

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.6348 of 2011**

Sarita W/o Vyas Narayan Kurmi, aged about 25 years, occupation Aangan Badi Worker at Mahila Bal Vikas, Pakariya (Julan), R/o Village Palariya Tahsil Akaltara Distt. Janjgir Champa (CG).

---- Petitioner**Versus**

1. State Of Chhattisgarh through Secretary, Department of Rural and Urban Administration, DKS Bhwan, Mantralaya Raipur (CG).
2. The Commissioner Bilaspur Division, Bilaspur (CG).
3. The Collector Janjgir Champa (CG).
4. Integrated Child Development Project Pamgarh Distt. Janjgir Champa (CG).
5. Gram Panchayat Pakariya through its Sarpanch, Village Pakariya, Tehsil Akaltara Distt. Janjgir Champa (CG).
6. Chief Executive Officer Janpad Panchayat Akaltara Distt. Janjgir Champa (CG).
7. Shyam Devi W/o Lt. Shyam Kurmi R/o Village Pakariya Tah. Akaltara Distt. Janjgir Champa (CG).

---- Respondents

For Petitioner	:	Shri Malay Shrivastava, Advocate.
For State	:	Ms. Sunita Jain, Panel Lawyer.
For Respondents 1 to 6	:	Shri Utsav Mahishwar, Advocate.
For Respondent No.7	:	Shri Deepak Kumar Singh, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**JUDGMENT****Delivered on 24/09/2018**

1. The challenge in the present writ petition is to Annexure P/1 dated 11.10.2011 passed by the Additional Commissioner, Bilaspur Division whereby the Commissioner has set aside the order of the Collector, Janjgir Champa dated 30.06.2009 (Annexure P/3).
2. The brief facts in nutshell is that a recruitment process was initiated for filling up of the post of Angan Badi worker for Gram Panchayat,

Pakariya, Tehsil Akaltara, Janjgir Champa. The Gram Panchayat after scrutinizing the claims of the respective candidates who had applied, found the petitioner to be most suitable candidate. Accordingly, the Gram Panchayat made a recommendation of the petitioner for appointment as Angan Badi Worker for village Pakariya vide order dated 02.04.2008 and on which the petitioner gave her joining on 07.04.2008.

3. The respondent No.7-Shyama Devi raised an objection and filed an appeal against the appointment of the petitioner before the Collector. The Collector, after thorough scrutiny of the entire factual matrix of the case and also taking into consideration the contentions raised by the respondent No.7, vide order dated 30.06.2009 (Annexure P/3) dismissed the appeal. This order of the Collector dated 30.06.2009 was put to challenge by the respective No.7 in a revision before the Commissioner, Bilaspur Division. The Additional Commissioner, vide order impugned dated 11.10.2011 interfered with the same and held the finding of the Collector to be unsustainable and set aside the order of Collector and further ordered that it was the respondent No.7 who should have been granted preferential advantage on account of the fact that she was a widow and in the process the Commissioner allowed the revision preferred by the respondent No.7. It is this order which is under challenge in the present writ petition.
4. This court while hearing the petition on admission on 21.10.2011 has granted interim protection to the petitioner by virtue of which she is still continuing her duties as Angan Badi Worker for village Pakariya.

5. The contention of the petitioner is that the finding of the Commissioner supporting the claim of the respondent No.7 is totally baseless without sufficient cogent materials and as such is a perverse finding. Infact the materials which were brought on record clearly reflected that the respondent No.7 was not a resident of village Pakariya, but was a resident of different village. The petitioner referred to the resolution of the Gram Panchayat which had scrutinized the claim of all the aspirants who had applied and in the course they found that the name of the petitioner at serial No.17 and that she was also found to be Below Poverty Line and further her name was also reflected in the voter list to establish that she was a resident of village Pakariya. Whereas, vide the same resolution the Gram Panchayat was of the view that the respondent No.7 admittedly was widow but was not a permanent resident of Pakariya village.
6. According to the petitioner, no specific justification has been given by the Commissioner while brushing aside the recommendations of the Gram Panchayat. The respondent No.7 had not produced any cogent material by which she could claim herself to be a resident of village Pakariya. The respondent No.7 was married and had started living at her matrimonial home and that she still has got property at her matrimonial home which is being taken care of by herself. It was also the contention of the petitioner that in the subsequent voter list which was prepared in the year 2009 also the name of the respondent No.7 was found to be reflected therein showing her to be a resident of village Konar which further establishes the fact that she was not a

resident of village Pakariya, but was a resident of village Konar dis-entitling the claim of the respondent No.7 seeking employment.

7. The petitioner further relied upon certain revenue records which would also show that it was the name of the respondent No.7 which is reflected against different properties situated at village Konar. Above all, the contention of the petitioner is that once when Gram Panchayat was of the view that the respondent No.7 was not a resident of village Pakariya, there was no further extra cogent documents produced by the respondent No.7 to disprove the said version and also to establish that the findings made by the Collector was bad in law. Therefore, prayed for setting aside of the order of the Commissioner and further prayed for upholding the order of the Collector, so also the appointment order be given in favour of the petitioner.
8. The counsel for the formal respondents No.1 to 6 substantially tried to defend their action so far as the appointment of the petitioner is concerned. However, per contra the counsel for the respondent No.7 referring to the finding of the Commissioner tried to justify the impugned order Annexure P/1 saying that the Commissioner has rightly considered the objections and contentions which the respondent No.7 had raised before the Commissioner assailing the order of Collector. According to respondent No.7, since she was a widow she ought to had been granted preference and it is this what has been observed by the Commissioner while setting aside the order of Collector.

9. According to respondent No.7, she was originally a resident of village Pakariya and it is only for a brief period of her married life with Shyam Kurmi that she had stayed at her matrimonial home i.e. at village Konar. That the Husband of the respondent No.7 had died after a brief period of married life and thereafter the petitioner came back and started staying at village Pakariya which was her parental village. Thus, she once again became a resident of village Pakariya and could therefore apply for the said employment and therefore prayed for the rejection of the petition and the respondent No.7 be declared selected on the post of Angan Badi Worker for village Pakariya.
10. Having heard the contentions put forth on either side and on perusal of record, what clearly reflects is that the petitioner and the private respondent both had applied for the post of Anganbadi Worker for village Pakariya and the petitioner was placed at serial No.21, whereas the respondent No.7 was placed at serial No.25, that means in the order of preference the petitioner's claim was placed ahead of the respondent No.7.
11. The petitioner was granted appointment vide order dated 02.04.2008, on the basis of which the petitioner gave her joining also on 07.04.2008 and since then the petitioner continues in service till date. The respondent No.7 had challenged the appointment of the petitioner only on the ground of her being widow and as per the guidelines for appointment of the Anganbadi Worker, the widows have to be given preferential treatment. The appeal was preferred to

the Collector and the Collector after due scrutiny of the entire documents and the contentions raised by the respondent No.7 as also on perusal of the documents filed at the time of the appointment, reached to the conclusion that there was no merit on the objection raised by the respondent No.7 and had also reached to the conclusion that the respondent No.7 in fact was no longer a resident of village Pakariya and therefore she did not have much right for the said post and thus had rejected the objection/appeal preferred by the respondent No.7. It is this judgment which has been reversed by the Additional Commissioner in the second appeal preferred by the respondent No.7 vide the impugned order Annexure P/1). The Additional Commissioner has reached to the conclusion that subsequent to the death of the husband of the respondent No.7 she had started living in village Pakariya and since her husband had expired, she had a preferential right of being a widow.

12. The crux of the order of the Additional Commissioner is that the respondent No.7 after the death of her husband had been staying at village Pakariya thereafter. Hence all that this Court has to see is whether the said finding of the Additional Commissioner was justified or not or whether it is based on any strong and cogent evidence. It would be relevant at this juncture to refer to the resolution of the Gram Panchayat Pakariya in respect of the appointment of the Anganbadi Workers and as per the resolution dated 03.08.2006, the recommendation of the Gram Panchayat so far as the petitioner is concerned was that her name existed in the voter list in the village

and her name was also registered below the poverty line (as a BPL candidate) and the Gram Panchayat so far as the claim of respondent No.7 is concerned, has accepted the fact that she was a widow, but the Gram Panchayat resolved that she was not a permanent resident of village Pakariya.

13. Now to find out whether the finding of the Gram Panchayat was correct or not, the voter list for village Konar has been enclosed along with the petition for the year 2011 and in the said voter list, the name of the respondent No.7 has been entered at serial No.633. The said voter list is of a period immediately after the recruitment process had been concluded, which would establish the fact that she was still a resident of village Konar. This reference of the voter list sufficiently establishes the fact that the respondent No.7 was not a permanent resident of village Pakariya, nor was she residing in village Pakariya for the last many years. Moreover when we look into to the order of the Additional Collector dated 30.06.2009, it reflects that the Collector had in fact conducted a roving inquiry so far as the entitlement of the respondent No.7 is concerned, and it was found by the Collector that even in the voter list for the year 2004, the name of the respondent No.7 appears as a voter for village Konar, whose name appeared at serial No.560. Moreover, the document on the basis of which the respondent No.7 wanted to prove her domicile at village Pakariya i.e. the Ration Card, which the respondent No.7 had produced, also was not a cogent document, which could be accepted as it did not bare the signature of the head of the family, neither it had the signature of

the Ration Shop, nor did it had the signature of any authority or the panchas, who had issued the same, neither it had the signature of even the Sarpanch.

14. Thus for all the aforesaid reasons, this Court is of the opinion that the finding of the Additional Commissioner setting aside the order of Collector does not seem to be justified or had sufficient material or reasons for setting aside the same. On the contrary, the voter list for the year 2004 and for the year 2009 bearing the respondent No.7, itself is a sufficient document, with which it could be easily said that the respondent No.7 was not a permanent resident of village Pakariya.
15. The finding of the Additional Commissioner thus is not sustainable and the same deserves to be and is accordingly set-aside affirming the order of the Collector dated 30.06.2009 with consequences to follow.
16. Since the petitioner by virtue of an interim order granted by this Court on 21.10.2011 has been continuing in service, no further direction needs to be issued in this regard.
17. The writ petition accordingly stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge