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Lalmani Devi Vs. Social Welfare Women and Child Development Dept

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Court : Jharkhand

Decided On : Dec-02-2015

Appellant : Lalmani Devi

Respondent : Social Welfare Women and Child Development Dept

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (S) No. 2604 of 2013 . Lalmani Devi --- --- Petitioner Versus

1. The State of Jharkhand

2. The Secretary, Department of Social Welfare, Government of Jharkhand, Ranchi

3. The Director, Department of Social Welfare, Government of Jharkhand, Ranchi

4. The Deputy Commissioner, Palamau

5. The District Programme Officer, Palamau

6. The Child Development Project Officer, Chhatarpur, Palamau --- --- Respondents CORAM: - HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioner : - M/s Arbind Kr. Mehta, Adv. For the State : - M/s Rishikesh Giri, JC to GP-II .... 06/02.12.2015 Heard learned counsel for the parties. Order dated 07.10.2015 is quoted below, which also encapsulates the grievances of the

petitioner, wherein directions were issued to the Deputy Commissioner, Palamau to enquire into the aspect dealt therein:- After the directions passed in W.P.(S) No. 6251 of 2009, the Child Development Project Officer, Chhatarpur, Palamau, respondent no. 6 has passed the impugned reasoned order (Annexure-5) dated 4th September, 2012 bearing Memo no. 254 after hearing the petitioner, canceling her selection as Anganbari Sevika of Centre Khatin-III and directing holding of fresh Aam Sabha. The reason apparent from the impugned order being that the petitioner does not belong to the majority of beneficiary population of Backward Class of the said centre as she is a schedule caste lady and her selection is contrary to the prescribed norms laid down under letter no. 585 dated 2nd June, 2006 of the department of Social Welfare, Women and Child Development, Government of Jharkhand. Petitioner has not been able to dislodge the aforesaid finding that Scheduled Caste Community does not belong to majority beneficiary population of Centre Khatin-III, for which selection was made. It appears from the impugned order that altogether 11 candidates had participated in the selection exercise and some of them belonged to the Backward Class. Counter affidavit filed on behalf of respondent by Child Development Project Officer, Chattarpur, namely, Anita Kumari wife of Sanjay Prasad however, takes a complete volte face in statement made at para-14. It seeks to uphold the selection of the petitioner stating that except petitioner none of the applicants were suitable candidate. The stand taken by the respondents, in their counter affidavit, defies reason. It goes contrary to the findings recorded in the reasoned order itself by the officer holding the same post of Child Development Project Officer, Chattarpur. It is therefore considered proper that the Deputy Commissioner, Palamau should inquire into the matter and file an affidavit sworn by responsible officer of the district on the subject matter. If the Deputy Commissioner comes to a finding of lapse in official duty on the part of the concerned officer, he may proceed in accordance with law against the said officer as well, of course, after due opportunity to the concerned person. Let such an affidavit be filed within a period of six weeks. List this case after six weeks i.e, on 26th November, 2015. A counter affidavit has been filed on 30.11.2015 on behalf of the respondent nos. 4 to

6. Learned counsel for the State submits that matter was enquired through Additional District Magistrate(Law and Order), Palamau. According to the report

submitted by him, a decision to appoint non BC Category candidate in the area covered by BC Caste has been found against the provision/circular of the Government. Deputy Commissioner, Palamau has issued show cause notice to the concerned Child Development Project Officer, Chhatarpur, district Palamau and after getting her reply, appropriate action would be taken. Annexures -A & B are in support thereof. On the merits of the matter, it is stated on their part that the selection of Aaganbari Sevika for the centre Khatin-3, Chhatarpur Block, which was held on 04.11.2006, was attended by 11 candidates. It is their case that majority of the beneficiary population of the said centre is BC community. Out of 11 applicants, 5 belonged to Backward Class Category and rest belonged to Scheduled Caste Category. As per Clause-7 of the letter no. 585 dated 02.06.2006 of the respondent-Social Welfare, Women and Child Development Department, Sevika of Aaganbari Centre should be selected from the caste which is in majority amongst the beneficiary population. Therefore, a candidate from majority beneficiary population should have been selected i.e. from the Backward Caste and not from other caste. Petitioner belongs to Scheduled Caste Community and therefore, her selection was contrary to the guidelines of the Government whereafter a provisional appointment letter was issued to her. After direction passed in W. P. (S) No. 6251 of 2009, the matter of selection of Sevika of the said centre was again examined and heard in the presence of the petitioner. It was found that within the said centre, though majority of the beneficiary was of BC Community, but against the rules and norms, she had been selected as Sevika, though she belongs to the Scheduled Caste. That was the basis for cancellation of her selection and ordering for holding fresh Aam Sabha. Learned counsel for the petitioner submits that the impugned order is in teeth of the circular dated 02.06.2006 where selection of the Aaganbari Sevika can only be cancelled by the Aam Sabha. Clause-16 thereof is relied for the said purpose. It is also submitted that Child Development Project Officer, Chhatarpur is not the competent authority to cancel the said selection. Therefore, it requires interference. Judgment rendered by the learned Division Bench of this Court in the case of Sumati Devi Vs. State of Jharkhand and Ors. reported in 2009(4) JLJR626has been relied upon by the counsel for the petitioner. I have considered the submissions of the parties and the relevant materials on record. At the outset it is to be noted that petitioner

had earlier approached this Court in W. P. (S) No. 6251 of 2009 being aggrieved by the order dated 30.09.2009 passed by the Child Development Project Officer, Chhatarpur cancelling her selection. The operative portion of the order dated 28.03.2012 passed in the said case, Annexure-4, is quoted hereunder:-

7. In view of the aforesaid facts and circumstances, I hereby quash and set aside the order, passed by the Child Development Project Officer, Chhatarpur within the district of Palamau dated 30th September, 2009, which is at Annexure 10 to the memo of petition, and the matter is remanded to the Child Development Project Officer. I direct respondent no.5, the Deputy Commissioner, Palamau, to allot this matter for a fresh decision to some another officer, other than who has passed the order at Annexure 10 to the memo of petition. If the same officer is continuing, the matter will be decided by the Child Development Project Officer of another Block. This case is absolutely indefendable, because respondent no.8 has not at all appreciated the earlier order, passed by this Court and again a non-speaking order has been passed, which has given birth to the present writ petition. I, therefore, allow this writ petition with a cost of Rs.9,000/- (rupees nine thousand), which will be paid by respondent-State authorities to each of the petitioners in equal share, within a period of four weeks from the date of receipt of a copy of the order of this Court. It, therefore, appears that present impugned order has been passed upon remand by this Court with specific direction to the Deputy Commissioner, Palamau to allot the matter to some other officer, other than who had passed the order at Annexure-10 to the memo of the petition. If the same officer continued, the matter should be decided by the Child Development Project Officer of another Block. Therefore contention of petitioner that the impugned order is bad on the ground that it has not been passed by the Aam Sabha is not correct and fit to be rejected. On the merit of the matter, it appears that the selection by the Aam Sabha was contrary to the circular dated 02.06.2006 whereunder it is to be undertaken from the candidate of the majority population of the said centre. Taking into account all these facts and upon hearing the petitioner also, the present impugned order at Annexure-5 was passed whereunder her selection was cancelled and fresh Aam Sabha was ordered to be held. This Court, on the previous date taking into account a total conflicting stand taken by the Child Development Project Officer, Chhatarpur in the counter affidavit filed in the matter,

had directed the Deputy Commissioner, Palamau to conduct an enquiry, whereafter the instant counter affidavit has been filed. The respondent-Deputy Commissioner, Palamau would proceed in the accordance with law in the said matter and after compliance of the principle of natural justice. However, having examined the matter on merit of the case, contention of the petitioner that the impugned order suffers from illegality or violation of the provisions of circular dated 02.06.2006 is not made out. The impugned order has been passed by the respondent no. 6, Child Development Project Officer, Chhatarpur only upon the matter being remanded to him in the previous writ petition being W. P. (S) No. 6251 of 2009 preferred by the writ petitioner. Therefore, impugned order does not suffer from any infirmity. The writ petition is dismissed. (Aparesh Kumar Singh, J.) Kamlesh/

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