

Anita Devi Vs. The State of Jharkhand and Ors

Anita Devi Vs. The State of Jharkhand and Ors

SooperKanoon Citation : sooperkanoon.com/66736

Court : Jharkhand

Decided On : Oct-16-2015

Appellant : Anita Devi

Respondent : The State of Jharkhand and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Civil Review No. 43 of 2013
Anita Devi Petitioner Versus 1. The State of Jharkhand. 2. The Deputy
Commissioner, Hazaribagh. 3. The Block Development Officer, Hazaribagh. 4.
The District Planning Officer, Hazaribagh. 5. The Child Development Project
Officer, Hazaribagh. 6. Anita KumariRespondents. CORAM: HONBLE MR.
JUSTICE APARESH KUMAR SINGH For the Petitioner : Mr. A. K. Das, Adv. For
the Opp. parties : J. C. to S. C. III. 5/16.10.2015 Heard learned counsel for the
parties. Respondent no. 6 in the writ petition who admittedly failed to appear and
contest despite service of notice, has preferred this petition seeking review of the
impugned judgment dated 22nd November, 2012. The judgment dated 22nd
November, 2012 is quoted in extenso herein below for better appreciation. Heard
learned counsel for the parties. Respondent no. 6 was earlier noticed and the
notices were sent by registered post as well as by personal service. It appears
from vide order dated 28.04.2010, that notices upon the respondent no. 6 has
been deemed to have been served. However, respondent no. 6 has not entered
appearance through his counsel to contest his case. The petitioner is challenging
the order dated 05.06.2007(Annexure7) by which the respondent no. 6, Anita Devi

has been appointed on the post of Sevika in place of the petitioner Anita Kumari, who was earlier appointed pursuant to the decision of the selection committee dated 21.08.2006 vide appointment letter of the same date. The petitioner has also challenged the subsequent selection process held on 08.02.2007 by which respondent no. 6 was selected for being appointed as Sevika contrary to the Rules. From the facts stated on behalf of the petitioner, it appears that the petitioner as well as respondent no. 6, both belong to Backward Caste and in the selection committee meeting of the Aam Sabha held on 21.08.2006, the candidature of the respondent no. 6 and two other candidates alongwith the petitioner were also considered. The petitioner was recommended for being appointed on the post of Sevika, although, village comprised majority of Harijan, but no Harijan female candidates were available. Learned counsel for the petitioner has drawn attention to the guidelines issued by the Secretary, Welfare Department, Government of Jharkhand contained in Memo No. 585 dated 02.06.2006 specifically paragraph 14 whereof and has submitted that the approval of such appointment is to be made by the Deputy Development Commissioner within a period of 15 days failing which the Child Development Project Officer is required to send the recommendation to the Director, Social Welfare Office, Government of Jharkhand for approval. It is further pointed out that without any rhyme or reason the appointment of the petitioner was not approved and second selection committee meeting was held without any notice to 2. the petitioner and respondent no. 6 was recommended and being appointed vide Annexure 3 and 3/1. Thereafter, approval of the appointment of respondent no. 6 was granted by the Deputy Development Commissioner, Hazaribagh communicated through letter dated 05.06.2007 issued by the District Programme Officer, Hazaribagh to the Child Development Project Officer, Katkamsandi, Hazaribagh without any justification as the respondent no. 6 also belonged to the same backward caste and her candidature was also considered in the first selection process, but the petitioner was recommended and provisionally appointed. It is further submitted that the petitioner is having qualification of Intermediate in Arts while respondent no. 6 is Matriculate, therefore, the impugned appointment is contrary to the Rules and is fit to be set aside. The respondents State has appeared and filed their counter affidavit. It is submitted on behalf of the respondents that village in

question was comprised of villagers, the majority of which belong to Harijan community. Since in the first selection process, no Scheduled Caste female candidates were available, therefore, the selection process was reconvened and thereafter, respondent no. 6 was recommended and appointed and her appointment has also been approved by the Deputy Development Commissioner as per the Rules. The counsel for the respondents has suggested on the basis of the averment made in the counter affidavit that the petitioner is a lady belonging to rich family while respondent no. 6 comes from low income group that is why she had been recommended. However, learned counsel for the respondents is not able to show any basis or documents such as the income certificates etc. either of the two candidates i.e. the petitioner and the respondent no. 6 to substantiate the aforesaid contention that the petitioner belongs to rich family and respondent no. 6 comes from poor family. I have heard learned counsel for the parties and gone through the relevant materials on records. From perusal of Annexure1, it appears that out of four candidates belonging to the same backward caste in which candidature of respondent no. 6 was also considered, the petitioner was recommended for appointment as Sevika and was provisionally appointed also. Further, although the ground has been made that since Scheduled Cast candidates were not available in the first selection process, therefore, the selection committee was reconvened, but in the second exercise also the candidates, who were considered belonged to Backward Cast including the respondent no. 6 as that of the petitioner. The aforesaid ground, therefore, is not made out to supersede or annul the first selection process and appointment of the petitioner made thereupon. Moreover, no documents have been brought on record to show that the petitioner is from rich family and the respondent no. 6 belonged to otherwise poor family. In the circumstances, it appears that the respondents have committed illegality and arbitrariness in appointing the respondent no. 6 in place of the petitioner by the impugned order dated 05.06.2007. The subsequent selection process also appears to be without any justification and as such, the approval granted to the appointment of the respondent no. 6, therefore, cannot be sustained in law. The appointment of the respondent no. 6 and approval of her appointment vide order dated 05.06.2007 is wholly illegal and arbitrary and accordingly, quashed. The respondent would therefore proceed to reconsider the case of the

petitioner in the light of recommendation by which the provisional appointment was made in her favour. Accordingly, let this exercise be completed within a period of four weeks after the receipt/production of a copy of this order. This writ petition is allowed in the aforesaid terms. The ground for seeking review urged by learned counsel for the petitioner is that the writ petitioner was also a candidate, who participated in the second Aam Sabha held on 8th February, 2007, but did not challenge holding of second Aam Sabha and after selection and approval of the review petitioner sought to question her appointment in the writ 3. petition. The writ petitioner's claim should not have been entertained on that count. Learned counsel for the petitioner also submitted on merits that only on account of the reason that no female Harijan candidate participated in the first Aam Sabha held on 21st August, 2006 though the village comprised of majority of Harijan population, in terms of the provisions of circular dated 2nd June, 2006 of the Department of Social Welfare, Women and Child Development, Government of Jharkhand, the second Aam Sabha was convened which admittedly selected the review petitioner and whose appointment was also approved by Deputy Development Commissioner, Hazaribagh through letter dated 5th June, 2007. The writ petitioner therefore could not have assailed the selection and approval of the petitioner's appointment in the aforesaid circumstances. It is submitted that she has suppressed the fact of participation in the second selection exercise and challenged the appointment of the petitioner. Counsel for the writ petitioner, opposite party herein, has however defended the impugned order and submitted that all considerations on merits with the aid of pleadings on record by the petitioner as also the StateRespondent have been done before arriving at the impugned judgment by this Court. When the circular of 2nd June, 2006 clearly prescribes a course of seeking approval of any such selection process arrived at through duly convened Aam Sabha by Deputy Development Commissioner or in case of delay thereafter by Directorate of Social Welfare Office, Jharkhand, instead of following the same, the respondent authorities of the department chose to convene second Aam Sabha in which she appeared on protest as per categorical statement made at paragraph 8 of the writ petition. It is submitted that mere participation with the protest in the second Aam Sabha by the writ petitioner would not denude her right to challenge the selection and appointment of the

review petitioner, if it is wholly untenable in law as well as on facts and in teeth of 4. the circular dated 2nd June, 2006. Counsel for the StateRespondent have submitted that in obedience to the directions in the impugned judgment passed in the writ petition, the appointment of the review petitioner has been revoked. Thereafter, decision on the appointment of the writ petitioner is kept pending on account of pendency of the review petition. Writ petitioner also is pursuing a contempt petition being Cont. Case (Civil) No. 362 of 2014. I have considered the submissions of the parties in the light of the findings recorded in the impugned judgment and the grounds urged on behalf of review petitioner. This Court is of the considered opinion that no grounds of review are made out for recall/review of the impugned judgment. The writ petition was decided in the absence of respondent no.6/review petitioner as she did not appear despite service of notice. All considerations on merits of the matter were made before arriving at a decision which is not shown to suffer from any errors apparent on the face of record. Arguments to the extent that on participation by the writ petitioner in the second Aam Sabha she was disentitled to question the appointment of the review petitioner does not cut much ice as the writ petitioner had participated in second Aam Sabha on protest. Apart from that impugned judgment has been passed on due consideration of the merits of the matter which is not open to review as no such grounds are made out by the review petitioner. Taking into account all these facts and the reasons recorded herein above, the review petition is fit to be dismissed. Accordingly, it is dismissed. (Aparesh Kumar Singh,J) jk