

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 2444 of 2008**

Smt. Achala Panda S/o Shri Shrivan Kumar Panda, aged about 36 years, R/o village Mohapali, Tahsil Raigarh, District Raigarh (CG)

---- Petitioner**Versus**

1. Smt. Mohar Mati W/o Mahadev Sao, aged about 43 years, R/o village Mohapali, Tahsil & District Raigarh (CG)
2. Smt. Padmavati S/o Laxmin Prasad Sao, aged about 41 years, R/o village Mohapali, Tahsil & District Raigarh (CG)
3. Chief Executive Officer, Janpad Panchayat Pusaur, District Raigarh (CG)
4. State of Chhattisgarh through the Secretary Panchayat Department, DKS Bhawan Raipur (CG)
5. The Director Panchayat, DKS Bhawan Raipur (CG)

----Respondents

For Petitioner	:	Shri U. R. Koshaley
For State	:	Ms. Astha Shukla, P.L.
For respondent no.1	:	Mr. Awadh Tripathi, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****10/09/2018**

The challenge in the present writ petition is to the order passed by the Director, Panchayat dated 27.02.2008 whereby the Director Panchayat has set aside the order of the Additional Collector, Raigarh dated 11.05.2007 who had allowed the appeal of the petitioner challenging the appointment of respondent no.1.

2. Brief facts of the case are that the recruitment process was initiated for filling up the post of Anganbadi worker for village Mohapali under Gram Panchayat Amapali, Janpad Panchayat Pusaur, District Raigarh. The petitioner along with respondents 1 & 2 had applied for the said post. The Gram Panchayat, after scrutinizing credentials of all the applicants made a recommendation and in the recommendation, the name of the petitioner was placed at serial no.1. So far as respondent no.1 is concerned, the resolution of Gram Panchayat was that for the general public of Gram Panchayat Aamapali, respondent no.1 was not acceptable. In spite of that, respondent no.3 issued an order of appointment in favour of respondent no.1 ignoring the recommendation of Gram Panchayat and also ignoring the fact that the general public of Gram Panchayat Aamapali was not in favour of appointing respondent no.1 as an Anganbadi worker. The order of appointment was issued on 19.09.2006.

3. The petitioner immediately filed an objection before the Collector against the appointment made in favour of respondent no.1. The Collector, after hearing of the parties to the dispute decided the appeal/objection vide order dated 11.05.2007 (Annexure P-6) whereby the appeal of the petitioner was allowed and the Collector reached to the conclusion that the order of Janpad Panchayat was bad in law as it was ignoring the order of the preference made by the Gram Panchayat. The collector held that under the normal circumstances, it is the order of preference as recommended by the Gram Panchayat which has to be honoured while making the appointment. For both these reasons, the Collector allowing the appeal quashed the order of appointment issued in favour of respondent no.1 and ordered for issuance of appropriate order in favour of the eligible candidate. Respondent no.1 thereafter preferred an appeal before the Director Panchayat who thereafter

hearing all the parties to the dispute has passed the impugned order dated 27.02.2008 reversing the order of the Collector and sustaining the appointment of respondent no.1 as Anganbadi worker. It is this order which is under challenge in the present writ petition.

4. The contention of the petitioner is that the impugned order of the Director Panchayat Annexure P-1 is not sustainable for the reason that there is no justification or specific reason provided by the Director Panchayat while allowing the appeal and ignoring the claim of the petitioner. The petitioner further drew the attention of this Court to the recommendation Annexure P-4 made by the Gram Panchayat and the entries made therein. According to the petitioner, there was a categorical recommendation made by the Gram Panchayat in favour of the petitioner and the recommendation also specifically held that the general public did not approve the name of respondent no.1. Counsel for the petitioner further referred to the guidelines framed by the Project Officer, Integrated Child Development Project whereby guidelines were framed so far as the appointment of Anganbadi workers are concerned. In the said guidelines, one of the condition is that in case candidates are similarly placed so far as their eligibility is concerned then the order of preference provided by the Gram Panchayat should be kept in mind. According to the petitioner, respondent no.3 while issuing the order of appointment did not take this fact into consideration and therefore the order is bad in law. The petitioner further contended that the Collector while deciding the objection of the petitioner in respect of the appointment of respondent no.1 did take care of these facts and had passed a speaking and reasoned order and as such there was no scope of interference left.

5. Counsel appearing for respondent no.1, on the contrary, submits that it is in fact a discretion of respondent no.3 to select the most suitable candidate

among the recommendation made by the Gram Panchayat and in the process respondent no.1 was appointed. Therefore there can be no grievance to the order of appointment passed by respondent no.3 in favour of respondent no.1. It was the contention of the counsel for respondent no.1 that right from 2006 onwards respondent no.1 has been working and as such she has been put in considerable length of service with the respondents as an Anganbadi worker, therefore, at this juncture it would not be equitable to cancel her appointment at this late stage. It was further contention of the counsel for respondent no.1 that the order of appointment issued by respondent no.3 again was on the basis of the resolution passed by Janpad Panchayat, Pusaur which had recommended the name of respondent no.1 and as such, there is no illegality in the order of appointment issued in favour of respondent no.1. Thus, prayed for rejection of the writ petition.

6. Having heard the contentions put forth on the either side and on perusal of the record what is not in dispute from the factual matrix of the case as narrated above is that a recruitment process was initiated for filling up of various post of Anganbadi worker under Janpad Panchayat, Pusaur. The dispute in the present writ petition pertains to the appointment of Anganbadi worker for village Mohapali under Gram Panchayat Aamapali. The petitioner as well as respondents 1 & 2 had applied for the said village. Gram Panchayat scrutinized the case of all the three candidates and passed a resolution on 15.06.2006. In the resolution, the petitioner was recommended as the first candidate in the order of preference. Respondent no.2 was placed at serial no.2 and respondent no.1 was placed at serial no.3. It is also revealed from the said resolution that Gram Panchayat had shown its reluctance in appointing respondent no.1 for the said post. Annexure P-2 attached to the writ petition is an instruction given by the Project Officer,

Integrated Child Development Project, Pusaur dated 24.01.2006 wherein certain guidelines have been issued to be kept in mind while appointments of Anganbadi workers are made. Clause 6 & 7 of that guidelines spell out the manner in which appointment order has to be issued which for ready reference is reproduced hereinunder:

“6 - (1) आंगनबाड़ी कार्यकर्ता के चयन के समय आठवीं उत्तीर्ण उम्मीदवार को प्राथमिकता दी जावे। आठवीं पास महिला उपलब्ध न होने पर ही हायर सेकेण्डरी या मैट्रिक उत्तीर्ण की नियुक्ति दी जावे। ग्राम में उक्त योग्यता के उम्मीदवार प्राप्त नहीं होने पर ही कम पढ़ी-लिखी महिला की नियुक्ति की जा सकती है।

(2) यदि एक से अधिक महिलाएं समान शैक्षणिक योग्यता रखती हो तो निम्न क्रम में प्राथमिकता दी जावे : (अ) विधवा (ब) परित्यक्ता (स) अनुसूचित जाति/जनजाति के उम्मीदवार ।

7 - उम्मीदवार में स्थितियां सामान पाये जाने पर पंचायत के वरीयता क्रम को भी ध्यान रखी जावेगी।”

7. Admittedly, none of the candidates were either widow or deserted lady, neither was any of the candidates belonging to SC and ST category. In the said circumstance, if all the candidates were similarly placed, the recommendation or the order of preference made by the Gram Panchayat has to be given more weightage.

8. So far as the resolution of Janpad Panchayat, Pusaur is concerned, it is resolution dated 26.08.2006 so also in the order of appointment dated 19.09.2006 and at the same time even in the impugned order dated 27.02.2008, no justification, no reason whatsoever has been given to establish the fact that respondent no.1 was more suitable and more eligible than the petitioner. Likewise, in all the aforesaid three orders/resolutions, the authorities or the Janpad Panchayat have failed to disclose any reason why the order of recommendation made by Gram Panchayat is not to be

honoured with or why the order of recommendation made by the Gram Panchayat should be ignored or bypassed. If at all if it had to be done, there has to be cogent, strong and genuine reasons. In the absence of any cogent or genuine reason, the action of Janpad Panchayat in passing a resolution in favour of respondent no.1 and the respondent no.3 issuing an order of appointment ignoring the recommendation of the Gram Panchayat would be arbitrary and therefore bad in law.

9. Another aspect is the fact that even the Director Panchayat while deciding the appeal against the order of the Collector has not made any discussion as to how the finding of the Collector was bad in law which the appellate authority while scrutinizing the order of the Collector was incumbent to give reasons. The authority also failed to take note of the fact that even respondent no.2 Smt. Padmavati whose name was placed at serial no.2 had filed an objection to the appointment issued to respondent no.1 which too has not been taken note of by any of the authorities before recommending the name of respondent no.1. Once when it is found that the order of appointment issued in favour of respondent no.1 was at the outset to be bad in law or has been made in contravention to the guidelines framed by the department for appointment, merely because respondent no.1 was put in some years of service by itself would not condone the erroneous appointment of respondent no.1.

10. Similarly once when the order of appointment itself stands vitiated for the reason discussed in the preceding paragraphs, the wrongful or illegal appointment made cannot be permitted to be perpetuated further, even if in course of time the candidate has in between rendered service for some amount of time.

11. For the aforesaid reasons, the order of Director Panchayat Annexure P-1 dated 27.02.2008 is not sustainable and the same deserves to be and is accordingly set aside thereby affirming the order of the Collector dated 11.05.2007. The writ petition accordingly stands allowed affirming the order of the Collector dated 11.05.2007 with a direction that the concerned authority shall proceed further and pass an appropriate order in the light of the directions given by the Collector in Annexure P-6 dated 11.05.2007.

Sd/-
(P. Sam Koshy)
Judge