

GP-16  
2/9/12

IN THE HIGH COURT OF JUDICATURE AT, PATNA

(Miscellaneous Jurisdiction Case)

M.J.C. No. .... /2012

Nitu Rani ..... Petitioner.

Vs.

The State of Bihar & others. .... Opposite Parties.

Sub;- Contempt

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DEPARTMENT OF POST  
BIHAR CIRCLE

भारत

STAMP DUTY

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बिहार  
JUDICIAL

COURT FEE



Rs. 0000055 30.7.2012

AUTH NO. 3185 DT. 16/12/2008

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**IN THE HIGH COURT OF JUDICATURE AT, PATNA**

**(Miscellaneous Jurisdiction Case)**

**M.J.C. No. .... /2012**

In the matter of an application under Article 215 of the constitution of India read with section 12 of the contempt of courts Act.

**And**

In the matter of non-compliance of order dated 09/9/2011 passed by Hon'ble Mr. Justice Navin Sinha in C.W.J.C. No. 5590/2010 Nitu Rani Vs. The State of Bihar & others.

**And**

In the matter of

Nitu Rani, W/o Krishna Chandra Bose R/O Village  
Parmananpur, Nawatolia, Ward No. 16, P.S.  
Madhepura (Ghailadh) and Distt. Madhepura.

.....Petitioner.

**Vs.**

1. The State of Bihar, through its Chief Secretary.
2. Sri Minhaz Alam, S/o not known the then District  
Magistrate, Madhepura.
3. Sri Upendra Kumar, son of not known, the District  
Magistrate, Madhepura.
4. Sri Mustafa Ansari, s/o not known the District  
Programme Officer, Madhepura.
5. Sri Shashi Bhushan Yadav, s/o not known, the then  
Child Development Project Officer, Madhepura  
(Ghailadh).

6. Smt. Aruna Kumari, w/o not known, Child Development Project Officer Madhepura (Ghailadh).
7. Sri Sanjay Kumar Nirala, s/o not known, the Sub-Divisional Officer, Madhepura.
8. Sri Mahadan Thakur, s/o not known, the then Mukhiya Gram Panchayat Raj Bharrandha, Parmanandpur, Block - Ghailadh, Distt. Madhepura.
9. Sri Lalan Kumar Sharma, s/o not known, Mukhiya Gram Panchayat Raj Bharrandha, Parmanandpur, Block - Ghailadh, Distt. Madhepura.
10. Raman Kumar Verma, s/o not known, the then Panchayat Secretary, Gram Panchayat Raj Bhatrandha Parmanandpur, Block Ghailadh, Distt. Madhepura.

11. Shiv Shankar Singh, s/o not known, Panchayat Secretary, Gram Panchayat Raj Bhatrandha Parmanandpur, Block Ghailadh, Distt. Madhepura.

...../Opposite Parties.

To,

The Hon'ble Ms. Justice Rekha M. Doshit, the Hon'ble Chief Justice of the High Court of Judicature at Patna and her companion Justices of the said Hon'ble Court.

**The humble petition on behalf of  
the petitioner above named.**

**Most Respectfully sheweth:-**

1. That, this is an application for initiating a contempt proceeding against the opposite parties for willfully and deliberately violating the order dated 09/9/2011 passed in C.W.J.C. No. 5590/2010 passed by Hon'ble Mr. Justice Navin Sinha.

2. That, C.W.J.C. No. 5590/2010 was filed for quashing the notice as contained in memo no. 59, dated 05/3/2010 inviting application from the prospective candidate for selection of Aganbari Sewika and holding general body meeting on 26/3/2010 and the petitioner also prays in consequence directing the respondent authorities to make selection out of earlier selection in which Bibha Kumari had been selected since she has been remove on the grounds of various charges such as production of forged mark-sheet and lodging of F.I.R. against her which was done on the basis of the protest and complaint made by the petitioner which had already filed a writ petition bearing C.W.J.C. No. 3076/08 praying for quashing of the appointment of Bibha Kumari which is still pending and further for issuance of an appropriate writ of certiorari.

3. That, the said writ petition was allowed by Hon'ble Mr. Justice Navin Sinha vide his order dated 09/9/2011. The relevant portion of the order dated 09/9/2011 is reproduced as hereinunder:-

"Keeping in mind the nature of the appointment for dissemination of a Welfare scheme when it is made of a person who is a member of the dominant populace of the beneficiary area, an object with a social purpose, and the notification dated 24/5/2007 that in such cases the first attempt should be to make appointment of the next competent candidate but subject only to the calling of a fresh Aam Sabha, the Court considers it proper to pass the following order:-

Let the petitioner appear before the District Magistrate along with a copy of the present order. If any fresh candidate has

been appointed in after termination of Bibha Kumari, the District Magistrate shall make her aware of the present order also. The matter shall then be placed before the Aam Sabha which shall proceed to decide the matter.

The court expects this procedure to be complied with within a maximum period of four months from the date of receipt/production of a copy of this order.

The writ application stands disposed."

**A Photostat copy of the order dated 09/9/2011 passed in C.W.J.C. No. 5590/2010 by Hon'ble Mr. Justice Navin Sinha is enclosed herewith and marked as Annexure '1' to this petition.**

4. That, pursuant to the direction of the Hon'ble Court dated 9/9/2011, the petitioner has sent an



affidavited representation on 21/9/2011 by speed post to the District Magistrate, Madhepura alongwith photocopy of order dated 9/9/2011.

**A photocopy of the affidavited representation dated 21/9/2011 is enclosed herewith and marked as Annexure '2' to this petition.**

5. That, the writ petitioner again submitted reminder application before opposite parties but nothing has been done by the opposite parties, that even after submitting the said representation, the petitioner kept representing before the concerned authorities by sending reminders but of no avail.
6. That, as per the direction embodied in the order under reference, opposite party no. 2 was to complied an order within a maximum period of four months from the date of receipt of the

application of the petitioner alongwith the copy of said order but the opposite party no. 2 deliberately & willfully flouted the order of this Hon'ble Court by not considering the case of the petitioner. It is apt to mention here that the opposite parties have deliberately violated the order of this Hon'ble Court making themselves liable for contempt proceeding.

7. That, the respondent/opposite parties contemnors have deliberately violated the orders of this Hon'ble Court & deserve to be punished for contempt of court.
8. That, the petitioner has not filed any contempt petition other than the present one earlier in this matter.

It is therefore prayed that Your Lordships may graciously be pleased to initiate a contempt of court

proceeding against the opposite parties and punish them for deliberately and willfully disobeying the orders dated 09/09/2011 passed in C.W.J.C. No. 5590/2010 passed by Hon'ble Mr. Justice Navin Sinha.

**And/or**

Further be pleased to pass such other order and/or orders, as Your Lordships may deem fit and proper.

***And for this the petitioner shall ever pray.***

**Affidavit**

**I, Nitu Rani, aged about 26 years, W/o Krishna Chandra Bose R/O Village Parmananpur, Nawatolia, Ward No. 16, P.S. Madhepura (Ghailadh) and Distt. Madhepura do hereby solemnly affirm and declare as follows;-**

1. That, I am the petitioner in this case and as such am acquainted with the facts and circumstances of the case.
2. That, I have gone through the contents of this petition have been read by me and understood the same and the statements of facts made therein.
3. That, the annexures are true/photo copies of the respective originals.

Ann-1

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IN THE HIGH COURT OF JUDICATURE AT PATNA  
CWJC No.5590 of 2010

1. Nitu Rani W/O Krishna Chandra Bose R/O Vill.-  
Parmanandpur, Nawtolia, Ward No. 16, P.S.- Madhepura  
(Ghailadh) And Distt.- Madhepura  
Versus

1. The State Of Bihar
2. The District Magistrate Madhepura
3. The Sub-Divisional Officer Madhepura
4. The Child Development Project Officer Madhepura  
(Ghailadh)
5. The Mukhia, Gram Panchayat Raj Bhatrandha  
Parmanandpur, Block- Ghailadh, Distt.- Madhepura
6. The Secretary, Gram Panchayat Raj Bhatrandha  
Parmanandpur, Block- Ghailadh, Distt.- Madhepura

3. 09.09.2011 Heard learned counsel for the petitioner  
and the State.

No counter affidavit has been filed on  
behalf of the respondents notwithstanding the  
institution of the writ application on 31.3.2010 and  
time granted for the purpose on 29.11.2010. No  
useful purpose shall be served by keeping the writ  
petition pending for that reason in view of the nature  
of the order to be passed.

Aggrieved by the selection of one Bibha  
Kumari to the detriment of the petitioner, the latter  
came to this Court in C.W.J.C. No. 3076 of 2008.  
During the pendency of that writ application the  
grievances stood redressed when the appointment of  
the former was cancelled. Directions had been given  
for a fresh selection process for which in the  
meantime the petitioner had already filed the present

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writ application questioning the need for the fresh selection contending that she was required to be considered as the next candidate.

Learned counsel submits that Bibha Kumari was appointed on 10.7.2007. From Annexure-5 of C.W.J.C. No. 3076 of 2008 learned counsel submits that the petitioner had objected to the appointment on 1.8.2007. That led to the termination of Bibha Kumari on 1.7.2009. Her appointment was terminated as she had obtained the appointment by playing fraud with regard to her qualification as informed to the petitioner under the Right to Information Act on 17.9.2009 in writing and a First Information Report lodged against the aforesaid. Learned counsel further relies upon a departmental instruction dated 24.5.2007 issued by the Social Welfare Department that in such cases the next empanelled candidate should be considered.

Learned counsel for the State, in absence of a counter affidavit, submits that fresh selection may have been completed by now. A third person may get prejudiced. The circular dated 24.5.2007 is not a part of the record and therefore he is not in a position to make any submissions with regard to the same.

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If a wrong appointment was made on 10.7.2007 and the petitioner protested on 11.8.2007 there can be no two opinions that the petitioner was vigilant for the enforcement of her rights. She has done so at the earliest available opportunity. The claim relates to appointment as an Agent for a Principal. Therefore the Principles of service jurisprudence that once a person has been appointed, the vacancy stands exhausted and any subsequent removal does not revive the vacancy but created a fresh vacancy may not be wholly appropriate in a relationship of the present nature. At least on the facts of the present case the Court is satisfied that it shall not be the most appropriate interpretation in the nature of the relationship between the parties. Moreover if the other candidate had secured appointment by fraud it tantamounts to no appointment at all as fraud operates from nativity and vitiates everything from the very inception. If that be so it will amount to no appointment at all having been made leaving the field open for the petitioner to be considered.

But the Court cannot loose sight of the fact, as submitted on behalf of the State that fresh selections may have been held in the meantime and

fresh appointment made. Perhaps if the petitioner had made submissions with regard to the existing state of affairs it may have been possible for this Court to pass orders with clarity today. The Court is not persuaded to pass order of a nature which may affect a third person who is not a party to the present proceeding and does not have the opportunity to defend.

Keeping in mind the nature of the appointment for dissemination of a Welfare scheme when it is made of a person who is a member of the dominant populace of the beneficiary area, an object with a social purpose, and the notification dated 24.5.2007 that in such cases the first attempt should be to make appointment of the next competent candidate but subject only to the calling of a fresh Aam Sabha, the Court considers it proper to pass the following order:-

Let the petitioner appear before the District Magistrate along with a copy of the present order. If any fresh candidate has been appointed in after termination of Bibha Kumari, the District Magistrate shall make her aware of the present order also. The matter shall then be placed before the Aam Sabha which shall proceed to decide the matter.



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The Court expects this procedure to be complied with within a maximum period of four months from the date of receipt/production of a copy of this order.

The writ application stands disposed.

P. Kumar

Sd/-  
(Navin Sinha, J.)

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RECEIVED PHOTO COPY

For Joint  
Patent  
Court  
of 1879

Rakesh Kumar

Ty  
15/09/2011  
28/8/9V33

15-9-11



Ann-2'

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NO. 21/9/2007

भारतीय डाक



SF MAMERUSA MDG 0852113  
EE974392426 IN  
Counter No. 101-Code: P01  
To: JILA PADMNIGARI, NPA  
MAMERUSA, PIN: 852113  
From: NITU RANI, PADMNIGARI  
Wt: 100grams.  
Pg: 03.00, 21/09/2011, 14:40  
Tax: Rs. 2.06 (Track on www.indiapost.gov)

सेवा में

श्रीमान् जिला पदाधिकारी महोदय मधेपुरा।

विषय : आंगनबाड़ी केन्द्र नवटोलिया महावीर स्थान, वार्ड नं०-16, केन्द्र संख्या-18, पंचायत भतरधा परमानपुर, प्रखण्ड-चेलाह से संबंधित अनियमितता पर उच्च न्यायालय पटना द्वारा निर्गत आदेश के आलोक में कार्रवाई कर मेरी चयन आंगनबाड़ी सेविका पद पर करने के संबंध में।

समक्ष में,

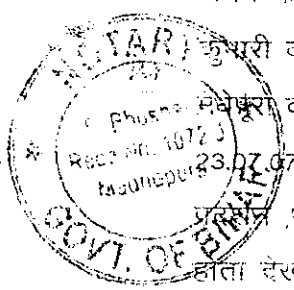
लेख्य प्रमाणक, मधेपुरा

शपथ पत्र

मैं नीतू रानी, पति श्री कृष्णचन्द्र बोस, ग्राम-परमानन्दपुर नवटोलिया, वार्ड नं०-16, थाना-जिला-मधेपुरा शपथ पूर्वक निम्नलिखित बयान करती हूँ कि मेरे द्वारा इस शपथ पत्र के साथ दी जा रही कागजात व लिखी गई सभी कथन सही व सत्य है।

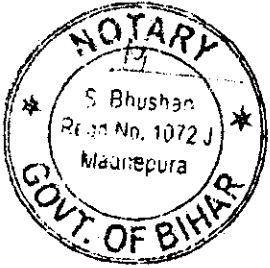
यह कि दिनांक 21.06.2007 को आंगनबाड़ी केन्द्र नवटोलिया, महावीर स्थान में चयन समिति द्वारा फर्जी अंक पत्र के आधार पर आमसभा में मेरी विरोध करने के बाबजूद विभा कुशरी का चयन कर लिया गया था। जिसके आलोक में मैं नीतू रानी श्रीमान् जिला पदाधिकारी मधेपुरा के समक्ष दिनांक 28.06.07 को लिखित आवेदन दी। उसके बाद दिनांक 07.07.07 दिनांक 23.07.07 तथा 01.08.07 को आवेदन दी। और उसके बाद बराबर आवेदन देती रही व धरना प्रदर्शन, भुख हड़ताल भी की। लेकिन उचित न्याय न मिला व आवेदन को विभाग द्वारा लंबित होता देख कर मैं पटना उच्च न्यायालय में सी० डब्लू० जे० सी० 3076/08 और सी० डब्लू० जे० सी० 5590/010 वावर की थी, जिसका निर्णय दिनांक 09.09.2011 को माननीय पटना उच्च न्यायालय में हो गया है।

अतः श्रीमान् से अनुरोध है कि इस आवेदन के साथ दिनांक-09.09.2011 केश नं० सी० डब्लू० जे० सी० 5590/010 की आदेश की प्रति संलग्न कर रही हूँ जिसे स्वीकार कर कार्रवाई कर मेरी चयन आंगनबाड़ी केन्द्र नवटोलिया, महावीर स्थान केन्द्र सं०-18 पंचायत-भतरधा परमानपुर, प्रखण्ड-चेलाह जिला-मधेपुरा में करने की कृपा की जाए। इस असीन कृपा के लिए मैं श्रीमान् से आभारी रहूँगी।



सत्यापन

मैं नीतु रानी पति : श्री कृष्ण चन्द्र बोस ग्राम-- परमानन्दपुर नवतोलिया वार्ड नं०-16 थाना-  
जिला--मधेपुरा सत्यापित करती हूँ कि उपरोक्त मेरे द्वारा लिखी गई बाते सत्य एवं सही है। सही  
लिखा पाकर आज मैं मधेपुरा कचहरी आहते में आज दिनांक 21/09/2011 को अपना हस्ताक्षर  
कर दी।



पहचानकर्ता

शपथकर्ता का ह०

म/स/म Nitu Rami  
who is identified by  
S. Keshav Prasad  
Advocate Madhepura. Ad  
solemnly affirm and declared before  
me that the contents of the affidavit  
is correct

नीतु रानी

दिनांक - 21-09-2011

S. Keshav Prasad  
21/9/11  
अधिवक्ता, मधेपुरा

Shashi Bhushan 21/9/11  
NOTARY  
REGD. NO. 1072 J  
DISTT- MADHEPURA

अनुसरणक :

- माननीय उच्च न्यायलय पटना की आदेश दिनांक-09.09.011 सी० डब्लू० जे० सी० 5590/10 की सत्यापित प्रति की छायाप्रति। पेज संख्या 01 से 05 तक।
- माननीय उच्च न्यायलय पटना की आदेश दिनांक-29.11.10 सी० डब्लू० जे० सी० 5590/10 इंटरनेट द्वारा निकाली गई प्रति पेज सं० 06 से .....तक।
- दिनांक-01.08.2007 को दी गई आवेदन की प्रति पेज सं० 07 से 09 तक।
- सुचना अधिकार एक्ट 2005 के तहत प्राप्त की गई उतर की छायाप्रति। दिनांक-17.09.09 पेज सं० 10 से .....तक।
- बिहार सरकार समाज कल्याण विभाग आई० सी० डी० एस० निर्देशालय पटना। द्वारा निर्गत पत्र दिनांक 24.05.07 की छायाप्रति। पेज सं० 11 से .....तक।
- दिनांक- 04.05.10 को मेरे द्वारा दी गई आवेदन की प्रति पेज सं० 12 से .....तक।
- द्वितीय स्थान पर आनेवाली फर्जी आवेदिका अनिता देवी द्वारा दी गई आवेदन की छायाप्रति। पेज सं० 13 से .....तक।
- माननीय उच्च न्यायलय पटना की आदेश दिनांक-05.04.011 सी० डब्लू० जे० सी० 3076/2008 इंटरनेट द्वारा निकाली गई प्रति पेज सं० 14 से .....तक।