

**Malti Kumar Vs. Social Welfare Women and Child Development Dept**

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**SooperKanoon Citation :** [sooperkanoon.com/111373](http://sooperkanoon.com/111373)

**Court :** Jharkhand

**Decided On :** Nov-16-2017

**Appellant :** Malti Kumar

**Respondent :** Social Welfare Women and Child Development Dept

**Advocate for Def. :** Mr. Shadab Bin Haque

**Advocate for Pet/Ap. :** Mrs. Nilam Tiwary

**Judgement :**

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S). No. 1335 of 2017

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Malti Kumari, wife of Prakash Yadav, resident of village Girdharchak, P.O. Girdharchak, P.S. Handadih, District Giridih. Petitioner VERSUS1 The State of Jharkhand.

2. The Secretary, Women, Child Development and Social Security Department, Govt. of Jharkhand, Ranchi.

3. The Deputy Commissioner, Giridih.

4. The District Social Welfare Officer, Sadar, Giridih.

5. The Child Development Project Officer, Sadar, Giridih.

6. Suman Kumari, village Giridharchak, P.O. Girdharchak, P.S. Handadih, District Giridih. ... Respondents.

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For Petitioner : Mrs. Nilam Tiwary, Advocate For Respondents : Mr. Shadab Bin Haque, JC to GP-I  
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CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK11 16.11.2017 Heard learned counsel for the petitioner and learned J.C. to GP-I for the State.

2. The petitioner has approached this Court with a prayer for quashing the appointment of Suman Kumari, respondent No. 6 who was appointed vide memo No. 135 dated 12.11.2016 on the post of Poshan Sakhi as the same has been made due to erroneous calculation of points obtained on different parameters by the Respondents. Further prayer has been made to consider the case of the petitioner for appointment on the post of Poshan Sakhi in village Giridharchak after adding the marks for experience as Sahiya in terms of guidelines dated 21.05.2015, issued by the respondents.

3. The facts as derived from the writ petition are that for appointment of Additional Aangabadi Sevika-cum-Poshan Paramarshi, a 2 guideline was issued by the Social Security Department on 21.05.2015. In view of the said guidelines, the petitioner as well as respondent No. 6 and others had applied for appointment on the post of Poshan Paramarshi. It is the specific case of the petitioner that she belongs to Backward Caste Category and completed her matriculation in the year 2008 with 33% marks and further intermediate in the year 2010 with 52.3% marks. Petitioner has also undergone training for Sahiya and she had also submitted experience certificate along with educational qualification certificate at the time of submission of application forms. On submission of the certificates and after verification of the same, a provisional merit list of applicants for the post of Poshan Paramarshi (Poshan Sakhi) was published on 30.01.2016, wherein the name of the petitioner appeared at Sl. No. 1 and the name of respondent No. 6 appeared at Sl. No.

2. From perusal of the said provisional merit list, it is crystal clear that apart from the petitioner and respondent No. 6, no other applicants were entitled for consideration and for appointment on the post of Poshan Paramarshi and considering the marks obtained by the petitioner, her name appeared at Sl. No. 1 i.e. at the top of the provisional merit list. The child development Project Officer also issued a notification dated 30.01.2016, wherein it was informed/ circulated to all that provisional merit list has been published and objections were invited against the same which could be registered till 05.02.2016. It is the further case of the petitioner that in view of the said notification no objections were filed and in view of the meeting under the Chairmanship of Deputy Commissioner, Giridih certain directions were issued regarding the selection of Poshan Sakhi, wherein it has been specifically stated that the procedure as laid down in resolution No. 2151 dated 23.09.2015 is to be followed. It has further been stated that even after the said meeting dated 05.02.2016, no decision for final selection of the Poshan Sakhi was taken. It has come to the knowledge of the petitioner that vide letter dated 01.04.2016, a guideline was issued for selection of Poshan Sakhi, which is reproduced herein below:- (a) In case the marks obtained by the applicants are same, then the person having obtained more marks in the minimum qualification i.e. matriculation examination, 3 would be given preference. (b) In case, even after adopting the above procedure, there is a situation of tie, then the person who is having higher age shall be given preference. In view of the said guidelines, a fresh list was issued by the office Child Development Project, Sadar, Giridih and very surprisingly, the respondent No. 6 was appointment on the post of Poshan Sakhi and her name was placed at Sl. No. 1, on the ground that since there was a tie, the respondent No. 6 has obtained higher marks in matriculation than the petitioner, so she was appointed. Aggrieved by the said illegal consideration and arbitrary appointment of respondent No. 6, the petitioner has knocked the door of this Court.

4. Mrs. Nilam Tiwary, learned counsel for the petitioner strenuously urges that it is very clear from the guidelines itself that the appointment of respondent No. 6 is de hors the rules and as such, illegal and arbitrary. Mrs. Tiwary further argues that on the guideline issued on 01.04.2016, no appointments can be made, rather, the appointments could have been done in view of the guidelines issued on

21.05.2015. Learned counsel argues that in view of the said guidelines, the petitioner has obtained more marks than the respondent No. 6 and in view of the guideline, person obtaining higher marks and having higher qualification has to be appointed and as such, in no way, appointment could be given to respondent No.

6. Learned counsel further argues that it is settled principle of law that Rules of Game cannot be changed, when the Game is over. Here after appointment, respondent-authorities have changed the Rules and relying on that they have given appointment to respondent No. 6 and as such, the appointment of respondent No. 6 is not tenable in the eyes of law.

5. Per contra counter-affidavit has been filed by the respondents. Mr. Shadab Bin Haque, learned counsel for the respondents vehemently opposes the contention of the learned counsel for the petitioner and submits that at no point of time, rules have been changed. The appointments have been made as per the rules which were existing and prevalent at the time of selection process. Learned counsel draws the attention of the Court towards Annexure-7 4 of the writ petition and argues that considering the contention of the learned counsel for the petitioner but on perusal of the Rules, i.e. 01.04.2016, it is crystal clear that the Rules are of 21.05.2015 and not of 01.04.2016 and 01.04.2016 is not a rule rather it is merely a clarifications of Rules dated 21.05.2015 and as such, contention of learned counsel for the petitioner is not tenable in the eyes of law. Respondent No. 6 represented by learned counsel, Mr. Vijay Kumar Roy, opposes the contention of the learned counsel for the petitioner and argues that in view of the provisional list and in view of Annexure-5 of the writ petition, an objection was raised by respondent No. 6, though the same has not been filed by way of an affidavit but he has brought it on record and the same is taken on Board by this Court. Learned counsel submits that in view of the guidelines, the petitioner as well as the respondent No. 6 have obtained equal marks though having equal qualifications but in view of clarification dated 01.04.2016, in case of tie, the marks obtained in matriculation was to be considered. After considering the marks obtained by respondent No. 6 in matriculation, she was found fit for appointment as she has secured more marks than the petitioner and as such, cannot be said that there is any illegality in appointment of respondent No.

6.

6. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that no case is made out for appointment of the petitioner on the following grounds:- (i) In view of guidelines and rules dated 21.05.2015, the petitioner as well as respondent No. 6 have obtained equal marks i.e. 30 marks. (ii) As there was tie of marks of both the candidates, a clarification was sought for and vide clarification dated 01.04.2016, which is at Annexure-7 of the writ petition. It is crystal clear that in case of tie, a person having more marks in matriculation has to be considered for appointment and as such, the respondent No. 6 was rightly considered for appointment. (iii) The legal issue raised by the learned counsel for the petitioner that rules of games cannot be changed after the game is over, is not applicable in the instant case. In the instant case rules of game have not been changed. It is only the same rule by which the appointments have been made, which is very much clear from the rules brought on record in the writ petition as well in the counter-affidavit.

7. As a cumulative effect of the aforesaid rules, observations, guidelines and judicial pronouncement, I find no infirmity or any illegality in the order of appointment of respondent No.

6. No interference is warranted in the instant writ petition.

8. Resultantly, the writ petition merits dismissal and is hereby dismissed. (Dr. S.N. Pathak, J.) kunal/-

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