

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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CWP No.1664 of 2015

Date of decision:12.12.2017

Anita Rani

... Petitioner

versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Munish Mittal, Advocate,
for the petitioner
Mr.R.K.Doon, AAG, Haryana

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AMOL RATTAN SINGH, J. (Oral)

By this petition, the petitioner seeks issuance of a writ of certiorari quashing the advertisement dated 14.1.2015 (Annexure P-3), by which applications were invited to fill up posts of Anganwari Workers and Helpers in different blocks in District Yamunanagar. In the said advertisement, the details of the posts which were to be filled in were given as per each Anganwari Centre, with the Centre in question, at Village Udhamgarh, Block Bilaspur, being shown to be a Mini Anganwari Centre, to which a worker was required to be appointed.

The case of the petitioner is that as per the letter, Annexure P-1, dated 6.5.2011, the Programme Officer, District ICDS Cell, Yamunanagar, had written to the District Primary Education Officer, Yamunanagar, that information be sent with regard to the workers and Coordinators working in

'Bachpanshalas' in different villages in the district, with the list of 16 such

villages given in the letter itself, at Sr.no.11 of which is village Udhamgarh, against which remarks have been entered that it was approved only for posting of one Mini Anganwari Worker, the inference thereby being that instead of converting the Bachpanshala running at the said village into an Anganwari, it was to be converted into a Mini Anganwari. In the letter itself, it is also written that only those Bachpanshalas would be merged where an Anganwari had been approved by the department, (i.e. the Department of Women and Child Development).

The grievance of the petitioner is that whereas Bachpanshalas in different villages were converted into Anganwari Centres, with the Coordinators in such Bachpanshalas also inducted as Anganwari Workers, in the case of the Bachpanshala in Village Udhamgarh, where the petitioner was working as a Coordinator, it was being converted into a Mini Anganwari for which a new worker was proposed to be inducted.

Upon notice having been issued in this petition, as per the reply filed by the respondents, it is stated that vide his letter dated 11.10.2012, the Programme Officer of the ICDS Cell, Yamunanagar, had directed all Child Development Officers of the District to intimate with regard to the vacant posts of Anganwari Helpers, calling for application forms for filling up the said posts. It is also stated that in Village Udhamgarh, there is a Mini Anganwari Centre and so the Bachpanshala could not be merged into the same.

Hence, the CDPO, Bilaspur, had also written to the Sarpanch of Gram Panchayat Udhamgarh, for calling of applications for appointment of a Mini Anganwari Worker in the Mini Anganwari Centre at the village.

Pursuant to the said letter, “an advertisement was published by way of munadi in Village Udhamgarh” and applicants were asked to come to the office of the CDPO, Bilaspur, by 5.11.2012.

The petitioner is stated not to have applied for the post, but instead filed CWP No.22206 of 2012, seeking a writ of mandamus to accept her application form for the post of an Anganwari Worker.

That writ petition was disposed of vide an order dated 13.10.2014, the operational part of which reads as follows:-

“In the light of the aforesaid two documents, it cannot be said that the petitioner never made an effort to file the application within the time permitted as the last date was 5.11.2010. All what the petitioner is seeking is consideration of her candidature.

For the reasons mentioned above, the writ petition is allowed. Respondent No.5 is directed to consider the candidature of the petitioner for the post of Anganwari Worker before declaring the result.”

Pursuant to the above direction, the petitioners' form, though is stated to have not been rejected at that stage, however, due to the stay operating in the aforesaid writ petition filed by the petitioner, the result of the interviews held on 7.11.2012 could not be declared and consequently, fresh applications were again called for, with the interview fixed for the same post on 6.2.2015.

The petitioner is stated to have applied for the post again, but her candidature was now rejected on the ground that she was beyond the age

of 44 years as on the cut off date, i.e. 7.11.2012 (the date of interview pursuant to the earlier advertisement), her date of birth being 18.1.1967. The factual position with regard to the age of the petitioner and the cut off date is not denied by learned counsel for the petitioner, on query by this Court.

However, on all the dates when this petition came up for hearing earlier, his argument has been that the decision to convert the Bachpanshala at Village Udhamgarh into a Mini Anganwari Centre, rather than a full fledged Anganwari Centre, is wholly arbitrary and therefore had the Bachpanshala been converted into an Anganwari Centre, as were such Bachpanshalas in other villages all over the State, and specifically in District Yamunanagar, no advertisement would have been issued calling for applications for appointment afresh of Mini Anganwari Workers/Helpers, and instead the Bachpanshala Coordinator would have 'automatically' been redesignated as an Anganwari Worker (in a full fledged Anganwari Centres).

Upon consistent query by this Court on previous dates, as to why this particular Bachpanshala had been converted into a Mini Anganwari Centre, with even the Director, Women and Child Development Department, having been called to Court, upon this Court not being satisfied with the answers projected by the respondents, eventually an affidavit of the Additional Chief Secretary to the Government of Haryana, Women and Child Development Department, was called for vide the last order dated 30.11.2017, pursuant to which an affidavit of Shri Sudeep Singh Dhillon, Additional Chief Secretary, has been filed in Court today by learned State

counsel. The affidavit is taken on record.

As per the said affidavit, “under the 3rd phase of expansion of the ICDS, 7955 Anganwari Centres and 260 Mini Anganwari Centres were sanctioned by the Government vide its letters dated 13.1.2010 and 25.1.2010”, and the population of the village was the touchstone upon which it was decided as to whether a Bachpanshala be converted into an Anganwari Centre or a Mini Anganwari Centre, with the following criteria fixed:-

“Anganwari Centres for Rural/Urban Projetscs

400-800	1 AWC
800-1600	2 AWCs
1600-2400	3 AWCs

Thereafter in multiples of 800 1 AWC

For Mini AWC

150-400	1 Mini-AWC”
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It is further stated in the affidavit that upon a survey conducted, it was found that 480 Anganwari Centres were suitable “for transferring of Bachpanshalas” and consequently 480 such Bachpanshalas were transferred by the Education Department to the Women and Child Development Department vide an order dated 17.2.2011, along with all their assets, subject to certain conditions.

All volunteers and helpers as were working in Bachpanshalas under the Sarv Shiksha Abhiyan (SSA) were absorbed as Anganwari Workers and Anganwari Helpers, provided they fulfilled the eligibility criteria for such appointment.

The eligibility criteria has also been given in the affidavit, one aspect of which is that a candidate, for being appointed either as a worker or a helper, must be between the age of 18 to 44 years, except in the case of widows/destitute women, where it was relaxable upto 50 years.

Yet further, it is stated that no Bachpanshala working under the Sarv Shiksha Abhiyan was taken over where only Mini Anganwari Workers were sanctioned in the 3rd phase expansion of the ICDS, and that since in a Mini Anganwari Centre there is only one functionary, whereas in the Anganwari Centre there are two functionaries, with the honorarium paid to a Mini Anganwari Worker also being about half of that of a worker of an Anganwari, the volunteer of a Bachpanshala and the helper could not be adjusted to the single post of Anganwari Helper in a Mini Anganwari Centre and therefore, the Bachpanshalas were not so merged into Mini Anganwari Centres, leading to the consequence that the single post for the Mini Anganwari Centre at Village Udhamgarh was lying vacant, for filling up of which applications were invited.

Having considered the aforesaid pleadings as also arguments of both learned counsel, supporting such pleadings, though this Court was initially actually inclined to accept this petition on the ground that on specific query it has been admitted by learned State counsel, on instructions, that as per the 2011 Census, the population of Village Udhamgarh was 430, which is 6 years ago and obviously today it would be far more than that, however, on producing the record, he has pointed to the fact that the population even as per the 2011 census was less than 400, and therefore, with the criteria framed in villages where the population was less than 400,

the Bachpanshalas existent there, would be converted into Mini Anganwari Centres, for the reasons already given hereinabove.

Though, in the opinion of this Court, as a matter of fact, there would be absolutely no need to even advertise the single post in the Mini Anganwari Centres, with the same principle as was adopted for Anganwari Centres, i.e. the Coordinators already working in Bachpanshalas, becoming Mini Anganwari workers, however, the petitioner earlier having filed CWP No.22206 of 2012, seeking therein only that her application be considered for appointment as a Mini Anganwari Worker, and that writ petition having been accepted, directing that her application be accepted and considered on merit, a subsequent petition pertaining basically to the same cause of action, but seeking therein that the advertisement calling for applications be rejected, cannot be entertained simply on the touchstone of Order 2 Rule 2 CPC, that not having been a prayer made in the previous petition. Thus, if the petitioner was aggrieved of the action of the respondents in advertising the post afresh, instead of just converting her post into that of a Mini Anganwari worker, that plea should have been raised in that petition itself.

Without a doubt, the petitioner is very obviously working on a post where she would not be fully aware of what exactly are her rights, which she should have agitated at the stage of her first petition itself. However, the fact of the matter remains that a statutory provision (under Order 2 Rule 2 CPC) does provide that all pleas available on a cause of action must be taken at the first instance itself and therefore, with the petitioner at the stage of filing of CWP no.22206 of 2012 having only sought a direction that her application be considered pursuant to the

advertisement issued inviting applications for appointment of a Mini Anganwari worker, she cannot seek a relief greater than that in a subsequent petition.

It needs of course to be noticed here that with the Mini Anganwari Centres having only a single worker with no helper, the helper in the Bachpanshala would have been rendered jobless, and therefore the reasoning by the State that the post of a Mini Anganwari worker be advertised, rather than converting the post of a Coordinator in the Bachpanshala to that of a Worker, may not be entirely without reasoning.

Having said that, it still needs to be considered that the cause for rejection of the petitioners' candidature at the threshold itself, after first considering her application in terms of the directions given by this court in the aforesaid writ petition, is that she has become overage, with the maximum age limit for an applicant for the post of a Mini Anganwari Worker stipulated as 44 years in the advertisement issued. That age limit, without granting any relaxation to the persons holding the posts of Bachpanshala Coordinators, is found to be wholly discriminatory by this Court, because in the case of those Bachpanshalas as were converted into Anganwari Centres, (without any selection process), the Coordinators and Helpers were taken on as Anganwari workers and Helpers without any fresh advertisement, even granting them relaxation of age by 16 years, with the Anganwari workers and Helpers who were earlier Coordinators and Helpers in Bachpanshalas being given a relaxation up to the age of 60 years.

Hence, while having to reject the prayer for quashing the advertisement Annexure P-3, for the reason that the said plea is not

available to the petitioner in this 2nd petition filed by her, however, with the petitioner being even today stated to be only 50 years of age, this petition is disposed of with a direction that the petitioners' application for the post in question in the Mini Anganwari Centre, shall not be rejected on the ground of her being over age, with a similar relaxation to be given to her as has been given to those Coordinators appointed as Anganwari workers who were earlier working in Bachpanshalas, (upon their absorption in Anganwari Centres).

In the circumstances there can be no order as to costs.

12.12.2017

pk/Davinder Kumar

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No