

Sr. No. 211

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No. 3575 of 2013
Decided on: 30.08.2017**

Sharmila

.....Appellant

versus

Veena Devi and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. P.R.Yadav, Advocate
for the appellant.

Mr. Chanderhas Yadav, Advocate
for respondent No.1/Caveator.

Rajbir Sehrawat, J.(Oral)

This is an appeal filed by defendant No. 5 in the suit against concurrent findings, judgments and decrees passed by both the Courts below; whereby the appointment of the appellant as Anganwari worker has been set aside.

For the purpose of the present appeal, the parties would be referred to as the plaintiff and the defendant as mentioned in the plaint.

The facts of the case, as mentioned in the judgment of the lower Appellate Court; are that the plaintiff/respondent No. 1 herein filed a suit for declaration, permanent injunction and mandatory injunction challenging the appointment of the present appellant on the post of Anganwadi worker in village Zahidpur, Tehsil Kosli, District Rewari. It was pleaded by the plaintiff that she was the permanent resident of village Zahidpur, Tehsil Kosli, District Rewari. Applications for appointment as Anganwadi worker

in District Rewari were invited by defendants No. 2 and 3 (official respondents). The plaintiff who is the daughter-in-law of village Zahidpur had applied for the post of Anganwadi worker. Interview was conducted for the post on 06.09.2010. However, she was not selected. Instead, defendant No. 5 (present appellant) was selected. Hence the suit was filed challenging her appointment and further for directing the official respondents to appoint the plaintiff in her place. In the plaint, it was pleaded that defendant No. 5 was not resident of village Zahidpur. Rather, she was resident of village Jatola, Tehsil Farukh Nagar, District Gurgaon. It was further pleaded that one of the conditions of eligibility in the advertisement issued by the official defendants was that the applicant should be female, the applicant should be resident of the village and she should be actually residing in the village. The persons of nearby village were to be eligible only in case if there was no person available in the village. It was pleaded that respondent No. 5 was married in village Jatola, Tehsil Farukh Nagar, District Gurgaon. However, by using old certificates of residence and by influencing official defendants; the defendant No. 5, manipulated to get the appointment on the post. Disputing the appointment of defendant No. 5 the plaintiff had made a representation on 04.10.2010. However, still the official defendants proceeded further and appointed defendant No. 5. It needs further clarification here that when the suit was filed, defendant No. 5 had not been actually appointed. However, she was appointed during the pendency of the suit.

Defendants appeared and filed written statements.

The official defendants admitted that the plaintiff was resident of village Zahidpur and had applied for the above said post. It was further

pleaded by them that as per the instructions dated 12.06.2008 for appointment of Anganwadi worker, any lady who is the resident of the same village where the appointment is to be made, was eligible. The criteria for selection was also mentioned. It was further pleaded by the official defendants that the daughters/girls belonging to the same village were also eligible. However, the daughter-in-law of the village is to be awarded special marks in comparison to the girls. Still further it was pleaded that widow is also entitled to special marks in the appointment. Qua defendant No.5 it was pleaded by the official defendants that she had participated in the interview. Initially she was not found eligible. However, later on she was considered in the process of selection and her interview was also conducted by the selection committee on 06.09.2010. However, she was asked to produce the residence certificate to remove the objection of the selection committee. It was further pleaded by the official defendants that the selection was held in accordance with the merit of the candidates.

Defendant No. 5 filed separate written statement claiming that although she was married in village Jatola, Tehsil Kosli, District Rewari, however, after the death of her husband she is regularly and permanently residing at village Zahidpur. It was pleaded by her that she has produced the latest residence certificate in regard to her claim of domicile. She claimed that since she was the domicile of the village she can not be denied the right of appointment.

Parties led their evidence.

After hearing learned counsel for the parties and appreciation of the evidence, the Trial Court recorded that the application filed by defendant No.5 Ex.PW1/5 mentions the name of her husband and also

mentions that she is the widow. The death certificate of the husband of defendant No. 5 is placed on record as DW1/7 showing that her husband had expired on 29.09.2009 and that he was a permanent resident of village Jatola. It was further held by the Trial Court that after marriage, defendant No. 5 was residing at matrimonial home at Jatola. It was further held by the Trial Court that she has admitted in the cross-examination that she was getting pension on account of death of her husband. It was further admitted by her that all the formalities of pension papers leading to sanction of pension were submitted by her showing herself to be a resident of village Jatola. Although defendant No. 5 had claimed that these pension papers were prepared at Jatola but were despatched from village Zahidpur, however, the Trial Court recorded a finding that no such evidence has been led by her that the documents were posted from village Zahidpur. It was further held that even if defendant No. 5 had become widow then also it has not been explained by her as to when and under what circumstances she returned to her parental village by leaving her matrimonial village. On the contrary, it was recorded by the Trial Court, that the; evidence shows that she was resident of village Jatola. No independent evidence was led by defendant No. 5, either oral or documentary to show that she was actually residing at village Zahidpur after becoming widow. It was further held that the distance between the village Jatola and village Zahidpur is around 30 km and there was no evidence that defendant No. 5 was commuting daily. Still further it was recorded that although she was selected in March, 2011 but the ration card and domicile certificate filed by her; to show her to be resident of village Zahidpur; are of the year, 2004 whereas the applications for the present post were invited in the year, 2010. Still further it was

recorded that even if she claims to be the domicile resident of the village Zahidpur then also she is not eligible for the post because of the requirement of eligibility was not being domicile but being actual resident. It was further recorded by the Trial Court that the fact that defendant No. 5 was not residing in village Zahidpur is also shown by the fact that before her appointment on 31.05.2011; she had again married on 07.03.2011; in village Goliawas. So, in any case at the time of appointment she was not residing in the village. Hence, she was not entitled to appointment. Therefore, a decree was passed setting aside the appointment of defendant No. 5. However, the Court did not issue any direction to appoint the plaintiff on the post; on the ground that the Court cannot substitute itself for the selection committee. Therefore, it was ordered that process of appointment be started afresh.

Feeling aggrieved against the judgment and decree defendant No. 5 filed the appeal before the lower Appellate Court. The lower Appellate Court also dismissed the appeal filed by the present appellant/defendant No. 5. The lower Appellate Court recorded that the letter Ex:PW1/22 the instructions regarding the appointment of Anganwadi workers contained clause No. V; related to appointment of Anganwadi worker and Anganwadi helper. The requirement prescribed for eligibility was that candidate should be woman and the permanent resident of village where the appointment is being made and further that she should be actually residing in the village. Further, the woman who is not residing in the village was not eligible for the post. Scrutinising the evidence and claim of defendant No. 5 in this back drop; the lower Appellate Court recorded that defendant No. 5; while appearing as DW-2 before the Court; has admitted in her cross-examination

that she was receiving ex-gratia financial assistance from the Army on account of death of her husband. She further admitted in cross-examination that she had married, Kanwar Lal of village Jatola in the year, 2006. She further admitted that after the marriage she had gone to village Jatola to reside with her husband. However, her husband died in the year, 2009. It is further admitted by her that the pension papers after the death of her husband were prepared at village Jatola. The screening committee had not found defendant No. 5 to be eligible on the ground that she was not resident of village Zahidpur and that she was the resident of village Jatola. When the screening committee asked for the affidavit from her; she stated that after the death of her husband she did not contract any second marriage and that she was residing in the village Zahidpur. But still further she stated that she had not received any financial assistance or pension on account of death of her husband. But in cross-examination she admitted that financial assistance was being received by her and the pension documents were also prepared at the address of village Jatola. Hence the claim of defendant No. 5; that she was residing in village Zahidpur cannot be taken on its face value. It was further recorded by the lower Appellate Court that two documents showing the residence of defendant No. 5 to be in village Zahidpur, Ex:PW1/10, the domicile certificate is issued on 16.06.2004 and the ration card Ex:PW1/12 related to the year, 2007. However, these documents are regarding her status prior to the marriage of defendant No. 5. She has not led any evidence to show that after the death of her husband she had moved back to village Zahidpur. Not only that it has come in evidence of defendant No. 5 that she re-married to some other village Golliawas prior to joining of the post. It was further recorded by the lower Appellate Court

that after defendant No. 5 had re-married; even before her joining; the plaintiff had moved an application Ex:P-Z showing that defendant No. 5 had re-married on 7.03.2012. However, still she was appointed by the official defendants. Therefore, it was recorded by the lower Appellate Court that the evidence establishes that prior to her appointment; defendant No. 5 was re-married and even at the time of initiation and conducting of selection process she was not proved as permanent and actual resident of village Zahidpur. Therefore, she was wrongly appointed by the official defendants. Hence, the judgment and decree passed by the Trial Court were upheld by the lower Appellate Court.

While arguing the case, learned counsel for the appellant/defendant No. 5 has submitted that both the Courts below have gone wrong in law in so far as they have passed the judgment and decree on the ground that appellant was not a resident of village Zahidpur. It was submitted by him that she had applied as resident of Zahidpur. She had submitted the domicile certificate showing her to be the resident of village Zahidpur. Once again, when she was asked to produce the certificate she had produced the latest residence certificate; dated 13.09.2010 also. Therefore, she was proved to be resident of village Zahidpur. It was further argued that subsequent re-marriage of the appellant is not material because the eligibility of a candidate is to be seen on the last date of submission of the application form.

On the other hand, learned counsel for the respondent/plaintiff submitted that she has rightly been held to be ineligible by the Courts below. She has not led any evidence whatsoever to show that she was resident of village Zahidpur. It was further submitted by learned counsel for

the respondent that although she has been proved to be not residing at village Zahidpur at the time of selection, however, in any case before the appointment she had, admittedly, re-married and gone to village Goliawas. Therefore, by any means she could not have been appointed in contravention of the instructions issued for this appointment.

Having heard learned counsel for the parties and perusing the record with the able assistance of counsel for the parties, this Court is of the considered view that the judgments and decrees have rightly been passed by the Courts below. The appellant/defendant No. 5 has miserably failed to prove that she was resident of village Zahidpur; whereas the instructions of appointment required that only a lady who was actually residing in the village was eligible for appointment as Anganwadi worker. Even the application submitted by the appellant shows that there was specific column regarding the name of the, village of residence, with domicile. However, the appellant has left that column as blank. Although she has mentioned elsewhere in the application that she was residing in the village Zahidpur. However, the fact that in this specific column; which specifically required the name of the village to be stated by the applicant; she chose not to mention the name of the village Zahidpur shows that, in fact, she was not residing in a village Zahidpur at the time of submission of application. Still further the application shows that she had struck off the name of the father and applied by mentioning the name of her husband as Kanwar Lal and claimed to be widow of Kanwar Lal. Hence, there is nothing wrong with the conclusion drawn by the Courts below that the application moved by the appellant itself leads to the inference that she was not residing in the village Zahidpur.

Reliance was placed by the appellant upon a domicile certificate dated 16.06.2004 to show the residence of the village. However, this document also shows that it is the certificate in relation to the father of the appellant; owning property in village Zahidpur. This certificate does not say anywhere that she was actually residing in village Zahidpur. Still further, the ration card placed on record by the appellant is of the year 2007. This document is also not showing that she was resident of village Zahidpur. Although this document was prepared in the year, 2007, however, admittedly, the appellant had already been married of in village Jatola and admittedly she was residing there till the year 2009 when her husband expired. Hence, this certificate is of no help to the appellant. Much reliance has been placed by counsel for the appellant on the subsequent certificate of residence which was subsequently submitted by the appellant. This certificate is dated 13.09.2010. However, this certificate is also not clear regarding the actual residence of the appellant in village Zahidpur. This certificate is also saying that she was born or residing in Haryana State and that the certificate would be valid as long as the owner of the certificate maintains the residence in Haryana. Therefore, this document is, at the best, a document of residence of Haryana, as is proclaimed by the certificate itself. This certificate, by no means, is proof of the fact that she was actually residing in village Zahidpur. In any case, since the instructions provided that no lady can be appointed as Anganwadi worker in a village if she is not actually residing in a village, therefore, the appellant could not have been appointed by the very fact that, admittedly, she had re-married in village Goliawas much prior to her actual appointment in village Zahidpur.

The argument of learned counsel for the appellant that the

eligibility of a candidate is to be seen at the time of making application is not sustainable in the present case. This appointment is not in the nature of strictly public office. This is only an engagement of Anganwadi worker for a village having special connection and reference to that village. In ordinary service jurisprudence this kind of restrictive requirement of residence could not have been countenanced by the Courts. However, this condition has been upheld by the Courts with regard to the particular appointment of Anganwadi worker and Anganwadi helper; only for the reason that these persons are required to remain present in village all the times. Hence, what is required to be seen in the matter of appointment of Anganwadi workers is; the actual residence of the candidate at the time of actual appointment; and even during the continuation of the appointment. Saying otherwise; would be frustrating the very purpose of appointment of Anganwadi worker and would render appointment in contravention of the instructions; issued for governing the appointment to the post of Anganwadi worker.

No other argument was raised by learned counsel for the parties.

In view of the above, there is no illegality, irregularity or perversity in the findings recorded by the Courts below. The judgments and decrees passed by the Courts below are upheld. The present appeal is dismissed being devoid of any merits.

30th August, 2017

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*