

**HON'BLE SRI JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO**

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WRIT APPEAL No. 36 OF 2015

P.C: (per the Hon'ble Sri Justice Dilip B. Bhosale)

Heard learned counsel for the parties.

This writ appeal is directed against the order dated 02-01-2014, allowing the writ petition filed by respondent No.1 challenging the order dated 17-08-2007 issued by the Child Development Project Officer, whereby he appointed the appellant as Anganwadi Worker, Gurrajupeta Village, Rayavaram Mandal, Visakhapatnam District.

We have perused the order, which, according to us, is well reasoned order wherein the learned Judge has considered all the aspects and grounds of challenge in proper perspective and allowed the writ petition for the reasons recorded therein. The relevant observations in the order read thus:

“In my considered opinion, once a qualified candidate is available, the question of exercising any discretion by the respondent authorities does not arise. Once a threshold qualification has been prescribed and it is possessed by a candidate, there is no need to consider all other rival candidates, who in the first place do not have the said threshold qualification, even in the name of evaluation of relative merits of the candidates. In the present instance, without any fear of contradiction, this Court is inclined to hold that in terms of the Circular Memo, dated 09.02.1995, once the respondent authorities have secured a candidate with requisite qualification, then the selection of a candidate with lesser qualification does not arise. On a perusal of the counter-affidavit filed by the second respondent, I do not gather any reasons justifying the selection and appointment of the fourth respondent in preference to the petitioner.”

Circular Memo dated 09-02-1995 which clearly prescribes that to the extent possible, effort should be made to select a person with

10th Class education from the same village. Admittedly, respondent No.1, i.e., the petitioner in the writ petition, had cleared 10th Class with first class. As against this, the appellant, though appeared for 10th Class, could not clear it.

In the counter filed by the Child Development Project Officer, it has been clearly stated that the selection was done only on the basis of the performance of candidates in interview. In the interview, the appellant secured 33 marks, whereas respondent No.1 secured 28 marks, and in view thereof the appellant was selected. We have perused the entire record with the assistance of learned counsel appearing for respondent Nos.2 to 4 and we find that no weightage whatsoever was given to the educational qualification by the Selection Committee, and they selected the appellant solely on the basis his performance in the interview. For the selections of such nature, in our opinion, the Selection Committee ought to have given weightage to the candidate who was holding required qualification. All this has been considered by learned Judge in proper perspective, and in the light of several judgments referred to in the order, he allowed the petition filed by respondent No.1. The learned Judge while allowing the writ petition has also directed the concerned authority to appoint respondent No.1 as Anganwadi Worker, giving benefit of the past service notionally from the date of appointment of the appellant i.e., 17-08-2007. Learned counsel appearing for respondent No.1, on instructions, fairly submits that he will not have any objection for respondent No.1's appointment as Anganwadi Worker afresh. Hence, we modify the order whereby benefit of past service was notionally granted by learned Judge with effect from 17-08-2007 and direct the concerned authority to appoint her as a fresh candidate on the said post.

At this stage, learned counsel for the appellant seeks liberty to the appellant to make a representation to the concerned authority for her appointment as Anganwadi Worker in view of her past experience.

It is open to the appellant to make such representation and if any such representation is made, it may be considered in accordance with law. While making this observation, we shall not be understood to have issued any direction as such in respect thereof to the concerned authority.

With these observations, the writ appeal is disposed of. Consequently, miscellaneous petitions, if any, also stand disposed of. There shall be no order as to costs.

DILIP B. BHOSALE, J

A. RAMALINGESWARA RAO, J

18-02-2015
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