

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 3660 OF 2009**

Smt. Lalita Bai, W/o Pawan Kumar Tandon, aged about 25 years, R/o Village- Suarmar, Post- Komakhan, Tahsil & Police Station- Bagbahara, District Mahasamund (CG) **... Petitioner**

versus

1. State of Chhattisgarh, through its Secretary, Woman and Child Development Department, D.K.S. Bhawan, Raipur, District Raipur (CG)
2. The Director, Panchayat, Raipur, District Raipur (CG)
3. The Additional Director, Mahamasamund, District Mahasamund (CG)
4. The District Programme Officer, Woman and Child Development Department, Mahasamund, District Mahasamund (CG)
5. The Project Officer, Child Development, Bagbahra, Janpad Panchayat Bagbahra, District Mahasamund (CG)
6. The Chief Executive Officer, Janpad Panchayat Bagbahra, District Mahasamund (CG)
7. Smt. Bhekh Bai, W/o Jaichandra and D/o Nehru Satnami, R/o Suarmal, Post- Komakhan, Tahsil & Police Station- Bagbahra, District Mahasamund (CG) **... Respondents**

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- Mr. V.K. Pandey and Ms. Neha Verma, Advocates, for the Petitioner.
 - Mr. Ratan Pusty, Govt. Advocate, for Respondents No. 1 to 6.
 - Mr. Ravindra Sharma, Advocate, for Respondent No.7.
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Hon'ble Shri Justice P. Sam Koshy**Order on Board****29/10/2018**

1. Challenge in the present writ petition is to the order dated 13.7.2009 passed by the Director Panchayat, Raipur in Revision Case No. 41-A/89/2008-09.
2. Brief facts of the case are that an advertisement was issued on 14.3.2006 for filling up of the post of Anganwadi worker. The petitioner as well as respondent no.7 had applied for the post of Anganwadi worker for Anganwadi Centre under Gram Panchayat Suarmal, Janpad Panchayat Bagbahra, District Mahasamund. Initially, the respondent-State had appointed the petitioner vide order dated 8.2.2007 and the petitioner joined the duties on 14.2.2007. Respondent no.7 in the present writ petition filed an objection before the Collector against the appointment of the petitioner and the Collector vide order dated 16.6.2008 in Appeal No. 42-A/89/2006-07

allowed the appeal of respondent no.7 and held that the petitioner has been wrongly granted the appointment and had set aside the appointment of the petitioner. The petitioner immediately preferred a revision petition before the Director Panchayat, Raipur where the case was registered as Revision Case No. 41-A/89/2008-09. The Director Panchayat also taking into consideration the entire facts and circumstances of the case vide the impugned order dated 13.7.2009 rejected the revision of the petitioner, affirming the order passed by the Collector.

3. It is this order which has been put to challenge by the petitioner in the present writ petition.

4. The contention of the counsel for the petitioner is that respondent no.7 was not eligible for participation in the recruitment process for Anganwadi worker for the reason that on the date of advertisement the respondent no.7 does not have minimum age that was required for applying for the post. According to the petitioner, respondent no.7 had not attained the age of 18 years on the date of advertisement and therefore the order passed by the authorities concerned is not sustainable and she could not have either participated in the recruitment nor could she have objected to the petitioner's candidature for the said post. It was also the contention of the petitioner that respondent no.7 also was not eligible for the said post as her name did not reflect in the voter-list of the concerned area which also went against the respondent no.7. It was the further contention of the petitioner that even otherwise the respondent no.7 was more qualified than the petitioner and as per the circular/guidelines framed by the department, the priority should have been given to candidates having 8th pass and not with higher qualification and on this ground also the claim of respondent no.7 could not have been considered and thus prayed for the setting aside of the same.

5. Counsel for the State as well as the counsel for respondent no.7 opposing the petition submits that in the advertisement dated 14.3.2006 there was no cut off date that was provided determining the age for applying for the post. According to the respondents, since there was no cut off date provided then it has to be presumed that the last date of filling up of the application would be the cut off date for determining the age and before the last date of filling up of the post of application itself the respondent no.7 had attained the age of majority and therefore she was fully eligible for the said post. It was also the contention of the respondents that the order of the Collector so also that of the Director Panchayat is a reasoned order and that there was no scope of interference by this Court under writ jurisdiction.

6. According to the counsel for the respondents, the finding of the Collector would clearly reflect that the petitioner's name did not reflect in the voter-list either and the petitioner was also not able to provide the proof of her being a candidate under below poverty line and the documents which were relied upon by the petitioner were all those documents which were obtained subsequent to the advertisement being published, therefore, the same would not come to the rescue of the petitioner.

7. Having heard the contentions put forth on either side and on perusal of record, undisputedly, the date of birth of respondent no.7 is 26.3.1988 and as such the respondent no.7 attained the age of majority on 25.3.2006. As per the advertisement, the last date for applying for the said post was 27.3.2006. Thus, this Court has no hesitation in reaching to the conclusion that before the last date of filling up of the application as per the advertisement, the respondent no.7 did attain the age of majority. It is settled position of law by now where it has been repeatedly held that in case if there is no cut off date provided in the advertisement so far as determining the age is concerned it would be the last date of filling up of the application

which will be crucial for deciding the age. In the instant case also since the advertisement neither did the regulations which were applicable then provided any sort of cut off date for determining the age, in the absence of which it has to be presumed that the age has to be determined as per the last date for filling up of the application, which in the instant case was 27.3.2006. Since the respondent no.7 had attained the age of majority before the last date of advertisement, the claim of respondent no.7 could not have been rejected only on this ground.

8. So far as the objection of the petitioner as regards the name of respondent no.7 not being included in the voter-list is concerned, firstly it was not a requirement under the advertisement or the guideline and secondly since the respondent no.7 has attained the age of majority only 25.3.2006, there could not have been a possibility of his name being reflected in any of the voter-list before attaining age of majority. Merely because his name is not reflected in the voter-list itself would not be a ground of his candidature being rejected. Moreover, what is also pertinent to take note of the fact is the resolution of the Gram Panchayat which had initially in fact recommended the case of respondent no.7 for appointment. However, subsequently, the Janpad Panchayat while issuing the order of appointment had issued it in favour of the petitioner.

9. Prima facie, this Court is of the opinion that the finding of the two authorities below does not seem to be in any manner perverse or contrary to the rules/regulations governing the field. However, it would be relevant that since both the orders i.e. the order passed by the Collector as also the Director Panchayat are silent as to the relief which could be given to respondent no.7, this Court is inclined to dispose of the writ petition with a direction that the authorities concerned will scrutinize the eligibility of respondent no.7 also and pass a fresh order taking into consideration the

credentials of the petitioner vis-a-vis the credentials of respondent no.7 as on the date when the scrutiny of the candidates was done by the Gram Panchayat.

10. So far as the present writ petition is concerned, we find that the petitioner has not been able to produce sufficient material to set aside or quashed the order passed by the Collector as also the Director Panchayat. Given the said fact, it is ordered that the case of the petitioner as well as respondent no.7 shall be reconsidered in the light of the observations made in the preceding paragraphs.

11. Considering the fact that the recruitment is of the year 2006 and the present writ petition is of the year 2009, it is expected that the authorities concerned would take a decision at the earliest preferred within a period of 90 days.

12. The writ petition accordingly stands disposed of.

Sd/-
(P. Sam Koshy)
Judge