



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 208 OF 2024
(Arising out of SLP(C) No. 2233 of 2023)**

ANJUM ARA **...APPELLANT(S)**

VERSUS

**THE STATE OF BIHAR
AND OTHERS** **...RESPONDENT(S)**

J U D G M E N T

B.R. GAVAI, J.

- 1.** The appeal is taken up for hearing.
- 2.** The present appeal challenges the judgment and order dated 28th November 2022 passed by the Division Bench of the High Court of Judicature at Patna in Letters Patent Appeal (LPA) No. 1853 of 2016 in Civil Writ Jurisdiction Case (CWJC) No. 17585 of 2015, thereby dismissing the appeal filed by the present appellant.
- 3.** The facts, in brief, giving rise to the present appeal are as under:
 - 3.1** On 17th October 2012, District Programme Officer, Katihar published a notice for selection of Anganwari

Workers/Sevika. Pursuant to the said notice, the present appellant as well as respondent No. 8 herein applied for the said post in the selection process. The appellant has secured 80.60, whereas respondent No. 8 has secured 48.60 marks. The appellant was appointed to the post of Anganwari Sevika on 2nd July 2013.

3.2 Being aggrieved and dissatisfied with the order of appointment issued in favour of the appellant, respondent No.8 submitted a representation before the District Programme Officer, Katihar praying for cancellation of the order of appointment dated 2nd July 2013 issued in favour of the appellant. She also prayed for a direction to issue an order of appointment in her favour. The same came to be rejected by the District Programme Officer, Katihar vide order dated 13th November 2014. Being aggrieved thereby, respondent No. 8 preferred an appeal before the Appellate Authority – Court of Joint Commissioner-cum-Secretary, Regional Transport Authority, Purnea. The Appellate Authority, vide order dated 30th July 2015, allowed the appeal filed by respondent No.8 while setting aside the order of appointment dated 2nd July 2013 issued in favour of the

appellant. Being aggrieved thereby, the appellant filed a writ petition being CWJC No. 17585 of 2015 before the High Court of Judicature at Patna.

3.3 The learned Single Judge, vide order dated 23rd August 2016, dismissed the said writ petition. Being aggrieved thereby, the appellant filed LPA No.1853 of 2016 in CWJC No. 17585 of 2015 before the learned Division Bench of the High Court. The same was also dismissed vide the impugned order. Hence, the present appeal.

4. We have heard Mr. Shoeb Alam, learned counsel appearing on behalf of the appellant and Mr. Samir Ali Khan, learned counsel appearing on behalf of the respondents.

5. It is submitted on behalf of the appellant that the only ground on which the appellant was held to be disqualified was that her father was a Panchayat Teacher and he was drawing a salary of Rs.6,000/- per month. It is submitted that Clause 4.9 of Anganwari Sevika Guidelines, 2011 (hereinafter referred to as “2011 Guidelines”), which imposed certain restrictions, was found to be in violation of Articles 14 and 16 of the Constitution of India by the High Court vide order dated 27th September 2022 passed in CWJC No. 13210

of 2014. It is submitted that, however, this has been ignored by the learned Division Bench.

6. Per contra, learned counsel appearing on behalf of the State as well as respondent No.8 supported the impugned judgment and order.

7. We find that both the learned Single Judge and the Division Bench have grossly erred in dismissing the writ petition as well as LPA filed by the appellant.

8. Clause 4.9 of the 2011 Guidelines imposed a restriction on such persons whose family member or members have secured appointment with the State Government or any organization of the State. The said Clause 4.9 of the 2011 Guidelines came to be challenged before the High Court by way of CWJC No. 13210 of 2014. The High Court, vide judgment and order dated 27th September 2022, after elaborate discussion, struck down the said Clause 4.9 of the 2011 Guidelines.

9. The only ground on which the appellant has been non-suited was that the appellant had not challenged the said Clause 4.9 of the 2011 Guidelines before the High Court. We find that the reasoning as adopted by the learned Division Bench is totally unsustainable.

10. When the said Clause 4.9 of the 2011 Guidelines was struck down by the High Court vide judgment dated 27th September 2022, it ceased to exist. As such, it was not necessary for the appellant to challenge the validity of the same inasmuch as the same was already held to be invalid by the very same High Court. In that view of the matter, we find that the judgments and orders passed by the learned Single Judge as well as the Division Bench are not sustainable in law.

11. In the result, we pass the following order:

(i) The appeal is allowed;

(ii) The impugned judgments and orders dated 28th November 2022 in LPA No. 1853 of 2016 in CWJC No. 17585 and dated 23rd August 2016 in CWJC No. 17585 of 2015, passed by the High Court of Judicature at Patna are quashed and set aside;

(iii) The writ petition being CWJC No. 17585 as well as the appeal being LPA No. 1853 of 2016 filed by the appellant before the High Court of Judicature at Patna are allowed by setting aside the order dated 30th July 2015 passed by the Appellate Authority; and

(iv) The appellant is directed to be reinstated forthwith.

12. It is further directed that though the appellant would not be entitled to wages for the period during which she was out of employment, she would be entitled to continuity in service for all other purposes.

13. Pending application(s), if any, shall stand disposed of in the above terms.

.....**J.**
[B.R. GAVAI]

.....**J.**
[SANDEEP MEHTA]

NEW DELHI;
JANUARY 08, 2024.