

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 547 of 2011**

Neel Kumari D/o. Kadamdas, W/o. Bharat Ram, Aged about 27 years, R/o. Village Sukligoind, Tahsil Pandariya, District Kabirdham, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through The Secretary, Women & Child Welfare Department, D.K.S. Bhawan, Raipur, District Raipur Chhattisgarh.
2. Collector, Kabirdham, District Kabirdham, Chhattisgarh
3. Project Officer, Integrated Child Welfare Project (Ekikrit Balvikas Pariyojna), Pandariya, District Kabirdham, Chhattisgarh
4. Laxmibai, W/o. Rameshwar Satnami, Aged about 23 years, R/o. Village Sukligovind, Tahsil Pandariya, District Kabirdham, Chhattisgarh
5. Shagunabai, W/o. Ishwari Satnami, R/o. Village Sukligovind, Tahsil Pandariya, District Kabirdham, Chhattisgarh
6. Janpad Panchayat, Pandariya, through: Chief Executive Officer, Janpad Panchayat, Pandariya, District Kabirdham, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Manoj Paranjpe, Advocate along with Mr. Anshul Tiwari, Advocate
For State	:	Mr. Rahul Mishra, Dy. G.A.
For Respondent No.4	:	Mr. Vivek Kumar Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****04/02/2019**

1. The challenge in the present writ petition is to the order Annexure P/1 dated 20.01.2011, by which the Commissioner, Raipur division in a revision petition in respect of the selection of an Anganbadi worker for the Anganbadi Centre, Sukligovind, Tahsil Pandariya, District Kabirdham.
2. The relevant facts for adjudication of the present dispute is that the respondent No.4 namely Laxmibai was appointed as an Anganbadi worker for the Anganbadi Centre, Sukligovind, District Kabirdham

vide order dated 26.09.2008. Aggrieved of her appointment, the petitioner herein namely Neel Kumari filed an objection/appeal to the Collector, District Kabirdham challenging the appointment of the respondent No.4 on the ground that the petitioner was more meritorious and ignoring her claim the respondent No.4 has been appointed.

3. The challenge was on the qualification, which the petitioner had, which was more than what the respondent No.4 had and also on the ground that the petitioner has been wrongly declared as non-resident of Village Sukligovind. The Collector, vide its order dated 21.04.2009 (Annexure P/2) allowed the appeal of the petitioner and set-aside the order of appointment of the respondent No.4 and ordered for issuance of appointment in favour of the petitioner.
4. It has been informed at this juncture by the counsel appearing for the petitioner that pursuant to the order of the Collector, the petitioner has been given appointment on 27.06.2009, which she had immediately joined and since 2009 till date the petitioner is still discharging the duties of an Anganbadi worker for the Anganbadi Centre, Sukligovind.
5. The order of the Collector dated 21.04.2009 was later on challenged by the respondent No.4 in a revision, which was registered as Appeal case No. 53B-121/2010-11 before the Commissioner, Raipur division. The Commissioner, vide impugned order (Annexure P/1) dated 30.01.2011, allowed the revision petition and set-aside the order of the Collector dated 21.04.2009 and ordered for the appointment to be issued in favour of the respondent No.4 in place of the petitioner. It is this order, which is under challenge in the

present writ petition and the petitioner has obtained an interim protection in her favour vide order dated 31.01.2011, by virtue of which the petitioner continues in the aforesaid Anganbadi Centre as an Anganbadi worker.

6. The contention of the petitioner is that the finding of the Commissioner is apparently bad in law for the reason that the Commissioner has not properly appreciated the aspect that the petitioner was more qualified than the respondent No.4. It is the contention of the petitioner that as per the requirement and the instructions of the State Government, in the event of the candidate not having the 12th Board certificate, the candidate who have 10th Board certificate should be given preference. The petitioner has 10th Board certificate and has also cleared the 11th standard, whereas the respondent No.4 admittedly is only 8th pass, thus the petitioner is more qualified as compared to the respondent No.4.
7. Likewise, it is also the contention of the petitioner that there is also a categorical finding by the Collector in respect of the petitioner also being a permanent resident of village Sukligovind and that the Sarpanch has also given a certificate in this regard that the petitioner even after her marriage was residing at her parental village and this finding of the Collector has been affirmed by the Commissioner.
8. In the light of the affirmation of this fact by the Commissioner, the Commissioner could not have passed an order against the petitioner, as firstly it has been established that the petitioner was more qualified and secondly the ground on which the petitioner was held to be disqualified for the post, has been found to be proved in her favour by the Collector as well as by the Commissioner.

9. Lastly, it was contended that the ground, on which the Commissioner has interfered was an altogether new ground, which was never raised before any of the proceedings earlier. It was also the contention of the petitioner that the fact that the respondent No.4 was a BPL category candidate was a secondary consideration, which could not have been considered at the first instance and that requirement would have come into force, only in the event if all other factors between the petitioner and the respondent No.4 were found to be equal and thus prayed for the quashment of the same.
10. Per contra, Mr. Vivek Kumar Shrivastava, Advocate appearing for the respondent No.4 submits that along with her reply the respondent No.4 had produced material documents to show that the petitioner subsequent to her marriage has shifted to her matrimonial home i.e. Village Bansapur, Gram Panchayat Koilarikala, District Kabirdham. The counsel for the respondent No.4 further submits that he has produced before the High Court the document to show that even as late as in the year 2009 in the Electoral Roll, the name of the petitioner is reflected to be a resident of Village Bansapur, Gram Panchayat Koilarikala, District Kabirdham. He further submits that this aspect has not been properly investigated by the Commissioner nor by the Collector at the appropriate stage. He further submits that he has also produced document, whereby the villagers of Village Bansapur, Gram Panchayat Koilarikala stating that the certificate issued by the Sarpanch, Sukligovind was incorrect and that the petitioner in fact after her marriage was residing at Village Bansapur, Gram Panchayat Koilarikala. This again is a fact, which has not been

properly investigated by the Collector as well as by the Commissioner, Raipur division while passing Annexure P/1.

11. Be that as it may, taking into consideration the amount of documents, which the respondent No.4 has produced and which it appears had not been discussed by either the Commissioner while passing Annexure P/1 or by the Collector while passing Annexure P/2, nor does there seem to be proper inquiry in this regard conducted. This Court is thus of the opinion that ends of justice would serve if the matter stands remitted back to the Commissioner, Raipur division to re-appreciate the entire facts and circumstances of the case and if require, may call upon the relevant documents to verify the contentions put forth on either side and the documents, which either of the side are relying and pass a fresh order altogether.
12. In view of the facts that this Court has decided to remit the matter back, the impugned order Annexure P/1, dated 20.01.2011 stands set-aside/quashed. It is expected that the Commissioner, Raipur division would pass a fresh order within an outer limit of 4 months from the date of receipt of the copy of this order.
13. Needless to mention that since the petitioner is already discharging her duties pursuant to the order of the Collector, the said order shall remain in force till the fresh order is passed by the Commissioner.
14. With the aforesaid observations, the writ petition stands allowed in part.

Sd/-
(P. Sam Koshy)
Judge