

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 58 of 2017**

Laxmi Ghudaswar D/o Shri Mahadeo Ghudaswar, W/o Komal Wasnikar, Aged About 39 Years Occupation Anganwadi Worker, R/o Village & Post 79, Jugani Kalar, Police Station & Tahsil Farasgaon, Civil & Revenue District Kondagaon (Chhattisgarh).

---- Appellant**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Women & Child Development Department, Mahanadi Bhawan, Mantralaya, Raipur, Post & Police Station Mandir Hasaud, Tahsil, Civil & Revenue District Raipur (Chhattisgarh).
2. Director, Directorate Of Women & Child Development Department, Indrawati Bhawan, Block A, Second Floor, New Raipur, Police Station Kewli, Tahsil, Civil & Revenue District Raipur, (Chhattisgarh).
3. Chhattisgarh Vyasayik Pariksha Mandal (VYAPAM), Through The Controller, Madhyamik Shiksha Mandal Parisar, Shailendra Nagar, Raipur, Police Station Civil Line, Tahsil, Civil & Revenue District Raipur (Chhattisgarh).

---- Respondents

For Appellant : Shri Ratnesh Kumar Agrawal, Advocate.
 For Respondent/State : Shri B. Gopa Kumar, Deputy Advocate General.
 For Respondent No. 3 : Dr. Sourabh Pandey, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri P Sam Koshy, J.

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****06/04/2017**

1. The judgment dismissing a writ petition under Article 226 of the Constitution of India is under challenge.

2. Heard the learned counsel for the Appellant, the learned Deputy Advocate General and the learned counsel for the 3rd Respondent-VYAPAM.
3. The Petitioner/Appellant is an Anganbadi Worker. She was therefore eligible to be considered for appointment as Anganbadi Supervisor as against the quota earmarked for selection from among Anganbadi Workers. She applied for it, also claiming that she belongs to a Scheduled Caste. However, when she appeared for the competitive examination conducted by the 3rd Respondent-VYAPAM, she wrongly marked her identity as one belonging to Scheduled Tribe, by so bubbling on the OMR answer sheet. VYAPAM, the selecting authority prepared a list by including the Petitioner in the general merit list and also in the Scheduled Tribe list. This exercise was sometime in 2014. The Petitioner filed the writ petition challenging her inclusion in the Scheduled Tribe list and pleaded that she may be included in the Scheduled Caste list, obviously because she could not find a reasonably high position in the general merit list. She had not obtained any interlocutory order in the course of the writ petition, either to reserve a vacancy or to make any appointment provisional and subject to the result of the writ petition. She had also not impleaded any person who was among the scheduled caste candidates who stood appointed by that time. We say this because by 2014, all appointments were actually made on the basis of impugned selection list. The learned Single Judge dismissed the petition upholding the plea of VYAPAM and the State that erroneous bubbling in the OMR sheet cannot be visited in writ jurisdiction. Hence this appeal.
4. The learned counsel for the Writ Petitioner/Appellant, very persuasively argued that the Appellant is a woman and that she belongs to the socially and economically marginalized sector of the society. It is even pleaded

that, on the totality of facts, there may be a direction to create a post or vacancy, at least supernumerary, to be accounted as against future occurring vacancies in the category of Anganbadi Supervisor from among the members of Scheduled Caste. This plea is raised when faced with the situation that it is the settled position of law that when large number of candidates participate in a selection process through OMR process, it is not advisable or feasible to have any modification to the OMR entries.

5. OMR markings in tests of similar situations has to have a finality and also should be insulated from challenge from case to case review by human agency. Such principle may also extend to areas where registration numbers, answer booklet number and other details which may connect an answer booklet to a particular candidate may become relevant. In the case in hand, we however see that the only wrong committed by the Petitioner/Appellant is that she bubbled on the OMR answer script erroneously showing that she is a Scheduled Tribe candidate though her claim is only that she is a member of Scheduled Caste. At the first blush we were persuaded to think that the said error is something which can be reached at and rectified, if the appointing authority under the executive resorts to a process of physical verification of the application and due comparison of the requisite details with the true state of affairs as regards the Appellant. But, on a deeper consideration, we are of the view that such an approach, at this distance of time may not be advisable in view of the fact that all the notified vacancies are stated to have been filled up by making appointments way back in 2014 and there was no interlocutory order in favour of the Petitioner/Appellant from the writ proceedings either reserving a vacancy or making any appointment provisional or subject to the result of the writ petition. It cannot also be ignored that the Petitioner/Appellant has not arrayed any Anganbadi Supervisor who would have

entered office from the reservation list of selected Scheduled Caste candidates, consequent on the selection and who may be liable to be displaced if the Appellant were to be ultimately given a beneficial judgment. If the Appellant succeeds, it goes without saying that at least the junior most among those recruited from the Scheduled Caste reserved group will have to be displaced to make way for the Appellant unless of course, the Government in their wisdom thinks that it is appropriate to create a supernumerary post and park the Petitioner there till alternate arrangements are made in due course. That is not a matter in which a command or direction could be issued by this Court exercising authority only under Article 226 of the Constitution of India. We have to stand by the legal principle that in exercise of power under Article 226 of the Constitution, even in cases where we make an attempt to provide situational justice to the permissible maximum, that could only be to the extent provided under the statute laws and in conformity with the constitutional principles underlining the scheme of the statutory provisions and the governing judicial precedents.

6. The aforesaid factors will show that notwithstanding that our hearts may be to some extent, with the Appellant, our heads stand to advise that no effective remedy could be granted to the Appellant through writ jurisdiction at this distance of time. The writ appeal therefore fails.
7. In the result, the writ appeal is dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE