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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 299 OF 2012**Order reserved on: 29/08/2017Order delivered on: 22/09/2017

Smt. Shashibala Bisvas wife of Shri Gokul Bisvas, aged about 48 years, R/o village Ramnagarkala, Village Panchayat, Santoshi Nagar Block Balrampur, District Balrampur (C.G.)

.....Petitioner**Versus**

1. State of Chhattisgarh, Through Secretary, Child & Women Development Department, D.K.S. Bhawan, Raipur (C.G.)
2. Additional Collector, Ramanujganj, District Surguja (C.G.)
3. District Programme Officer, Child & Woman Development, Ambikapur, District Surguja (C.G.)
4. Latika Haldar, aged about not known to the petitioner, wife of Shri Gopal Haldar, R/o village Ramnagarkala, Village Panchayat, Santoshi Nagar, Block Balrampur, District Balrampur (C.G.)

.....Respondents

For Petitioner	:	Smt. Hamida Siddiqui, Advocate
For State/Respondents No. 1 to 3	:	Mr. R. K. Jaiswal, P.L.
For Respondent No. 4	:	Mr. A. N. Bhakta, Advocate

Hon'ble Shri Sanjay Agrawal, J.**C A V ORDER**

1. By way of this writ petition, the petitioner is questioning the propriety of the order dated 12/04/2012 passed by the Additional Commissioner, Surguja Division, Ambikapur in Revenue Appeal Case No. 27/A-89/10-11, whereby, the order dated 30/09/2008 passed by the District Programme Officer, Women and Child Development Department, Ambikapur cancelling the appointment order of

the petitioner on the post of Aganwadi Worker at Ramnagarkala of Gram Panchayat, Santoshi Nagar has been maintained.

2. Undisputed facts of the case are that on the basis of the application invited by the Collector (Women and Child Development Department) District Surguja, the petitioner was appointed on the post of 'Aganbadi Worker' for the Aganbadi Centre at Ramnagarkala. Her appointment was made by respondent No. 3, i.e., the District Programme Officer, Women and Child Development Department, Ambikapur vide order dated 11/09/2007 after completion of all the requisite formalities and the petitioner has then given her joining on 12/09/2007.

3. It is pleaded in the petition that her appointment order has been questioned by respondent No. 4, namely, Latika Haldar by lodging a complaint (Annexure P-10) in the form of appeal before the respondent No. 2, Additional Collector, Ramanujganj on 21/11/2007, where the case was registered as Appeal Case No.02/2007-08/Misc. Enquiry/A-89. It is alleged in the said complaint that despite the fact that the petitioner was not eligible and qualified to be appointed as such in view of the directions contained in the guidelines issued in this regard by the Collector (Women and Child Development Department), District Surguja vide its memo (Annexure P-4), dated 02/01/2006 addressing to the concerned Gram Panchayat and Municipality/Corporation, yet, contrary to that, her appointment was made by the Supervisor of the said Department, namely, Smt. Asha Dubey. It was alleged further in the said complaint that as the petitioner, who was 55 years old was above the prescribed age limit of 18 to 44 years, therefore she was not at all entitled to be appointed as such. However, by furnishing a false and fabricated document/certificate in relation to her age, she has illegally obtained the alleged appointment on the said post of Aganbadi Worker.

4. Further contention of the petitioner is that upon receiving the aforesaid complaint (Annexure P-10), the Additional Collector, Ramanujganj while registering the case, directed for issuance of notice to the petitioner vide its order dated 21/11/2007 by fixing the case on 17/12/2007. On 17/12/2007, the petitioner appeared and submitted her reply and matter was accordingly directed to be listed on 07/01/2008. It is pleaded further that the matter was then adjourned from time to time and that on 09/09/2008, it was directed to be listed on 07/10/2008 as the Presiding Officer was on tour. However, during the pendency of the said enquiry, a termination order dated 30/09/2008 (Annexure P-1) even prior to the said date has been passed without affording any opportunity of hearing to the petitioner by observing that on the basis of close enquiry on the complaint of respondent No. 4, it was found proved. Accordingly, the said termination order was passed by the District Programme Officer, Women and Child Development Department, District Surguja by appointing the complainant Latika Haldar, the respondent No. 4 as Aganbadi Worker for the Centre Ramnagarkala.

5. The aforesaid termination order has been affirmed further in an appeal preferred by the petitioner under Section 91 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 by the Additional Commissioner, Surguja vide its order impugned dated 12/04/2012 (Annexure P-2).

