

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 345 of 2013

Rugni Bai W/o Kanhai Ram, aged about 26 years, R/o village Maheshpur, Post Bataikela, Police Station Sitapur, Tahsil Sitapur (At present Batouli), District Surguja (C.G.).

---Petitioner

Versus

1. The State of Chhattisgarh, Through : the Secretary, Women and Child Development Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.).
2. The Collector, Surguja at Ambikapur, District Surguja (C.G.).
3. Chief Executive Officer, Janpad Panchayat Batouli, P.S.Batouli, District Surguja (C.G.).
4. Project Officer, Women and Chief Development Department, Batouli, District Surguja (C.G.).
5. Kanti W/o Manmohan Singh, R/o Village Maheshpur, Post Bataikela, Police Station Sitapur, Tahsil Sitapur (At present Batouli), District Surguja (C.G.).

---Respondents

For petitioner	:	Shri A.K.Prasad, Advocate.
For State	:	Shri Shashank Thakur, Government Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18/07/2018

1. The challenge in the present Writ Petition is to the order Annexure-P/1 dated 03/12/2012 passed by the Commissioner, Sarguja (C.G.) whereby it has been held that, the order of appointment of the petitioner made by the District Project Officer on 13/01/2006 is said to be erroneous.
2. According to the Commissioner, the respondent No.5 was the candidate who has scored more marks than the petitioner and therefore she was more

meritorious and entitled for being appointed on the post of Angan Badi Worker for the village Maheshpur, Tahsil Sitapur, District Surguja (C.G.).

3. This Court while entertaining the Writ Petition on 11/02/2013 had ordered for issuance of notice to the respondents along with the permission to make dasti service.

4. In spite of services been made upon the respondents, none appears on behalf of the respondent No.5 before this Court and therefore on 15/03/2013, this Court had granted an interim protection to the petitioner to the extent of effect and operation of the impugned order passed by the Commissioner being stayed.

5. By virtue of the interim protection given by this Court on 15/03/2013, the petitioner is till date discharging her duties of Angan Badi Worker at village Maheshpur.

6. In spite of notice and the matter being pending before this Court for almost 5 years, the respondent No.5 till date has not entered appearance, nor has she engaged a person to represent on her behalf to defend her case.

7. Thus, this court forced to proceed further and decide the matter with the presence of the counsel for the petitioner and with the available documents which has been brought on record by the petitioner.

8. The contention of the counsel for the petitioner is that, the finding of the Commissioner in the impugned order Annexure-P/1 dated 03/12/2012 is erroneous and without any basis. He submits that, the only ground of setting

aside of the appointment of the petitioner was that, the respondent No.5 had scored more marks than the petitioner in the selection process and therefore, the petitioner's appointment was bad in law. This according to the counsel for the petitioner is erroneous in the light of the document Ex-P/2 wherein the marks which have been allotted to each of the candidates reflect that the petitioner had scored 231 marks out of 500 which come to 46.27% and the respondent No.5 had scored 272 marks out of 600 which come to 45.33% and thus it was the petitioner who had more marks than the respondent No.5 and therefore the finding of the Commissioner in this regard is bad in law.

9. In addition, the counsel for the petitioner has raised two more objections so far as the claim of the respondent No.5 not been worth entertaining for the reason that the appeal which the respondent No.5 at the first instance was filed was itself beyond the permissible period of limitation of 30 days as is envisaged in provision of Rule-4 of the Panchayat (Appeal and Revision) Rules, 1995 where the limitation period prescribed is 30 days.

10. He further submits that, the order of appointment in favour of the petitioner was issued on 13/01/2006 and the appeal preferred by the respondent No.5 for the first time was on 27/02/2007 i.e. much after 13 months from the date of appointment and therefore the authorities concerned should have first considered the limitation aspect as to whether the objection/appeal preferred by the respondent No.5 before the authorities concerned was maintainable or not or whether it was barred by limitation.

11. He further submits that, even the Commissioner has not dealt with the issue of delay while deciding the appeal.

12. The second objection which the counsel for the petitioner raises is that, as per the guidelines which have been issued for the appointment to the post of Angan Badi Worker dated 02/04/2008, clause 1.9 of the said guidelines clearly stipulates that, in the event of the candidates belonging to the SC/ST category, they would be required to furnish a duly issued caste certificate from the competent authority of the State Government and which is mandatory.

13. According to the counsel for the petitioner, the respondent No.5 though belonged to the said category has not produced certificate from the competent officer, rather she had got the certificate prepared from the office of the Sarpanch and on this ground also, the claim of the respondent No.5 was liable to be rejected.

14. In the absence of any rebuttal on part of the respondent No.5 to the aforesaid objection and contention which the petitioner has raised, this Court finds it difficult to disbelieve the averments and the documents which the petitioner has brought on record.

15. Annexure-P/2 is a document which is prepared by the Gram Panchayat, Maheshpur wherein the details of all the candidates who had applied is reflected and between the petitioner and the respondent No.5 it reflects that, the petitioner had scored 231 marks out of 500 and the respondent No.5 had scored 272 marks out of 600. This means that the percentage of marks

scored by the petitioner was 46.27 and the percentage of marks obtained by the respondent No.5 was 45.33.

16. Now, how the Commissioner has reached to the conclusion that the petitioner had scored less marks than the respondent No.5 is not clearly reflected from the impugned order, nor is there any document to proof to substantiate the same. On the contrary, there is Ex.P/2 produced by the counsel for the petitioner which supports the claim of the petitioner who from the record it appears to have scored more marks than the respondent No.5.

17. So far as the limitation aspect is concerned, neither the Additional Collector while considering the appeal preferred by the respondent No.5 in his order dated 25/02/2011 nor the Commissioner while passing the impugned order has discussed the aspect of limitation.

18. This Court finds that the respondent No.5 admittedly has raised an appeal for the first time before the Additional Collector after a period of around 13 months and with no plausible explanation provided for the delay so caused. Neither it has been condoned by the Additional Collector, nor has this aspect been looked into by the Commissioner while entertaining the appeal preferred by the respondent No.5.

19. Further, so far as the impugned order is concerned, again there is no discussion in this regard in the order of the Commissioner in spite of the specific ground being raised during the course of argument.

20. For all the aforesaid reasons and for the fact that, there is no representation on behalf of the respondent No.5 to rebut the contention of

the counsel for the petitioner, this Court is inclined to accept these submissions and reach to the conclusion that the findings arrived at by the Commissioner is not proper, legal and justified and they appear to be contrary to the records available.

21. The impugned order Annexure-P/1 to the extent of cancelling the appointment of the petitioner stands set-aside/quashed. As a consequence the appointment of the petitioner is held to be proper.

22. The Writ Petition thus deserve to be and is accordingly allowed.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit