

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 1026 of 2008**

Santoshi Bai Sidar W/o Shri Rohit Kumar Sidar, aged about 26 years, Caste Sanwra, R/o village Singhanpur Gram Panchayat Khursi, Janpad Panchayat Sarangrh, Tahsil Sarangarh, District Raigarh, CG

---- Petitioner**Versus**

1. State of Chhattisgarh through its Secretary, Department of Women & Child Development, DKS Bhawan, Raipur, CG
2. The Director (Panchayat), Chhattisgarh, Raipur (CG)
3. The Collector (Women & Child Development) Raigarh (CG)
4. The Chief Executive Officer, Janpad Panchayat Sarangarh, District Raigarh (CG)
5. District Programme Officer, Department of Women and Child Development, Raigarh, District Raigarh (CG)
6. Project Officer, Edikrit Bal Vikas Seva Pariyojana, Sarangarh District Raigarh (CG)
7. Smt. Anita Sidar W/o Shri Kanhaiya Sidar, R/o village Singhanpur, Tahsil Sarangarh District Raigarh (CG)

---- Respondents

For Petitioner	:	Shri Pallav Mishra, Advocate
For Respondent/State	:	Shri Majid Ali, Dy. Govt. Advocate
For Respondent no.7	:	Shri Raghvendra Pradhan, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board**

28.08.2018

Challenge in the present writ petition is to the order of the Director Panchayat passed on 12.12.2007 Annexure P-14.

2. Brief facts of the case are that respondent no.4 had issued an advertisement on 05.01.2006 for filling up the post of Anganwadi worker at village Singhanpur under Janpad Panchayat, Sarangarh. After the selection process was over, respondent no.7 was issued with an appointment order on 26.10.2006 Annexure P-6. The petitioner who had also applied for the said post being aggrieved of the appointment given to respondent no.7 filed an objection/complaint to the Collector and the Chief Executive Officer, Janpad Panchayat, Sarangarh specifically alleging that respondent no.7 who has been granted appointment was in fact not eligible/entitled for appointment on the ground that a couple of her close relatives are in Govt. employment. The Collector got the matter enquired by the Project Officer, Integrated Child Development Project Sarangarh. The Project Officer found the guidelines framed by the State Govt. for appointment of Anganwadi workers have not been followed while granting appointment to respondent no.7 and vide its order dated 03.02.2007 ordered for cancelling the appointment given to respondent no.7 along with other Anganwadi workers who were appointed in violation to the guidelines framed by the Department. The authorities thereafter also ordered for fresh recruitment of Anganwadi workers for village Singhanpur. Meanwhile, respondent no.7 preferred an appeal before the Director Panchayat. However, while preferring the appeal, respondent no.7 deliberately did not implead the petitioner as a party to the appeal. The Director Panchayat proceeded to decide the appeal and allowed the

same vide order dated 12.12.2007 setting aside the order passed by the Project Officer on 03.02.2007 and thereby ordering the appointment to be given to respondent no.7. It is this order which is under challenge in the present writ petition.

3. This Court vide its order dated 18.02.2008 had stayed the effect and operation of the order of the Director, Panchayat and also the order dated 05.01.2008 Annexure P-13.

4. Counsel for the petitioner assailing the impugned order passed by the Director Panchayat submits that the impugned order is bad in law on account of non-joinder of necessary party. According to the petitioner, once when on the complaint instituted by the petitioner the Collector and the Project Officer has taken cognizance of the complaint and reached to the conclusion that the order of appointment to respondent no.7 was wrong, the respondent no.7 while filing the appeal was supposed to implead the petitioner also as a party to the proceeding so that the petitioner could have got a fair opportunity to represent in the appeal and to put forth her defence if any. Not impleading the petitioner in the appeal and the Director Panchayat also not taking this aspect, the petitioner has been adversely prejudiced in the process of the appeal being decided. It is contention of the petitioner that she had specifically brought before the authority concerned the details of the relatives of respondent no.7 who were in government employment and the authority concerned should have in fact conducted an enquiry whether these relatives were in Govt. employment or not, in stead of asking the petitioner to have produced the substantial documentary proof to establish the employment as well

as the relationship. On this ground also the impugned order is bad in law. Counsel for the petitioner further submits that along with the present writ petition the petitioner has filed a couple of affidavits filed by the villagers who have in very categorical terms made averments that the relatives of respondent no.7 were in Govt. employment at the relevant point of time.

5. Per contra, counsel appearing for respondent no.7 trying to justify the impugned order submits that firstly the petitioner does not have any locus to challenge the appointment of respondent no.7. According to respondent no.7, the original order dated 03.02.2007 i.e. the cancellation of the appointment order of respondent no.7 was itself by an authority who is not otherwise conferred any power under the Statute. It was contended that the said Project Officer does not seem to have conducted any detail enquiry in respect of the allegations levelled by the petitioner in her complaint. Moreover, respondent no.7 has produced ration card enclosed along with her return to justify the fact that those relatives whose name has been reflected by the petitioner are living separately and are independent persons unconnected with respondent no.7. Further that those persons would also not fall within the purview of relatives of respondent no.7 as has been envisaged in the guidelines framed by the State Govt. It was the further contention of respondent no.7 that the caste of the petitioner also has not been established which could entail her for the post of Anganwadi worker without which the petitioner could not have got an employment. Therefore the entire exercise becomes futile as she herself would not be eligible for employment as the caste to which the

petitioner belongs does not fall within the category of Scheduled Caste as per the notification issued by the Govt. in this regard.

6. So far as the State is concerned, it was the contention of the State counsel that the issue involved has been dealt with by the competent authority in accordance with the provisions of law, therefore, it does not require much interference. However, State counsel fairly admits the fact that the petitioner was not made a party in the appeal which was filed by respondent no.7 before the Director Panchayat and the appeal having been decided behind the back of the petitioner particularly when it was the petitioner who had filed a complaint objecting to the appointment issued in favour of respondent no.7.

7. Considering the submissions put forth on either side and on perusal of records, the factual matrix which is not in dispute is the advertisement, the date of appointment of respondent no.7, the complaint lodged by the petitioner to the Collector and the Collector authorizing the project officer to enquiry into the matter and pass a suitable order, and finally the Project Officer ultimately passing an order on 03.02.2007 cancelling the appointment of respondent no.7. It is also not in dispute that respondent no.7 has assailed the order dated 03.02.2007 before the Director Panchayat. In the appeal also it is not in dispute that the petitioner has not been made a party though respondent no.7 was fully aware that the entire proceeding drawn by the Project Officer or the Collector was on the complaint of the petitioner on whose complaint the entire exercise had started.

8. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that the proceeding drawn by the Director Panchayat suffers from non-joinder of necessary party as the petitioner was a necessary party to the appeal preferred by respondent no.7 as it was the petitioner who had filed an objection against the appointment of respondent no.7 specifically raising certain allegations and on whose complaint, the order of appointment of respondent no.7 was cancelled. Had the petitioner been made a party in the appeal, she could have also produced material documents if any before the Director Panchayat for establishing her case. In the absence of which, the finding of the Director Panchayat that there was no material to show that the relatives of respondent no.7 were in Govt. employment is not sustainable.

9. Be that as it may, once when the State Govt. has framed specific guidelines in respect of the parameters or the factors which have to be taken note of while appointing Anganwadi workers, it was incumbent upon the authorities to ensure that those guidelines are strictly adhered to. In the event of a complaint being lodged in respect of certain appointment, the least that was expected from the authority is to ensure that the nature of complaint or the allegation put forth is enquired into and only after an enquiry could an order be passed.

10. In the instant case, prima facie, it appears that the Project Officer had considered the contentions of the petitioner and conducted an enquiry and that enquiry was not just confined to the case of only respondent no.7 but the enquiry was in respect of the whole lot of Anganwadi workers who were appointed vide the said recruitment. Vide order dated 03.02.2007 the Project Officer had cancelled the

appointment of a large number of persons including respondent no.7. Under such circumstances, the Director Panchayat when hearing the appeal of respondent no.7 ought to have considered as to whether the allegations levelled or the findings of the Project Officer were proved or established. The Director Panchayat also could have collected proof to ascertain whether the details of the relatives which have been provided were in fact the relatives of respondent no.7 or not and could have also enquired whether those persons were in Govt. employment or not. This perhaps could have settled the entire dispute. In the absence of any such exercise done and the finding of the Director that there was no material available on record seems to be too bald a decision and appears as vague as it could be. The impugned order therefore is not sustainable and deserves to be and is accordingly set aside/quashed. The matter stands remitted back to the appellate authority where the respondent no.7 shall implead the petitioner as a necessary party. The Director Panchayat would thereafter proceed and decide the appeal in accordance with the rules also taking note of the guidelines framed by the State Govt. in this regard and after giving due opportunities to the parties. Needless to mention that the Director Panchayat, if necessary, would enquire whether at the time of issuance of appointment order to respondent no.7 her relatives were in Govt. employment or not.

11. Since the petitioner is till date continuing the work as Anganwadi worker by virtue of the interim protection by this Court, the status of the petitioner would not be disturbed till the appeal is finally decided by the appellate authority.

12. With the aforesaid observation, the appeal stands allowed and disposed of.

**Sd/-
P. Sam Koshy
Judge**

Bhola