

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 765 of 2015**

Smt. Aarti Nirala W/o Shri Dujram Nirala Aged About 34 Years
Aanganbadi Worker At Village Malda (A) R/o Village Malda (A) P.S.
Kousir Janpad Panchayat Sarangarh Tahsil Sarangarh District Raigarh,
Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Principal Secretary Panchayat And Social Welfare Department, Mantralaya Mahanadi Bhawan, Naya Raipur, P.S. Rakhi District- Raipur, Chhattisgarh
2. The Commissioner Bilaspur, Division- Bilaspur Chhattisgarh
3. The Collector, Raigarh District- Raigarh Chhattisgarh
4. The Chief Executive Officer Janpad Panchayat Sarangarh, District- Raigarh, Chhattisgarh
5. Smt. Urmila Kure W/o Soukilal Kure R/o Village Malda (A) Tahsil Sarangarh District- Raigarh Chhattisgarh
6. Smt. Malti W/o Jodhan Sahu
7. Smt. Nandani Sahu W/o Uttara Sahu
8. Smt. Rina Bai W/o Gendran Ratre
9. Smt. Law Kumari W/o Kinkar Prasad Satnami

Respondents No. 6 to 9 are R/o. Village Malda (A) P.S.- Kousir Tahsil Sarangarh District- Raigarh, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Jitendra Nath Nande, Advocate
For State	:	Mr. Arvind Dubey, Panel Lawyer
For respective Respondents	:	Mr. Pallav Mishra, Advocate
		Mr. Neeraj Pradhan, Advocate on behalf of Mr. Gary Mukhopadhyay, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****19/09/2018**

1. The challenge in the present writ petition is to the two orders passed by the Collector (Annexure P/2) dated 06.07.2011 as also passed by the Commissioner (Annexure P/1) dated 18.02.2015.
2. Ignoring all the factual details, the brief facts relevant for adjudication of the dispute is that a recruitment process was initiated for filling up for the

post of Anganbadi worker in the year 2007. The petitioner and the other candidates had applied for the post of Anbanbadi worker for the Anganbadi Centre, Malda, under Janpad Panchayat Sarangarh in District Raigarh.

3. Initially the petitioner was granted an appointment vide Annexure P/3 on 14.09.2007. The respondent No.5 had immediately raised a complaint before the Sub-Divisional Officer, Sarangarh, so far as illegal appointment made in favour of the petitioner is concerned. The Project officer after conducting the inquiry gave an inquiry report on 24.12.2007, wherein it was held that the petitioner was rightly appointed and that the respondent No.5 was not eligible for appointment on account of the fact that her relatives were in employment.
4. Subsequently, the respondent No.5 is said to have preferred an appeal before the Collector, who has allowed the appeal and has set-aside the order of appointment of the petitioner and ordered for appointment of the respondent No.5 vide order dated 06.07.2011 (Annexure P/2). Thereafter the petitioner preferred a revision before the Commissioner. The Commissioner also vide Annexure P/1 rejected the revision petition vide impugned order dated 18.02.2015.
5. The appeal by the respondent No.5 stood allowed and which has further been accepted by the Revisional authority vide Annexure P/2 and P/1 respectively was on the ground that the alleged disqualification of the respondent No.5 on her relatives' being in employment found to be incorrect.
6. The finding of the Collector as well as by the Commissioner was that the so called relatives were in fact the children of the elder brother and the

younger brother of the father in law, who would not fall within the ambit of relatives as provided in the explanation clause under Section 40 of the Chhattisgarh Panchayat Raj Adhiniyam.

7. In view of the aforesaid factual matrix, the only issue now left to be considered is whether those persons can be termed to be the near relatives of the respondent No.5 calling for his disqualification for appointment to the post of Anganbadi worker.
8. Apart from the aforesaid alleged disqualification, there is no dispute to the fact that it was the respondent No.5, who was found to be most meritorious candidate, as she has scored 68% whereas the petitioner herein has scored only about 48%.
9. In the circumstances all that we have to ascertain is the fact, whether the two persons alleged to be the relatives of the respondent No.5 are in fact relatives within the definition of relatives as is envisaged under the provisions of the Panchayat Raj Adhiniyam. In this regard, it would be relevant at this juncture to refer to Section 40 of the Panchayat Raj Adhiniyam, 1993 (in short "the Act of 1993"). The relevant portion of Section 40 for adjudication of the present dispute is clause (c) to sub-section (1) of Section 40 and the explanation provided to clause (c). For ready reference, both clause (c) as well as the explanation is concerned, it is being reproduced herein under:

40. Removal of office-bearers of Panchayat. -

(1) xxxxxxxx

(a) xxxxxxxx

(b) xxxxxxxx

Explanation. - For the purpose of this sub-section "Misconduct" shall include-

(a) xxxxxxxx

(b) xxxxxxxx

(c) the use of position or influence directly or indirectly to secure employment for any relative in the Panchayat or any action for extending any pecuniary benefits to any relative, such as giving out any type of lease, getting any work done through them in the Panchayat by an office-bearer of Panchayat.

Explanation. - For the purpose of this clause, the expression 'relative' shall mean father, mother, brother, sister, husband, wife, son, daughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law.

10. The plain reading of the explanation clause reveals that by the term “relative” under the Act of 1993, the legislatures intended that it shall mean either, father, mother, brother, sister, husband, wife, son or daughter of the candidate. In addition, the explanation also held the mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law and the daughter-in-law also as a relative of a candidate, which in other words means that apart from the aforementioned relatives, both on the parental side as also from the in-laws side, there is no prohibition under the Rules by which any other relatives could be brought within the ambit of explanation of clause (c) of Section 40 for disqualifying a candidature. What is necessary to take note of is that the legislature has deliberately excluded the Grand Parents from the list of relative. This itself means there is a deliberate exclusion which in other words means that other than those relatives who have been disclosed in the Explanation will not have an adverse impact so far as the employment on the post of Anganbadi Worker is concerned.

11. In the light of the aforesaid statutory provisions what is relevant at this juncture is that the only objection, which the petitioner seems to have raised against the respondent No.5 is that two of their relatives were already in employment and therefore under the provisions of explanation to Section 40 clause (c), the respondent No.5 would be disqualified from holding the said post. The two persons, who were referred to by the petitioner as the relatives of the respondent No.5 were undisputedly, the son of the elder brother of the father-in-law and also the son of the younger brother of the father-in-law. This by itself establishes the fact that the so called relatives of the respondent No.5 are not the children of the father-in-law, but are the children of the two brothers of the father-in-law. It is this relationship, the petitioner intended to be brought or covered under the explanation to clause (c) of Section 40 and in support of his contention, the petitioner relied upon the three judgments i.e. **2007(3) MPHT (Chhattisgarh) Bholaram Verma vs. State of Chhattisgarh and Ors., 2009(2) MPHT 69 (C.G.) Savita Manoj Kumar (Smt.) vs. State of Chhattisgarh and Ors. and 2014(4) CGLJ 291 Rampati vs. State of Chhattisgarh.**
12. The plain perusal of the facts of all three judgments quoted herein above and which was relied upon by the petitioner would show that the relationship on account of which the disqualification was challenged were those relationship, which were referred to in the explanation to clause (c) of Section 40 and therefore those judgments are distinguishable on its facts itself and cannot be equated with the facts of the present case.
13. However the Division Bench of the State of Madhya Pradesh in **2005(1) MP Weekly Notes page 111** in the case of "**Jamnabai Mehra (Smt.) v.**

State of M.P.” dealing with the *pari materia* provisions applicable in the State of Madhya Pradesh dealing with a similar situation has held as under:-

“The term 'relative' necessarily should have a definite meaning and can not refer to distant relatives. We may take note of the fact that in villages, each person belonging to a particular caste or community will in a distant manner be able to trace a relationship to virtually every other member of that community/caste. If the term 'relative' is to be used in the broadest manner without any boundaries or limitations, it will lead to absurd results and make the provisions of the relevant Acts and scheme unworkable. We are therefore of the view that the definition of the term 'relative' in the cognate provisions of the statute should be borrowed for understanding the limitations of the word 'relative'. We therefore, hold that the terms 'relative' in the scheme for appointments of Anganwadi Karyakartas/ Assistants, in the absence of a specific definition, refers only to the father, mother, brother, sister, husband, wife, son, daughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law and daughter-in-law but it does not include uncle-in-law and co-sister of mother-in-law. In the aforesaid circumstances, the learned Single Judge has rightly directed the case of fourth respondent to be reconsidered by the Collector.

14. Again the Division Bench of the Madhya Pradesh High Court while hearing another writ appeal i.e. **WA No. 828/2012 (Narendra Kumar v. State of Madhya Pradesh)** in paragraph No. 6 & 7 has held as under:

“6. Under Section 69 of MP Panchayat Raj Gram Swaraj Adhiniyam 1993, "uncle" does not come under the definition of relative. Section 69 defines relative to mean a father-mother, brother-sister, husband-wife, son-daughter, father in law - mother in law.

7. That apart there is no prohibition in the rules or the scheme for appointment to show that the candidature of any candidate can be rejected if his close relative uncle was an officer of Gram Panchayat.”

15. Given the aforesaid facts and circumstances and also the legal position as is stands on the basis of the two judgments of the Madhya Pradesh High Court referred to in the preceding paragraphs, this Court has no hesitation in reaching to the conclusion that only because the children of the brothers of the father-in-law are in employment, by itself cannot be a disqualification from being considered for appointment to the post of Anganbadi worker.
16. On the anvil of the explanation to clause (c) of Section 40, it can be safely concluded or reached to the conclusion that there is no bar for a candidate from being considered, if some of their distant relatives or the relatives who are not specified in the explanation to clause (c) of Section 40 are in employment.
17. Under the aforesaid facts, the respondent No.5 thus cannot be held to be disqualified from being appointed as an Anganbadi worker and in view of the same, this Court does not find any strong case made out by the petitioner calling for an interference with the findings arrived at by the Collector dated 06.07.2011 and which has been affirmed by the Commissioner dated 18.02.2015.
18. The writ petition thus being devoid of merits deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge