra.