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22/10/13

In the High Court of Judicature at Patna.

(Letters Patent Appellate Jurisdiction)

L.P.A.No. _____ of 2013.

(Arising out of C.W.J.C.No.12503 of 2008

Disposed of on 12.9.2013)

Reema Kumari ~~Respondent~~ - Appellant

Versus

The State of Bihar and others ~~Respondent~~ Respondents.

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In the High Court of Judicature at Patna.

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(Arising out of C.W.J.C.No.12503 of 2008 disposed of on
12.9.2013).

Reema Kumari Appellant

Versus

The State of Bihar and others..... Respondents.

- : SYNOPSIS :-

This appeal is directed against order dated 12.9.2013 passed
by Hon'ble Mr.Justice Navaniti Prasad Singh in C.W.J.C.No.125
-03 of 2008.

11.6.2007
PARA- 2 Respondent No.6 was appointed on the post of Anganwari Sevika

25.4.2008
PARA- 3 Respondent No.6 had to distribute Take Home Ration but she
did not distribute among beneficiaries.

29.4.2008
PARA- 4 Respondent No.6 was asked show cause.

2.5.2008
PARA- 6 District Magistrate, Madhepura cancelled the appointment
of Respondent No.6.

2008
PARA- 7 Respondent No.6 filed Appeal before Commissioner, Koshi
Division, Saharsa.

2008
PARA- 8 Respondent No.6 filed C.W.J.C.No.12503 before High Court.

12.10.2009
PARA-9

Commissioner Koshi Division dismissed the appeal.

2009
PARA-11

Application has been invited for selection of Anganwari Sevika till 18.12.2009. Appellant applied for the same.

28.2.2010
PARA-13
Ann-1

In merit list Appellant's name is placed at Sr.L.

20.4.2010
PARA-14

Appellant was selected as Anganwari Sevika by Ang Sabha.

20.4.2010
PARA-15
Ann-2

Appellant was appointed as Anganwari Sevika.

22.4.2010
PARA-16
Ann-3

Appellant joined as Anganwari Sevika.

PARA-19

Appellant appeared in writ petition.

12.9.2013
PARA-20

Hon'ble Court allowed writ petition, set aside the order of District Magistrate and commissioner.

PARA-22

Hon'ble Court allowed writ on the ground that Respondent No. was engaged in immunization work on relevant day.

PARA-23

Respondent No.6 did not produce any order of higher authority to do work of immunization.

PARA-25

Government Circular is that if take Home Ration is not distributed on fixed date, by Anganwari Sevika, then she will be removed immediately without asking any show cause. Hence this Letters Patent Appeal.

*Filed through
Vijay Chandra Behera
Advocate by D. Appellants
7-10-2013
D.O. ENL- 054-50*

In the High Court of Judicature at Patna.

(Letters Patent Appellate Jurisdiction)

L.P.A .No. _____ of 2013.

(Arising out of C.W.J.C.No.12503 of 2008

Disposed of on 12.9.2013)

In the matter of an

appeal under Clause 10 of

the Letters Patent of High

Court of Judicature at Patna

AND

In the matter of :-

Reema Kumari Wife of Daya Kant Yadav, Resident of

Village and Post Office-Dighi, Block and Police Station

Murliganj, District-Madhepura..... Appellant.

Respondent-

Versus

1. The State of Bihar.

2. The Secretary, Social Welfare Department,

Government of Bihar, Patna.

3. The District Magistrate, Madhepura.

4. District Welfare Officer, Madhepura.

5. The Commissioner, Koshi Pramandal, Saharsa.

... Respondents- Respondents

6. Anju Kumari Wife of Sri Sudhir Kumar, Resident

of Village-Dighee, Police Station-Murliganj,

District-Madhepura.

..... Petitioner- Respondent.

To,

The Hon' ble Ms. Justice Rekha M. Doshit,

the Chief Justice of the High Court of

Judicature at Patna and her Companion

Justices of the said Hon' ble Court.

The humble Memorandum of

Appeal on behalf of the

Appellant abovenamed

Most Respectfully Sheweth :-

1. That this Memorandum of Appeal is directed against order dated 12.9.2013 passed by Hon' ble Mr. Justice Navhiti Prasad Singh in C.W.J.C. No.12503 of 2008 whereby it was ordered that, the order of cancellation of her appointment cannot be sustained. The order of the Collector, as affirmed by the Divisional Commissioner, is thus, set aside. The unfortunate consequence would be that appointment of Respondent No.6 (Appellant), who was duly selected, has to be set aside. The Writ petition is, accordingly, disposed of in terms of the order aforesaid. The consequence would be that the petitioner must be reinstated immediately and not later than one month from the date of production of a copy of this order before C.D.P.O.

2. That the facts of the case is that Respondent No.6 (Petitioner) was selected as Anganwari Sevika on 11.6.2007 by the ~~competent~~^{competent} authority at Anganwari Centre Yadav Tola, Dighi, District-Madhepura vide Annexure-1 to the writ petition.
3. That on 25.4.2008 the Respondent No.6 (Petitioner) had to distribute "Take Home Ration" to the beneficiaries but she did not distribute the same among beneficiaries on 25.4.2008. On the same day i.e. on 25.4.2008 Gram Panchayat Supervisor came at Centre and found that Take Home Ration was not distributed ~~amongst~~^{amongst} beneficiaries.
4. That vide Letter No.409 dated 29.4.2008 District Welfare Officer, Madhepura asked show ~~cause~~^{cause} from Respondent No.6 (Petitioner) that why did she not distribute the Take Home Ration on 25.4.2008 ~~among~~^{amongst} beneficiaries and she was directed to appear before District Magistrate which is annexed as Annexure-'5' to the

writ petition.

5. That Respondent No.6 (Petitioner) appeared before District Magistrate, Madhepura and gave show cause that on the direction of authority she went to do work of vaccination on 25.4.2008 which is annexed as Annexure-'6' to the writ petition.
6. That the District Magistrate, Madhepura after considering the show cause vide order dated 2.5.2008 cancelled the appointment of Respondent No.6 (Petitioner) for charges of not distributing Take Home Ration on 25.4.2008 which is annexed as Annexure-'7' to the writ petition.
7. That the Respondent No.6 (Petitioner) being aggrieved with the order of District Magistrate filed Appeal Case No.15 of 2008 before Commissioner, Koshi Division, Saharsa.
8. That without disposal of the appeal by

the Commissioner the Respondent No.6 (Petitioner)
filed writ petition bearing C.W.J.C.No.12503 of 2008
before Hon'ble High Court for quashing of cancellation
order of her appointment by the District Magistrate
although matter is subjudice before the Commissioner.

9. That in the meantime the Commissioner
Koshi Division vide order dated 12.10.2009 dismissed the
appeal giving finding that the charges of not distri-
buting Take Home Ration was found true which is annexed
as Annexure-'9' to the I.A.No.7468 of 2010.

10. That it is relevant to state here that by
order dated 2.5.2008 (Annexure-'7') of the Writ petition)
District Magistrate after cancelling appointment given
direction to concerned authority to take step for sele-
ction of Anganwari Sevika as per Selection procedure.

11. That in pursuant ^{to} aforesaid direction Am
Sabha consisting of Mukhiya and Panchayat Sachiv made

advertisement inviting application from eligible candidates for Selection of Anganwari Sevika at Centre Yadav Tola, Dighee till 18.12.2009.

12. That the Appellant as well as other candidates applied for the post of Anganwari Sevika within time.

13. That a merit list was prepared by the Am Sabha on 28.2.2010 in which list the name of Appellant is placed at Sl.No.1.

A true copy of Merit List dated 28.2.2010 is annexed herewith and marked as Annex - re' 1' to this appeal.

14. That on 20.4.2010 a meeting of Am Sabha was held in which Appellant was selected as Anganwari Sevika as she possessed highest merit point and recommended the name of appellant for appointment on the post of Anganwari Sevika at

Centre Yadav Tola, Dighi on 20.4.2010.

15. That accordingly an appointment letter dated 20.4.2010 has been issued under the signature of Mukhiya and Panchayat Sachiv by which the appellant was appointed on the post of Anganwari Sevika at Centre Yadav Tola.

A true copy of Appointment Letter dated 20.4.2010 is annexed herewith and marked as Annexure-' 2' to this Appeal

16. That the appellant gave her joining before Child Development Project Officer, Murliganj on 22.4.2010 and her joining has been accepted.

A true copy of Joining Report dated 22.4.2010 is annexed herewith and marked as Annexure-' 3' to this Appeal.

17. That on the direction of Respondent authority the Appellant got training at Anganwari Training Centre, Madhepura for different period.

True copies of Training

Certificate are annexed

herewith and marked as

Annexure-^{Series} 4¹ to this Appeal.

18. That Respondent No.6 filed amendment petition bearing I.A.No.7468 of 2010 in the writ petition seeking quashing of order of Commissioner as well as recommendation of appointment of Reema Kumari (Appellant).

19. That the Appellant appeared ~~in~~ before Hon'ble High Court and filed Counter Affidavit denying contention of Respondent No.6 (Petitioner).

20. That after hearing all the parties Hon'ble Patna High Court vide order dated 12.9.2013

set aside the order of District Magistrate and Commissioner and cancelled the appointment of the appellant and reinstated the service of Respondent No.6 (Petitioner).

21. That Hon'ble Single Judge has not properly considered the case of the appellant and allowed writ petitioner in favour of Respondent No.6.

22. That Hon'ble Single Judge allowed the writ petition on the ground that on the direction of Panchayat Supervisor Respondent No.6 (Petitioner) was engaged in immunization work on 25.4.2008.

23. That in this connection it is submitted that there is no any such order of higher authority to the Respondent No.6 to do work of immunization nor Respondent No.6 produced any order of higher authority regarding immunization work either before Collector or before Commissioner or before Hon'ble

High Court.

24. That Respondent No.6 (Petitioner) annexed Annexure-' 3' to the writ petition showing that document as direction of higher authority for doing work of immunization but it appears from Annexure-' 3' to the writ petition that it is ~~table~~ chart of doing immunization work, not the order of higher authority.

A true copy of the ^{work}

Statement of immunization work

is annexed herewith and marked

~~Annexure~~
as Annexure-' 5' to this Appeal.

25. That there is circular of State Government that the Scheme of Distribution of Take Home Ration must be followed but in this case Respondent No.6 has not obeyed the direction of higher authority and circular of State Government and not distributed Take Home Ration among beneficiaries.

26. That in enquiry report it was found that at Anganwari Centre a large number of beneficiaries including women and children were present on 25.4.2008 for taking Take Home Ration, but Respondent No.6 was not present nor she distributed Take Home Ration among beneficiaries, which is clear violation of Government Circular.

27. That Circular dated 10.10.2007 of State Government says that if on the fixed date the Take Home Ration is not distributed, the Anganwari Sevika must be removed without asking any show cause.

28. That the appointment of the appellant was done in accordance with law by the Am Sabha and she has been continuously working on the said post since 22.4.2010 continuously and regularly and there was no complain was found against her and it is also also relevant to state here without disposing the

statutory appeal before learned Commissioner she
(Respondent No.6) filed present writ application and ~~at~~
not only that she also not made party to the petitioner
hence
and case is not maintainable.

29. That there is several decision of Hon'ble
Division Bench of Patna High Court that the matter of
anganwari Sevika is not maintainable before Hon'ble
High Court, since same time she filed Appeal before
Learned Commissioner and Hon'ble High Court also, which
is not maintainable.

30. That the appellant has no any other alter-
native and efficacious remedy other than by way of this
appeal.

31. That the appellant has not moved earlier
before Hon'ble High Court in the instant matter.

Being aggrieved with and dissatisfied
with the order dated 12.9.2013 passed

- 14 -

by Hon' ble Mr. Justice Nav^ahiti Prasad

Singh in C.W.J.C.No.12503 of 2008 the

appellant begs to move this Hon' ble Court

in the Letters Patent Appeal on amongst

others, the following

GRUNDS:-

- (i) For that the impugned order passed by Hon' ble Single Judge is bad in law as well as on facts of the case.
- iii) For that all the facts produced by the appellant has not been properly considered by the Hon' ble Single Judge and passed impugned order.
- (iii) For that the Hon' ble Single Judge has not followed the Circular dated 10.10.2007 of State Government which clearly stated on

the fixed date the Take Home Ration ^{is} was not distributed among beneficiaries, the Anganwari Sevika must be removed without asking any show cause.

(iv) For that on the fixed date i.e. on 25.4.2008 the Respondent No.6 had to distribute Take Home Ration among beneficiaries but Respondent No. 6 was found absent at Centre as a result all beneficiaries returned back without getting Take Home Ration.

(v) For that on relevant date i.e. on 25.4.2008 Gram Panchayat Supervisor went at Centre but he did not find the Respondent No.6 at Centre, he also found that due to absence of Respondent No.6 the Take Home Ration could not be distributed among beneficiaries which is a clear violation of Government Circular.

- (vi) For that the Panchayat Supervisor after inspection found that on 25.4.2008 the Take Home Ration was not distributed among beneficiaries.
- (vii) For that Respondent No.6 took stand that she was engaged in immunization work on the direction of higher authority, but Respondent No.6 has not produced any letter/order of higher authority any time.
- (viii) For that the Respondent No.6 produced only work statement of immunization (Annexure '3' to the writ petition) before Hon'ble High Court, but it is not the direction of higher authority, since it is the work chart and the Hon'ble Single Judge relied upon that chart saying the authority has taken work of immunization.

(ix) For that the appellant has been selected and appointed on the post of Anganwari Sevika in accordance with law since 22.4.2010 on the aforesaid vacant post and there is no complain against him.

(x) For that if the impugned order will not stayed then the appellant will suffer pecuniary loss and will become unemployed.

(xi) For that the impugned order passed by Hon'ble Single Judge is bad in law as well as on facts.

It is, therefore, prayed that your Lordships may graciously be pleased to admit this appeal, issue Notice to Respondents and after hearing the parties be pleased to set aside the order dated 12.9.2013 passed by

- 18 -

Hon' ble Mr. Justice Navaniti Prasad

Singh in C.W.J.C.No.12503 of 2008.

And

It is further prayed that till pendency
of this appeal the operation of the
impugned order may kindly be stayed.

And/Or

Pass such other order or orders as
your Lordships may deem fit and proper.

And for this, the Appellant shall ever pray.

AFFIDAVIT.

I, Reema Kumari, aged about 26 years, Wife of Daya Kant Yadav, resident of Village & Post Office-Dighi, Block and Police Station-Murliganj, District-Madhepura, do hereby solemnly affirm and state as follows:-

1. That I am Appellant in this case and as such am well acquainted with the facts and circumstances of the case.

2. That the contents of this petition have been read over and explained to me in Hindi which I have fully understood the same and the statements of facts made in Paragraph Nos. 12 to 17 and 19 to 29 _____ are true to my knowledge and those made in Paragraph Nos. _____ 2 to 11 and 18 _____ are based upon informations derived from the records of the case which I believe to be true and the rest are by way of submissions to this Hon'ble Court.

3. That the Annexures are true/photostat copies of their respective originals.

रीमा कुमारी

CERTIFICATE.

It is certified that ground set forth above are good grounds for Letters Patent Appeal.

It is my instruction that the Appellant has not moved earlier in this Hon'ble Court against the impugned Judgement/Order.

In my opinion no notice either to the Attorney General of India or Advocate General of Bihar under Order XXVII-A Rule 1 of the Code of Civil Procedure is necessary.

Udaychand Baid
Advocate for Appellant.

Dated:- 7-10-13


D.A.R. No - 05450

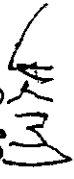
Annexure-1)

21

ग्राम पंचायत दिव्या केंद्र चारु शेला झालेले म्हाजानबाई सेविका पर हेतु प्राप्त आवेदन का मीटर लिस्ट - निम्न प्रकार है। -

क्र.सं.	आवेदिका की नाम	पिता का नाम	पति का नाम	सं.क्र.क	आय	इन्टर का आय	अभिराम मा. धर्म एवं कुशल	6+8 का कुल आय	अभिराम
1	दीपा कुमारी	अनवरुद्रा शारदा	दशरथ शारदा	413	59%	481	+ 5%	64%	
2	दीपा देवी	जयशंकर शारदा	सतीश शारदा	511	56.5%	—	—	56.5%	
3	सतीश देवी	सतीश शारदा	दीपा कुमारी शारदा	411	45.6%	—	—	45.6%	


 28-02-2010
 पंचायत सचिव
 दिव्या केंद्र चारु शेला
 ग्राम पंचायत (महोदय)


 28-02-2010
 ग्राम पंचायत सचिव
 दिव्या केंद्र चारु शेला
 ग्राम पंचायत (महोदय)

कार्यालय

पंचायत/वार्ड संख्या ...I.(५९)...श.प्र.पंचायत...दि.२५/४/१०.....

पंचायत/वार्ड संख्या : ०२ (५९) जिला : मधुपुरा

ज्ञापक संख्या : ०२ (५९)

दिनांक : २०-०४-२०१०

चयन पत्र

श्रीमती श्रीमा कुमारी पति दयाकान्त भारद्वाज

जो ग्राम दि.२५/४/१० पोस्ट दि.२५/४/१० की स्थाई निवासी है का आँगनबाड़ी

सेविका/सहायिका के रूप में ग्राम/टोला/मुहल्ला दि.२५/४/१० की

आँगनबाड़ी केन्द्र (कोड सहित) ११२ आदन टोला के सेवा क्षेत्र के लिए दिनांक २०-०४-२०१०

को आयोजित आम सभा में लिये गये निर्णय तथा परियोजना पदाधिकारी के पत्रांक-२१४ के प्रतिवेदन के अ लोक.

में आपने दिनांक १५-०९-२०१० से २१-०९-२०१० तक संतोषप्रद इण्डक्शन/जॉब प्रशिक्षण प्राप्त किया है ।

2. आपकी चयन सेविका/सहायिका के रूप में बिहार सरकार के समाज कल्याण विभाग के आई०सी०डी०एस० निदेशालय द्वारा निर्धारित मापदंडों एवं आपके द्वारा उपलब्ध कराये गये सूचनाएँ/प्रमाण पत्र के आधार पर लिया गया है, पर भविष्य में उक्त सूचनाएँ/प्रमाण पत्र गलत पाये हैं या आपके द्वारा अपने कर्तव्यों के संतोषप्रद ढंग से निर्वहन नहीं किया जाता है तो आपका चयन रद्द करते हुये आपको कार्यमुक्त किया जा सकता है । कार्यमुक्त होने कि स्थिति में पुनः उसी या अन्य किसी आँगनबाड़ी केन्द्र पर आपका दावा मान्य नहीं होगा ।

3. सेविका/सहायिका के रूप में आपका चयन केन्द्र के सेवा क्षेत्र तक सीमित कार्य के लिए ही किया जा रहा है ।

4. यह एक सामाजिक कार्य है एवं आपका चयन महिलाओं एवं बच्चों के विकास हेतु सामाजिक कार्य करने के लिए इच्छुक रहने संबंधी घोषणा के आलोक में किया जाता है । इस चयन एवं केन्द्र में किये गये कार्य का दावा सरकारी नौकरी का आधार नहीं होगा ।

20-04-10
सदस्य सचिव का हस्ताक्षर/
पंचायत सचिव पंचायत ५१/५९
ग्राम पंचायत दि.२५/४/१०

मुखिया
पंचायत/वार्ड प्रमुख/वार्ड प्रमुख/वार्ड प्रमुख
मुखिया का हस्ताक्षर/नाम मुखिया
20-04-10

सेवा से

ताल विकास परिशीलना पदाधिकारी
मुरलीगंज (प्रवेपुरा),

विषय - आंगनवाड़ी सेविका पद पर आंगनदान
के संबंध में।

माहशाय, सविनय निवेदन यह है कि शाश्वत 3.10

फ्याचन दिवसी के पत्रांक 1 दिनांक 20.04.10

द्वारा मेरा चयन आंगनवाड़ी केंद्र थादव तीला

फ्याचन दिवसी के लिए

पद पर किया है। जिसके आंगनवाड़ी सेविका

आज दिनांक 22.04.10 के फ्याचन में

अपना आंगनदान आंगनवाड़ी सेविका के
रूप में दे रही हूँ।

अतः श्री मान से प्रार्थना

है कि मेरी आंगनदान स्वीकृत करने की
कृपा की जाय

श्री मान का विश्वास

रीगा कुमारी

सेविका

केंद्र - थादव तीला

फ्याचन - दिवसी

मुरलीगंज (प्रवेपुरा)

एक प्रति फ्याचन

दिनांक 10

22/04/10

3.10

2

3.10

3.10



ICDS

प्रमाणित किया जाता है कि

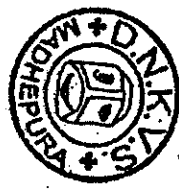
श्रीमती..... श्रीमता .. (A.W.W. Centre Code :- 112, Muxaigawan)..... से
दिनांक..... 17.08.2011..... से..... 24.08.2011..... तक

“नवजात शिशु एवम् बाल्यकाल की बीमारियों की समेकित देखभाल”
के स्वास्थ्य कार्यकर्ता लिए आयोजित प्रशिक्षण कार्यक्रम में सफलता पूर्वक प्रतिभागी के रूप में
भाग लिया ।

Md. Shamsuddin
जिला कार्यक्रम प्रबंधक
जिला स्वास्थ्य सचिव, मधेपुरा

[Signature]
सिविल सर्जन
मधेपुरा

श्री कृष्णा नीता कल्याण विकास समिति



मधेपुरा कृषि विज्ञान केन्द्र से उत्तर (सधुवा पथ), मधेपुरा

ऑनलाइन प्रशिक्षण केन्द्र, मधेपुरा

संचालित : आई.सी.डी.एस. निदेशालय, पटना (बिहार)



प्रशिक्षण प्रमाण -पत्र

प्रमाणित किया जाता है कि श्रीमती श्रीमा कुमारी पति श्री केशवकांत झा राज

गाम दिउरही पो 0 दिउरही थाना मुन्सी नाल

जिला मुन्सीपुरा (बिहार) ऑनलाइन सेविका/सहभिका 32 (अतीस) दिवसीय

प्रशिक्षण दिनांक 16-02-2013 से 23-03-2013 तक गैर कोर्स

प्रशिक्षण सफलतापूर्वक प्राप्त किया। इसका आचरण उत्तम रहा है।

संस्था इसके उज्वल भविष्य की कामना करती है।

दिनांक 23-03-2013

प्राचार्य 23-03-013

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Praveen
सचिव 3/13
मधेपुरा

क्रमांक - ०३/१३-III

AMRONGE-150225

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राजकी नीता कल्याण विकास समिति



मधेपुरा कृषि विज्ञान केन्द्र से उत्तर (सधुवा पथ), मधेपुरा

ऑनलाइन प्रशिक्षण केन्द्र, मधेपुरा



संचालित : आई सी डी एस निदेशालय, पटना (बिहार)

प्रशिक्षण-प्रमाण - पत्र

प्रमाणित किया जाता है कि श्रीमती श्रीमा कुमारी पति श्री रमकान्त यादव

शाम दिउची पौ० दिउची थाना मुसलीजांज जिला सदौपुरा

(बिहार) ऑनलाइन सेविका / सहायिका 7 (स्नात.) दिवसीय प्रशिक्षण दिनांक ०२-०५-२०१३ से ०४-०५-२०१३

तक सिरीशर कोर्स प्रशिक्षण सफलतापूर्वक प्राप्त किया। इसका आवरण उत्तम रहा है।

संस्था इनके उज्वल भविष्य की कामना करती है।

दिनांक : ०४-०५-२०१३

प्राचार्य

सचिव

0-6 वर्ष के बच्चों का टीकाकरण प्रपत्र : आँगनवाड़ी सेविका

समेकित बाल विकास सेवा

क्र. सं.	बच्चे का नाम	व्यक्ति का नाम	लिंग		जन्म तिथि	वै. सं. सं.	टीकाकरण					संस्थान				
			पुरु	स्त्री			I	II	III	बूस्टर	I	II	III	बूस्टर		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15		
M23	अवनी शर्मा	बिरा संतोष शर्मा	✓	✓	31-12-08	✓	✓	✓	✓	✓	✓	✓	✓	✓		
M128	अरुणा शर्मा	बिरा नरेश शर्मा	✓	✓	07-03-08	✓	✓	✓	✓	✓	✓	✓	✓	✓		
M27	दीपा शर्मा	बिरा संतोष शर्मा	✓	✓	19-03-08	✓	✓	✓	✓	✓	✓	✓	✓	✓		
M60	अनुराधा शर्मा	बिरा अशोक शर्मा	✓	✓	16-02-08	✓	✓	✓	✓	✓	✓	✓	✓	✓		
M43	सुधा कुमार	बिरा विक्रम शर्मा	✓	✓	05-03-08	✓	✓	✓	✓	✓	✓	✓	✓	✓		
M49	सविता शर्मा	बिरा संतोष शर्मा	✓	✓	17-03-08	✓	✓	✓	✓	✓	✓	✓	✓	✓		
M95	अरुण शर्मा	बिरा संतोष शर्मा	✓	✓	13-10-07	✓	✓	✓	✓	✓	✓	✓	✓	✓		
<p>अनुराधा शर्मा 25/11/08</p>																

समेकित बाल विकास सेवा
 गर्भवती महिलाओं का प्रपत्र : आँगनवाड़ी सेवि

क्र. सं.	गर्भवती का नाम व पति का नाम	पंजीकरण की तिथि	गर्भ का मास (पंजीकरण का समय)	टी.टी. नैने की तिथि		वजन			स्वास्थ्य चौक की तिथि	अतिरिक्त आहार की सलाह (L/M)		गर्भवती को दिए गए आहार की मात्रा				वजन		गर्भवती का स्वास्थ्य
				I	II	दृष्टि	एड	आहार		प्राप्त की मात्रा	प्राप्त की मात्रा	गर्भवती को दिए गए आहार की मात्रा	गर्भवती को दिए गए आहार की मात्रा	किलो	ग्राम			
1																		
2	एलीजा बी. पी. डी. श्री शर्मा	25-4-08	14-08-08															
	उमा देवी श्री श्री शर्मा	25-3-08	14-08-08															
	विष्णा देवी श्री श्री शर्मा	25-4-08	14-08-08															
	श्री श्री शर्मा	25-4-08	14-08-08															

Author's
 25/4/08

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 12503 of 2008

Anju Kumari, wife of Sri Sudhir Kumar, resident of village – Dighee, Police Station – Murliganj, District - Madhepura
 Petitioner/s

Versus

- 1 The State Of Bihar
- 2 The Secretary, Social Welfare Department, Government of Bihar, Patna
- 3 The District Magistrate, Madhepura
- 4 District Welfare Officer, Madhepura
- 5 The Commissioner, Koshi Pramandal, Sahibganj
- 6 Smt Reema Kumari, wife of Daya Kumar Yadav, Village & Post – Dighi, Block & PS – Murliganj, District - Madhepura
 Respondent/s

Appearance :

For the Petitioner/s : M/s Amit Shrivastava & Girish Pandey,
 Advocates

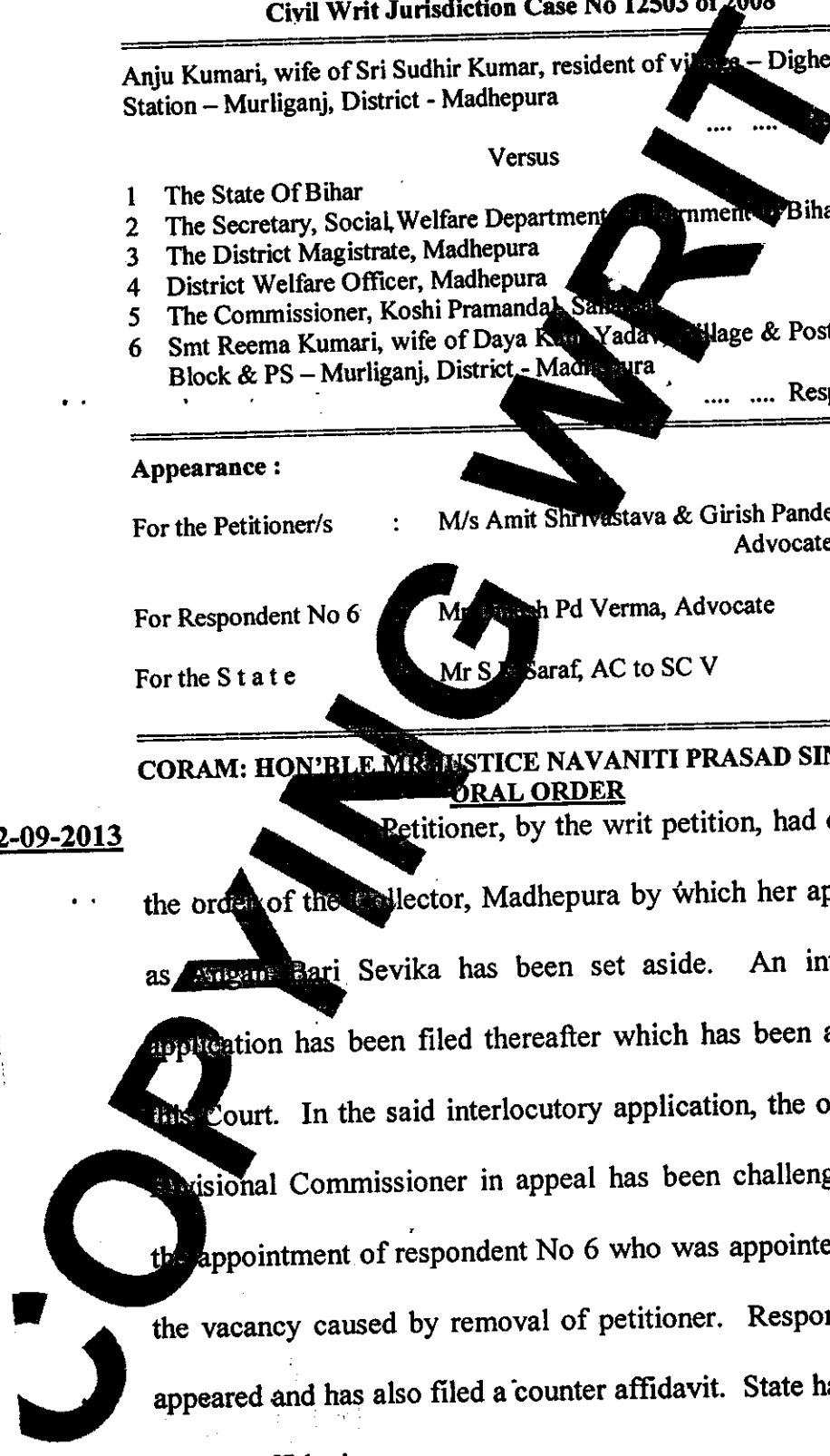
For Respondent No 6 : Mr. Girish Pd Verma, Advocate

For the State : Mr S. Saraf, AC to SC V

CORAM: HON'BLE MR. JUSTICE NAVANITI PRASAD SINGH
ORAL ORDER

12-09-2013

Petitioner, by the writ petition, had challenged the order of the Collector, Madhepura by which her appointment as ~~Assistant~~ Bari Sevika has been set aside. An interlocutory application has been filed thereafter which has been allowed by this Court. In the said interlocutory application, the order of the Divisional Commissioner in appeal has been challenged as also the appointment of respondent No 6 who was appointed to fill up the vacancy caused by removal of petitioner. Respondent No 6 appeared and has also filed a counter affidavit. State has filed two counter affidavits.



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REGISTRATION, EXCISE & PROHIBITION DEPT.
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Heard the parties and with their consent, the writ petition is being disposed of at the stage of admission itself.

A preliminary objection has been raised on behalf of respondent No 6 stating that as respondent No 6 has already been appointed and is working, the Court should not interfere in the matter. However, Shri A. Shrivastava, learned counsel for the petitioner submits that the appointment of respondent No 6 was clearly with stipulation that it would be subject to result of petitioner's challenge to her dismissal. Thus, petitioner, having challenged her dismissal and consequential selection of respondent No 6, the writ petition cannot be dismissed.

Coming to the merit of the issue. Petitioner, being an Angan Bari Sevika, is supposed to distribute Take Home Ration on dates fixed in this regard. With reference to Annexure 4 to the writ petition, petitioner states that she was directed by the Panchayat Supervisor that on the date fixed, she has to help in immunization work and the distribution of Take Home Ration would be done on the next date that is 02.05.2008. That is a written order. On 25.04.2008, an inspection was conducted. It was found that people were waiting for their Take Home Ration and it was disclosed that ration would not be distributed on that

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date. Report having been made, petitioner was asked to show cause as to why she failed to distribute Take Home Ration on 25.04.2008. Petitioner filed her show cause which is Annexure 6 clearly stating that as per orders of the Panchayat Supervisor, on that date, she was to assist him in immunisation work and as per his order, Take Home Ration was to be distributed on 02.05.2008. Having perused the show cause on the ground that the petitioner had not distributed the Take Home Ration on the date fixed, her appointment has been cancelled. During pendency of the writ petition, the vacancy having already occurred, was sought to be filled by appointment of respondent No 6 but with a clear stipulation that her appointment is subject to the result of the writ petition. In the counter affidavit, nowhere it has been disputed or stated that Annexure 4 was not an authentic document. It has nowhere been stated that Panchayat Supervisor did not give any such direction. All that is said in the counter affidavit that petitioner was bound to distribute the Take Home Ration and by not doing so, she has committed a great and grave crime and did not deserve to continue as Angan Bari Sevika.

I am afraid I cannot accept the stand. It would have been a totally different matter had State brought on affidavit anything to show that the Panchayat Supervisor did not in fact

issue any such direction. That was disclosed to the authority at the very first instance. Once an order emanates from a person holding position of authority then a citizen is bound to obey the same. Here, Annexure 4 categorically stated that petitioner had to assist in immunization work on 25.04.2008 and was directed to distribute the Take Home Ration on 02.05.2008. This document, not being disputed, no mens rea whatsoever can be attributed to the petitioner. If at all, the petitioner was caught between the dowel and the deep sea. She had little choice. She cannot be punished according

Therefore in my view, the order of cancellation of her appointment cannot be sustained. The order of the Collector, as affirmed by the Divisional Commissioner, is, thus, set aside. The unfortunate consequence would be that appointment of respondent No 6, who was duly selected, has to be set aside so that petitioner can be reinstated. It is, accordingly, set aside. The writ petition is, accordingly, disposed of in terms of the order aforesaid. The consequence would be that the petitioner must be reinstated immediately and not later than one month from the date of production of a copy of this order before CDPO.

M.E.H./-

sd/-
(Navaniti Prasad Singh) - J.

Rakesh Kumar
A.S.O.
77/09/2013
28/09/13

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Prasadh Chandra
For Joint Registrar
Patna High Court
18/09/13
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