6. Being aggrieved, the petitioner has filed this petition by submitting *inter alia* that the alleged termination order dated 30/09/2008 (Annexure P-1), affirmed further by the Appellate Authority on 12/04/2012 (Annexure P-2) has been passed without providing any opportunity of hearing to the petitioner and has been passed even during the pendency of the said proceedings initiated on the basis of alleged complaint of respondent No. 4, is therefore, perse contrary to law and deserves to be set-aside. In support, Smt. Hamida Siddiqui, learned

counsel for the petitioner has placed her reliance upon the decisions rendered in **“Ku. Punam & Others v. State of C.G. & Others”**, **“Mrityunjay Shukla & Others v. Municipal Corporation, Raipur & Others”** and **“Aghan Singh Jangade v. State of C.G. & Others”**, reported respectively in **2008(2) C.G.L.J. 366**, **2009(1) C.G.L.J. 97** and **2009(3) CG.L.J., 72** and based upon which, submits that since the order impugned has been passed in gross violation of the principles of natural justice, therefore, not sustainable in the eye of law and deserves to be set-aside.

7. Respondents have contested the aforesaid claim on the ground that only after holding an enquiry upon the complaint lodged by respondent No. 4, the alleged termination order was passed as the allegation levelled against the petitioner was found proved. It is contested further on the ground that since the petitioner had obtained the alleged appointment order on the post of Aganbadi Worker by suppressing the material facts regarding her educational qualification as well as her age, which however, was reveled in the said enquiry initiated on the basis of complaint dated 21/04/2008 (Annexure R-4/8) lodged by respondent No. 4 that she is exceeded the prescribed age limit, therefore, her termination order was rightly passed. In support, the note-sheet and order-sheet showing the aforesaid fact was annexed by respondents as Annexure R-1 and also by placing the alleged complaint of respondent No. 4 namely Latika Haldar on record as Annexure R-4/8. In support, Mr. A. N. Bhakta, learned counsel for the respondent No. 4 has placed his reliance upon the decision rendered in **Superintendent of Post Offices and Others v. R. Valasina Babu**, reported in **(2007) 2 SCC 335** and stated that in an enquiry held on the basis of complaint lodged earlier by respondent No. 4 on 21/04/2008, in which, it was found after providing sufficient opportunity of hearing to the petitioner that she had obtained alleged post of Aganbadi Worker by suppressing her educational qualification as

well as of her age. Therefore, under such circumstances, it cannot be said that the order impugned has been passed in violation of the principles of natural justice as pleaded by the petitioner.

8. I have heard learned counsel for the parties and perused the entire relevant papers placed on record carefully.

9. Undisputedly, the alleged appointment order appointing the petitioner on the post of Aganbadi Worker was passed on 11/09/2007 by the competent authority. The said appointment order was questioned by respondent No. 4 Latika Haldar by lodging a complaint before the Additional Collector, Ramanujganj on 21/11/2007. The Additional Collector while registering the case on 21/11/2007 had issued notice to the petitioner, who in turn, appeared before the said authority on 17/12/2007 along with her reply. The order-sheets would reveal that the said matter initiated on the basis of alleged complaint of respondent No. 4 was adjourned from time to time and order-sheet dated 09/09/2008 would reveal further that it was adjourned by fixing the case on 07/10/2008. However, in the meantime, the alleged termination order has been passed on 30/09/2008 (Annexure P-1) by respondent No. 3 by observing that the complaint as lodged by respondent No. 4 Latika Haldar was found proved. Consequently, the appointment order of the petitioner has been cancelled.

10. True it is that the alleged termination order was passed during the pendency of aforesaid enquiry but, pertinently to be noted here, as reflected from the record, that prior to the initiation of aforesaid enquiry, the respondent No. 4 had lodged the complaint earlier also of a like nature on 21/04/2008 (Annexure R-4/8) before the Collector, Ambikapur by submitting *inter alia* that since no enquiry was conducted so far on her earlier complaint which was lodged on 19/09/2007, therefore, it was prayed by way of the said application that an

enquiry be made against the petitioner. Perusal of the record would reveal further that a detailed enquiry, as evidenced by Annexure R-1, was conducted on her complaint dated 21/04/2008 (Annexure R-4/8). In the said enquiry, it was found that the petitioner had obtained the alleged appointment order on the post of Aganbadi Worker by suppressing the material facts regarding her educational qualification as well as with regard to her age. The alleged enquiry based upon the complaint dated 21/04/2008 was made by affording sufficient opportunity of hearing to the petitioner. In such circumstances, it cannot be held that the alleged termination order, dated 30/09/2008 (Annexure P-1) which affirmed further vide order impugned dated 12/04/2012 (Annexure P-2) was passed in violation of the principles of natural justice as pleaded by the petitioner. The contention of Smt. Hamida Siddiqui, based upon the aforesaid case laws, therefore, cannot be accepted.

11. In the matter of **Superintendent of Post Offices** (supra) as relied upon by Mr. Bhakta is squarely applicable in the present case. That is the case where the respondent R. Valasina Babu had obtained an appointment order on the post of Postal Assistant in the Office of Superintendent of Post Offices against the post reserved for the Scheduled Caste community on the basis of Certificate dated 27/12/1990 as he belonged to "*Mala*", a Scheduled Caste community. However, upon receiving the information that he does not belong to said "*Mala*" community and in fact had belonged to Christian community, a disciplinary proceeding was initiated against him by issuance a charge-memo dated 01/03/1989. Pertinently to be noted here that the Collector had also hold an enquiry during the pendency of the said disciplinary proceeding for ascertaining the genuineness of the said Certificate dated 27/12/1990 based upon which, respondent R. Valasina Babu had obtained the alleged post of Postal Assistant reserved for Scheduled Caste community. In the said enquiry, it was found by

the Collector that the alleged Certificate was not a genuine certificate and in consequence, the Collector had cancelled it by its order dated 28/11/1990. This cancellation order was not the part of charge-memo dated 01/03/1989 based upon which, the said disciplinary proceeding was initiated against the respondent R. Valasina Babu. The question was therefore, arose that whether this order of cancellation dated 28/11/1990 passed by the Collector which was admittedly not the part of said charge-memo could be taken into consideration in the said disciplinary proceeding. In the said factual scenario, it was held by the Supreme Court that alleged cancellation order dated 28/11/1990 passed by the Collector subsequent to the initiation of the said disciplinary proceedings can be taken into consideration while observing at Paragraphs 12 & 13 as under:-

12. The crux of the matter, therefore, was as to whether the respondent belongs to the Scheduled Caste community or not. If he was not, the question as to whether the disciplinary proceeding initiated against him relying on and on the basis of a particular Caste Certificate, in our opinion, pales into insignificance. Furthermore, the Tribunal and the High Court were not correct in holding that in the departmental proceedings no subsequent event could be taken into consideration. We have reproduced hereinbefore the order of the Collector from a perusal whereof it would appear that the said proceeding was initiated at the instance of the Superintendent of Post Offices. Thus, the respondent was aware of the fact that a proceeding had been initiated against him for cancellation of the certificate before the competent authority. Once the Caste Certificate issued by the Revenue Department of the State of Andhra Pradesh issued in favour of the respondent is cancelled, the original certificate on the basis whereof another certificate was obtained would be non-est in the eye of law. Any other or further certificate issued on the basis shall also be non-est.

13. In the aforementioned situation, we see no reason as to why the inquiry officer or for that matter disciplinary authority could not have taken into consideration the subsequent event. Moreover, as noticed hereinbefore, the disciplinary authority had given another opportunity of hearing and the respondent availed the same. He also preferred an appeal against the order of the disciplinary authority. In this view of the matter, the Tribunal as also the High Court, in our opinion, committed a manifest error of law in allowing the Original Application filed by the

respondent on the premise that the said order dated 18.11.1990 passed by the Collector should not have been taken into consideration by the Disciplinary Authority or by the Appellate Authority.”

12. If we examine the facts of this case in the light of the above mentioned principles, then it would lead to an irresistible conclusion that although the proceedings (Annexure P-9), bearing Appeal Case No. 02/2007-08/Misc. Enquiry/A-89 initiated on the basis of the complaint dated 21/11/2007 (Annexure P-10) was pending, but an enquiry on the basis of earlier complaint of a respondent No. 4 of a similar nature dated 21/04/2008 (Annexure R-4/8) was conducted while providing opportunity of hearing to the petitioner where it was found that she had obtained the alleged appointment order on the post of Aganbadi Worker by suppressing the material facts regarding her educational qualification as well as of her age. It is worth mentioning that the petitioner while filing this petition also has not disclosed these material facts that she had already participated in that enquiry proceedings. In such circumstances, it is difficult to hold that the alleged termination order dated 30/09/2008 (Annexure P-1), affirmed further by way of impugned order dated 12/04/2012 (Annexure P-2) was passed in violation of principles of natural justice.

13. Consequently, the petition being devoid of merit is hereby dismissed. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge