

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 20266 of 2012

DATE OF DECISION: 01.05.2015

Krishna Devi

.....Petitioner

Versus

State of Haryana and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present:- Mr. H.S. Sethi, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana.

Mr. R.K. Chugh, Advocate
for respondent No.4.

Mr. K.S. Banyana, Advocate
for respondent No.5.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of certiorari setting aside the selection as well as appointment of respondents No. 4 and 5 to the post of Anganwari Worker on the ground that the petitioner being more meritorious has not been considered and no marks for experience have been awarded while preparing the merit of the petitioner and respondents No. 4 and 5 who are lower in merit have been selected and appointed.

Briefly, the facts of the case as have been mentioned in the

petition are that the respondent-department had decided to fill up one post of Anganwari Worker in Village Ghillour, Tehsil Radaur, District Yamuna Nagar. Notice was given by way of munadi through Sarpanch of the village. The petitioner applied on 14.8.2010 and enclosed all her documents as well as experience certificate. As per policy dated 12.6.2008, the post of Anganwari Worker was to be filled up from the candidates who are resident of the same village and are in the age group of 18-44 years. As per criteria, 60 marks were meant for 10th class, 15 marks for higher qualification and 7 marks for experience. The petitioner along with other candidates was called for interview, which was held on 18.10.2010 and secured 59 marks, whereas, respondent No.4 secured 60 marks. Since respondent No.4 got one mark more than respondent No.4, and was selected and appointed as Anganwari Worker. Aggrieved by the Selection of respondent No.4, the petitioner filed an appeal dated 28.2.2011 before the Deputy Commissioner, Yamuna Nagar challenging the irregularities and also the fact that the petitioner was to secure higher marks than respondent No.4 as per policy dated 12.6.2008. Initially the appeal was submitted to Additional Deputy Commissioner, Yamuna Nagar, who returned the same on 26.5.2011 by stating that he was not the competent authority. The appeal, therefore, was filed before the Deputy Commissioner, Yamuna Nagar, who sought comments but the department delayed the matter on one pretext or the other.

Thereafter, another post of Anganwari Worker was notified by the respondent-Department in the village in November, 2011. The petitioner again applied for the said post by enclosing all the required documents but again respondent No.5 was selected and appointed by the respondent-department by ignoring the petitioner.

The selection and appointment of respondents No.4 and 5 has

been challenged by the petitioner on the ground that it was made without following the criteria as per the policy.

Learned counsel for the petitioner contends that the petitioner was having experience but no marks of experience were given in the first selection. Had she been given marks for experience, she would have secured 62 marks, whereas, respondent No.4 was selected on the basis of 60 marks in total. Learned counsel further contends that in the second selection, respondent No.5 even did not apply and no documents whatsoever were submitted with the application. Even the matriculation certificate was not attached with the application. It was simply mentioned that all the documents would be produced at the time of interview. Learned counsel also contends that after interviewing all the candidates on 13.10.2011, a merit list of 12 candidates was prepared. The name of selected candidate i.e. respondent 5 was mentioned at the end of the list with hand, whereas, the list of 12 candidates was typed. It is also the contention of learned counsel that in the second selection, three marks have been given to the petitioner for experience but she was denied three marks in the earlier interview when respondent No.4 was selected. The selection has been made on the basis of pick and choose policy by giving more marks in the interview to respondents No.4 and 5 and by considering the documents of the selected candidate at the time of interview, which were not even supplied at the time of submission of the application, whereas, it was specifically mentioned in the notice that incomplete forms will not be accepted but still the documents were submitted subsequently, which would show that same were submitted after the interview. Learned counsel has also relied upon the Division Bench judgment of this Court in **Nisha Rani and others Vs. State of Haryana and others** 2013 Law Suit (P&H) 74, wherein, it was held that writ petition is not maintainable in case

of Anganwari Workers and judgment of Single Bench was set aside by Division Bench.

Learned counsel for respondents No.4 and 5 submit that selection was made on the basis of comparative merit and selected candidates were more meritorious viz-a-viz petitioner. Learned counsel for respondent No.5 has also raised a preliminary objection that the writ petition is not maintainable and without availing the remedy of appeal, the present petition has been filed. He further submits that an affidavit was submitted by respondent No.5 stating therein that the documents would be supplied at the time of interview. Learned counsel for respondent No.5 has also relied upon the judgments of Hon'ble the Apex Court in the case of **State of Karnataka and others Vs. Ameerbi and others** 2007 (2) RSJ 7, **State of Maharashtra and others Vs. Narmada Estates Pvt. Ltd. And others** 2011 (2) RCR (Rent) 82 and of this Court in **Krishna Vs. State of Haryana and others** CWP 6214 of 2011, decided on 11.7.2011 and **Anup Kaur Vs. State of Punjab and others** CWP 11887 of 2010, decided on 20.10.2011, in support of his contentions.

Learned counsel for the respondent-State submits that as the petitioner did not enclose any experience certificate with the application form on 14.8.2010, therefore, no marks were awarded to her in the first selection. She did not give any undertaking along with application form to submit experience certificate subsequently. The petitioner secured total 59 marks, whereas, respondent No.4 secured 60 marks in the first selection and respondent No.4 was, therefore, selected and appointed on the basis of merit. In the second selection, respondent No.5 secured 62 marks, whereas, the petitioner secured 60 marks. Learned State counsel further submits that the merit list was prepared on the basis of marks awarded for academic qualification and experience. The petitioner filed an appeal

which was dismissed but order passed in the appeal has not been challenged.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on the file as well as the original record of the selection.

Admittedly, one post of Anganwari Worker was filled in the year 2010 and another in 2011. In the year 2010, the petitioner as well respondent No.4 along with other candidates applied for the said post and in the year 2011, the petitioner as well as respondent No.5 along with other candidates applied for the post of Anganwari Worker. As per case of the petitioner, the marks of experience have not been awarded to her in the first selection, whereas, marks were awarded to respondent No.4. It is the contention of learned counsel for the petitioner that had the marks of interview been awarded to the petitioner in the first selection, she would have been selected. It is also the argument of learned counsel for the petitioner that in the second selection, respondent No.5 did not enclose any document along with her application and her name was added later on in the list of interview with hand. A perusal of interview list of Anganwari Worker would show that names of twelve persons are typed along with biodata and names of three candidates i.e. from serial numbers 13 to 15 have been written with hand duly signed by members of the Committee i.e. CDPO, President, Mahila Mandal and Programme officer.

No doubt, in the second selection the petitioner secured 60 marks and respondent No.5 secured 62 marks. The stand taken in the written statement by respondents No.1 to 3 is that respondent No.5 submitted her documents at the time of interview as an undertaking was given by her at the time of submission of the application. It has also been admitted in the written statement that 12 candidates applied for the post of

Anganwari Worker and three candidates, namely, Sushma, Raj Kali and Reena Devi submitted their documents at the spot which were duly considered. Respondent No.5 was found suitable and accordingly she was selected. It has been mentioned in the written statement that three marks for three months experience were given to the petitioner at the time of second selection but still she was not found suitable. It has also been mentioned in para No. 12 that petitioner did not enclose the experience certificate with the application form and the same were not produced even at the time of interview and as such no marks were awarded to her at the time of first selection.

The Director, Woman and Child Development Department, Haryana Vide letter dated 12.6.2008 issued instructions with regard to appointment of Anganwari Workers as certain amendments were made vide letter dated 15.4.2007. The selection was to be made by the members of the Committee consisting of President, Village Level Sub Committee being Chairman, all the Women Panches being Member, President of the Sakshar Mahila Samuh being Expert, President Mahila Mandal being Member and Circle Supervisor being Convener. The presence of President of the Sub Committee and supervisor is necessary. Beside above, the presence of at least two other members is also necessary. The Coram is complete when these four members are present. As per eligibility criteria out of total 100 marks, sixty marks were for matriculation examination, seven marks for experience, eight marks for daughter-in-law and ten marks for interview were to be given. The marks for experience have been specified by keeping in view the number of the years. Similarly different marks have been earmarked for primary, middle pass and marks less than 60% or more than 60% in matriculation examination. It has also been mentioned in the instructions that

applications will be invited by the Chairman of the Village Level Sub Committee, which shall be complete in all respects. In case the application is incomplete and documents are not enclosed then application form can be rejected.

In the present case, it is apparent that respondent No.5- Sushma Devi did not enclose any certificate along with the application form. Even a perusal of application form of respondent No.5 would show that neither the date of birth has been mentioned nor any experience certificate was submitted. The date on the application form has also not been written. An affidavit was submitted by her on 29.9.2011, wherein, it was mentioned that in case the documents are not submitted at the time of interview her application form may be rejected. The undertaking given by way of an affidavit clearly shows that no documents were attached with the application form and same were to be submitted at the time of interview. The date of interview was 18.10.2011 and the affidavit was got attested on 29.9.2011. The petitioner as well as respondent No.5 have been awarded 45 marks for matriculation, whereas, respondent No.5 has been awarded nine marks in interview whereas the petitioner has been awarded four marks. There is a difference of 2.5 marks between the petitioner and respondent No.5.

A perusal of the record of the selection and marks awarded to the selected candidates shows that the proper procedure has not been followed as marks have not been awarded as per guidelines issued vide letter dated 12.6.2008. It has also been established from the record available on the file that selected candidate i.e. respondent No.5 did not submit her documents along with application. The names of three persons were found mentioned in the result with hand subsequently. It appears that the signatures of the members of the Committee were adjusted as there is

space between the list and the signatures. There is no application of mind while awarding marks and even the criteria has not been followed as per instructions.

Accordingly, the petition deserves to be allowed and selection and appointment of respondents No.4 and 5 to the post of Anganwari Worker is set aside. It is also directed that respondents No.1 to 3 shall consider the respective merits of all the candidates, who had submitted their applications and by awarding marks on the basis of performance including experience of each candidate as per criteria and guidelines. The procedure and criteria should be followed strictly in accordance with the guidelines. The necessary exercise be done within a period of two months from the date of receipt of copy of the order.

May 01, 2015
pooja

(DAYA CHAUDHARY)
JUDGE