

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 332 of 2017

(Arising out of order dated 03.04.2017 in WPC- 1555 of 2017)

- Smt. Sumitra W/o Bhimsen, Presently Resident At Badkegaon, Wadrafnagar, District Balrampur Ramanujganj, Chhattisgarh. (Respondent No. 6)

---- Appellant

Versus

1. State of Chhattisgarh through the Secretary, Department of Woman & Child Development, New Mantralaya, Mahanadi Khand, Raipur, Chhattisgarh.
2. The Collector, District Balrampur, Ramanujganj (Chhattisgarh).
3. The Chief Executive Officer, Janpad Panchayat Rajpur, District Balrampur, Ramanujganj (Chhattisgarh).
4. Project Officer, Integrated Child Development, Rajpur, District Balrampur, Ramanujganj (Chhattisgarh).
5. Smt. Ritu Singh, W/o Kaila Ram, Aged About 28 Years R/o Chaura, District Balrampur, Ramanujganj (Chhattisgarh).
6. Smt. Pooja Sonwani W/o Tejram Sonwani, Aged About 24 Years R/o Village Choura, Block Rajpur, Civil & Revenue District Balrampur Ramanujganj, Chhattisgarh. (Respondent / Petitioner)

---- Respondents

For Appellant	: Shri Kishore Narayan, Advocate
For State	: Shri RK Gupta, Deputy Advocate General
For Respondent- 6	: Shri Sushil Dubey, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Justice Sharad Kumar Gupta

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

20.11.2017

- 1) This is an appeal which stands an application seeking condonation of delay of 100 days in its institution. It is submitted that counter affidavit has been filed to that application.

2) Having heard the learned counsel for the appellant, the learned Deputy Advocate General and the learned counsel for the 6th respondent, who was the 6th respondent in the Writ Petition from which this appeal arises, we think that, in writ jurisdiction, it would be profitable for us to have a comprehensive and composite consideration of the application seeking condonation of delay and the appeal on their merits.

3) Writ Petitioner- Smt Pooja Sonwani, Smt Ritu Singh and Smt Sumitra were competitors for being appointed as Mini Anganbadi Karyakartas of Anganbadi Centre of Gram Panchayat, Choura, district Balrampur. The 6th respondent- Smt Sumitra was appointed.

4) Going by Annexure A/3, judgment in WPS- 3699 of 2014, which is an earlier round of Writ Petition filed by Smt Pooja Sonwani, we see that this Court then noticed that she had filed an appeal on 08.10.2013 before the Collector. As per judgment dated 21.03.2016, that Writ Petition was ordered directing the Collector, Balrampur-Ramanujganj to decide that appeal within a period of three months. It is noteworthy to mention here that Smt Sumitra, who is the appellant before us was a party and was heard in that Writ Petition.

5) Going by the record before us, we do not know as to what happened to the aforementioned appeal dated 08.10.2013. However, yet another appeal is stated to have been filed on 31.12.2016 by the Writ Petitioner- Appellant Smt Pooja Sonwani impeaching the appointment of Smt Sumitra. That appeal was dismissed by the Collector on the ground of delay. We may record that there is controversy between the parties as to whether the delay in instituting the representation before the Collector

was only 9 months or whether the delay was four years. Whatever that be, the Collector dismissed the application seeking condonation of delay. That was impeached by Smt Pooja Sonwani by instituting WPS- 1555 of 2017 from which this appeal arises.

6) As per the impugned judgment dated 03.04.2017, the learned Single Judge making reference to the judgment in **Collector, Land Acquisition, Anantnag and another Vs Mst.Katiji and others** (AIR 1987 SC 1353) & **Perumon Bhagvathy Devaswom, Perinadu Village Vs Bhargavi Amma (dead) by LRs and others** {2008(8)SCC 321} allowed the said Writ Petition, however, without hearing or issuing notice to Smt Sumitra, the 6th respondent therein. Hence this appeal is by her on the ground that the impugned order of the learned Single Judge has been issued without giving her an opportunity of hearing though she is the beneficiary of the order, that has become final at the hands of the Collector.

7) In this intra Court writ appeal arising from a decision rendered by the learned Single Judge in writ jurisdiction, we deem it appropriate to consider as to what should be the course that should be adopted rather than tie down the parties to technicalities and carry forward their controversies on the basis of default decisions. We say this because, ultimately, what needs to be resolved is the claim of Smt Pooja Sonwani that she was entitled to be appointed way back in 2011, instead of the 6th respondent- Smt Sumitra and going by the materials, it appears that atleast in 2013 the controversy was before the Collector.

8) The learned Single Judge has observed in the present judgment in WPS-1555 of 2017, which is impugned before us, that the Writ Petitioner

is a poor villager, though she had passed 10th Class. There cannot be any dispute that the competitors, namely, the petitioner and the 6th respondent- Smt Sumitra, who is in Writ Appeal before us could be treated as socio economically challenged women, competing among themselves to become Mini Anganbadi worker. The so-called delay in instituting the appeal before the Collector is itself a matter which to be considered differently. The Collector proceeded as if the delay is for 9 months or 4 years as could be seen from the records. But the fact of the matter remains that as per the judgment issued in the earlier round namely, WPS- 1555 of 2017 and WPS 3699 of 2014, the complaint of the Writ Petitioner- Smt Pooja Sonwani was already before the Collector in 2013. Whatever be the quality of that representation and whether it was eligible to be treated as an appeal, this Court had, after hearing the petitioner and the 6th respondent- Smt Sumitra, directed the Collector to decide it as an appeal. This is the effect of the contents of paragraphs 2 and 3 of the order dated 21.03.2016 in WPS- 3699 of 2014. That direction has to be carried to its hilt. Obviously, therefore, any subsequent procedural muddle has to settle down, thereby leading to an adjudication by the Collector and consequential decision on the dispute raised by the Writ Petitioner - Smt Pooja Sonwani regarding the appointment of the 6th respondent- Smt Sumitra.

9) In the aforesaid view of the matter, though the writ appellant was entitled to be heard by the learned Single Judge before the order of the Collector was set aside, the substance of the controversies at this stage having been considered by us, we deem it unnecessary to open up such

aspect relating to hearing by the learned Single Judge, particularly because , in view of the earlier direction issued by this Court through the judgment in WPS-3699 of 2014, it is absolutely necessary that the parties are heard on the merits of their rival contentions as regards the selection and appointment of the 6th respondent- Smt Sumitra. This has to be done by the Collector in obedience to the earlier judgment of this Court rendered in WPS- 3699 of 2014.

10) It may be that, we would have been inclined to impose an order of costs against the Writ Petitioner on the facts and circumstances of the case. But, taking into specific consideration the fact that the petitioner and the 6th respondent belong to economically challenged category of women, we are inclined to take a lenient view and desist from passing any order which may, sometimes, tend to be economically oppressive.

11) As a result of the aforesaid discussion, the conclusion is that the delay in instituting this Writ Appeal deserves to be condoned and the appeal is to be ordered directing that following this judgment, the District Collector will hear the parties on the merits of the objections raised by Writ Petitioner- Smt Pooja Sonwani against the selection and appointment of th 6th respondent- Smt Sumitra as Mini Anganbadi Karyakarta of Anganbadi Centre of Gram Panchayat, Choura, district Balrampur. Such decision shall be rendered by the District Collector after advertng to and considering all relevant facts and materials. Let this be done within an outer limit of three months from the date of receipt of the copy of this judgment. To enable quicker proceedings before the Collector, we direct the Writ Petitioner- Smt Pooja Sonwani and the appellant (6th respondent

of the Writ Petition Smt Sumitra) to appear before the Collector, district-Balarampur-Ramanujganj during the office hours of 12th December, 2017 to enable that office to fix a due date for hearing the parties. This Writ Appeal is ordered accordingly. All issues on merits are left open.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge

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