

**In The Court of Commissioner, Saran Division, Chapra
Anganbari Appeal No. 41/2013**

Usha Devi

Vrs.

Girija Devi & Ors.

ORDER

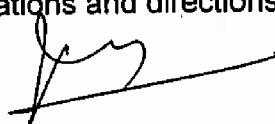
The instant appeal is directed against the impugned order of District Magistrate, Gopalganj dated 30.11.2012 passed in Anganbari Case No. 17/2011.

The brief facts of the case are that in the Aam Sabha held on 23.03.2007 to select Anganbari Sevika for Centre No. 149 located in Ghana Chhaper Village, Gram Panchayat Hussepur, Block- Bhorey, Dist- Gopalganj in which the present appellant was selected as Sevika as she was having more marks than all candidates and having her residence also in that area absence of any other suitable candidates, although, the centre was reserved for Muslim Community. This led to filing of a complaint petition before D.M., Gopalganj by the present respondent on the ground that she was not selected despite she was a resident of that area. The learned D.M. vide order dated 27.08.2011 terminated the service of the present appellant and ordered for a fresh selection to be made for the said centre. Feeling aggrieved by the said order the present appellant had filed an appeal bearing Anganbari Appeal No. 190/2011 before this court and this court vide order dated 11.06.2012 was pleased to set aside the order passed by D.M. relating to cancellation of appointment of this appellant and remanded the case back to Collector, Gopalganj to decide afresh by judging the correctness of the selection made in the Aam Sabha based on the facts, law, evidences etc and prevailing circumstances and situation existing at the time of the decision. This led to reinitiation of the case by D.M. vide Anganbari Case No. 17/2011 which was subsequently disposed of vide order dated 30.11.2012 wherein the selection of the present respondent for that centre, during pendency of the appeal case No. 190/2011, before this court, was held to be valid.

On being aggrieved by and dissatisfied with the impugned order of D.M., Gopalganj dated 30.11.2012, the present appellant has again approached this court for relief by way of preferring this appeal.

Heard the parties.

The learned senior counsel appearing on behalf of the appellant submitted that the impugned order is illegal, without jurisdiction and also against justice, equity and good conscience. He further pointed out that the earlier order of D.M. Gopalganj passed in Appeal No. 17/2011 dated 27.03.2011 has been set aside by this court and the matter was remanded back to the D.M. for fresh consideration with certain observations and directions but the learned D.M. while restarting the earlier case, instead of complying with the said directions he simply changed the original petitioner in that case as respondent and earlier respondent was made petitioner which is also legally not permissible. He also submitted that whatever observations and directions given by this

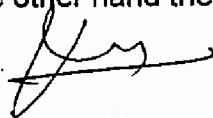


court in the remand order have been completely overlooked by the D.M. and the case has been decided in favour of the respondent although she had no valid claim to be appointed at centre no. 149 as she was not a resident of the area falling under the coverage of centre no. 149. He further pleaded that this respondent was appointed on 17.02.2012 by CDPO, Bhore, during the pendency of an appeal case before this court only to defeat the genuine claim of this petitioner and depriving her of her right to be reappointed on that centre in case of any favourable order of this court in the appeal. The learned counsel lastly prayed that the impugned order of D.M., Gopalganj be set aside and this appeal be allowed.

The learned counsel appearing on behalf of respondent No. 5, submitted that the impugned order of D.M. is proper and legally valid. He further said that the respondent was appointed as her residence was in the benefited area of the centre No. 149 and this has been proved in the earlier enquiry reports of DCLR & SDO. He further argued that centre No. 149 was reserved for Muslim Community and as no Muslim Candidate was available, this candidate was appointed as she was the resident of that benefited area where as the petitioner belongs to general category and as she was wrongly appointed earlier, her service was terminated. The learned counsel lastly submitted that the selection of Girija Devi was made through an Aam Sabha held on 17.02.2012 in presence of all candidates and as per the provisions of the guidelines which is legally valid and she is working there.

The learned Govt. pleader appearing on behalf of the state submitted that the house of the respondent also falls under the Poshak Kshetra of Centre No. 149 and she was selected for that centre as no muslim candidate was available. The order of Collector is just, proper and valid and this appeal is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, rival submissions advanced by the learned counsel for the contesting parties and on going through the impugned order of D.M. dated 30.11.2012 as well as the remand order of this court, it appears that in this case, the sole question still remain unresolved relating to the claims and counter-claims between the parties as to whether the residence of Girija Devi, the present respondent actually falls under the benefited area of Anganbari Centre No. 149 or not? Although, the respondent claims that her house is located in the area of Centre No. 149 on the basis of residential certificate whose validity expired on 22.02.2007 but the Aam Sabha was held on 28.03.2007 on that day she was not qualified to be considered as a resident of the Poshak Kshetra of Centre No.149 and she was also not in possession of any valid documents to prove her claim. Had she been in possession of any valid documents on the day of selection she could not have been denied selection. A lot of discussion has already been made about the genuineness of her claim regarding the documents produced in the Aam Sabha held on 28.03.2007 in the previous order of this court. On this basis she could not be held as a resident of Centre No. 149 on the day of selection. On the other hand the appellant, also

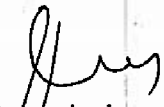



contradicts the claim of the respondent on the basis of the voter's List of that area (Ward No. 19) in which the name of Girija Devi does not appear but the name of the husband of Girija Devi and her father in law appear in the voter List of ward No. 16 and ward No. 16 is not included under the benefited area of Centre No. 149. The copies of voter list filed by the petitioner justifies her claim. Thus, the question that the respondent does not belong to benefited area of Centre No. 149 is proved on the basis of documentary evidence, this itself makes the claim of the respondent invalid and that was the basis why she was not selected earlier as Sevika for Centre No. 149. It is also important to mention here that this court while remanding the case back to D.M., Gopalganj discussed in detail about this vexed issue and ultimately on finding that the respondent failed to justify her claims of she being the resident of benefited area of Centre No. 149, directed the D.M. to make a fresh enquiry into the matter. But from perusal of the impugned order of D.M., Gopalganj dated 30.11.2012, it appears that no steps have been taken to inquire in to the matter thereby completely disregarding and ignoring the earlier directions/ observations of this court. What is more surprising that the respondent was allowed to be selected on 17.02.2012 although, the concerned authorities fully aware of the fact that an appeal case is pending before this court. What was needed at that time that they should have waited for the disposal of the appeal case mainly to avoid any further litigation. I also find that this court on previous occasion after careful consideration of the whole issue rightly arrived at the conclusion that the appointment of Girija Devi during the pendency of an appeal and after five years of the previous Aam Sabha held smacks. This observations itself speaks a lot about the way of selection and termination of services of Anganbari Sevikas.

Thus, for the reason aforesaid and the discussion made therein, the impugned order of D.M., Gopalganj dated 30.11.2012 and subsequent selection of respondent on 17.02.2012 during the pendency of the appeal before this court are not sustainable in view of the facts that the learned D.M. failed to comply with the directions and observations made in the order dated 11.06.2012 of this court so as to arrive at a correct finding of facts which is the crux of the issue. As such, I am left with no option than to set aside the impugned order dated 30.11.2012 of D.M. Gopalganj. Accordingly, the same is set aside.

In the result this appeal is allowed.

Dictated & Corrected by me.


Commissioner,
Saran Division, Chapra
24/2/2014


Commissioner,
Saran Division, Chapra
24/2/2014