

In The Court of Commissioner, Saran Division, Chapra
Anganbari Appeal No. 357/12
Komal Gupta
Vrs.
The State of Bihar & Ors.

ORDER

2007/2014
The instant appeal is directed against the impugned order dated 18.09.2012 passed by District Magistrate, Gopalganj in Anganbari Appeal Case No. 39/2012

The brief facts of the case are that Komal Gupta W/o Ajay Prakash R/o Village- Batedesh Tola Chainpur P.S. Barauli Dist-Gopalganj was selected as Anganbari Sevika for Additional Anganbari Centre No. 17 in Aam Sabh held on 27.02.2012. Thereafter one Sweta Kumari who was also an applicant for the said post, filed a complaint before D.M. Gopalganj alleging therein that irregularities have been committed in selection of Sevika and Sahayika for that Centre. The learned D.M. got the matter inquired through a senior Dy. Collector and who reported that as the Komal Gupta was a physically handicapped she was given 5 bonus marks on the basis of her Eight percent physical disability. Then the learned D.M. initiated a case vide Anganbari Appeal No. 39/12 and finally passed the order on 18.09.2012 whereby and whereunder the present appellant's Service was terminated and order for initiation of fresh selection for that centre.

Feeling aggrieved by the said order of D.M. the present appellant, preferred an appeal before this court. This appeal was admitted on 29.01.2013 and again vide order dated 02.07.2013, the selection process was kept in abeyance till the final order is passed.

Heard the parties.

The learned counsel appearing on behalf of the appellant submitted that the present appellant is a physically challenged candidate and as such on the basis of 5 bonus marks awarded to her for that she was selected, as her marks became higher than the complainant. He also drew the attention of the court towards the relevant provision of the ICDS guidelines of 2011 wherein it has been mentioned that physical disability of maximum 40 % should be counted in selection and this candidate has got 8 % disability as per the certificate issued by medical officer of PHC, Barauli. He further assailing the impugned order of D.M. submitted that the learned D.M. wrongly interpreted that 40% physical disability is the minimum criterion for consideration. Thus the impugned order of D.M. is against the facts and also against the provision of the guidelines. He lastly submitted that the




Impugned order is fit to be set aside on this point alone.

The learned G.P. appearing on behalf of the state while opposing the submission made by the learned counsel for the appellant, submitted that the impugned order of D.M. is proper and justified in view of the fact that the ICDS guidelines for selection of Sevika clearly stipulates that a candidate having minimum 40% physical disability can only be awarded bonus marks, thus, this appeal having no merit fit to be dismissed.

Considering the facts and circumstances of the case, material on records and arguments advanced by the learned counsels for the parties, it seems to me that the only controversy relates to the fact that as to whether the appellant qualifies to be considered for the award of any bonus marks on the basis of her physical disability and said bonus marks may be counted for preparation of merit list. The section 4(11) of the guidelines of ICDS, circulated vide memo No. 2862 dated 04.11.2011 reads as " विकलांग उम्मीदवारों के लिए विकलांगता की स्थिति अधिकतम 40 % तक होनी चाहिए।सक्षम प्राधिकार द्वारा निर्गत विकलांगता प्रामाण्य पत्र मान्य होगा". Thus it appears that there is a provision of maximum 40 % of physical disability and no minimum limit has been prescribed. Since the petitioner has 8% physical disability, she was awarded bonus marks and on that basis she topped the merit list and subsequently got selected. It also appears that the learned D.M. failed to interpret the provision as existing in the guidelines and due to this the selection of petitioner was terminated.

For the reasons, aforesaid, the impugned order of D.M. is set aside and this appeal is allowed.

Dictated & Corrected by me.


Commissioner,
Saran Division, Chapra


Commissioner,
Saran Division, Chapra

26/11/14