

HIGH COURT OF CHHATTISGARH AT BILASPUR**W.P.(S) No. 3243 of 2017**

Smt. Sarita @ Sarita Dewangan, W/o. Shri Narendra Dewangan, Aged About 27 Years, R/o. Gram Khamhariya, Police Station Than Khamhariya, Tehsil Khamhariya, District Bemetara Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Secretary, Women And Child Welfare Department Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur Chhattisgarh.
2. Commissioner, Division Durg, Durg, Chhattisgarh.
3. Collector, Bemetara, District Bemetara, Chhattisgarh.
4. Sub-Divisional Officer, Saja, Bemetara, Chhattisgarh.
5. Chief Municipal Officer, Nagar Panchayat Than Khamariya, District Bemetara, Chhattisgarh.
6. District Program Officer, Women And Child Welfare Department, Division Saja, District Bemetara, Chhattisgarh.
7. President, President in Council, Nagar Panchayat Than Khamariya, District Bemetara, Chhattisgarh.
8. Smt. Kunti Bai, D/o. Shri Bali Ram, Age Around Years, R/o. Gram Than Khamhariya, Police Station Than Khamhariya, Tehsil Khamhariya, District Bemetara, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Ishan Verma, Advocate
For State	:	Mr. Avinash Singh, Panel Lawyer
For Respondent No.8	:	Mr. Praveen Dhurandhar, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****13.11.2019**

1. The present petition is against the order dated 11.05.2017 passed by the Commissioner Durg in a Revision No.319 A-89 Year 2013-14. By the said order, the order passed by the Collector on 15.01.2014 was affirmed.
2. The brief facts of this case are that on 12.01.2010 an advertisement was made for appointment of Anganbadi Sahayika for Anganbadi Centre- Than Khamhariya, District Durg. Pursuant to the advertisement, different

applications were filed and to secure competitive number on the merit, the persons were holding the BPL number i.e. Below Poverty Line, the norm was that they were to be given 6 marks. The respondent No.8, Kunti Bai, Daughter of Bali Ram also applied for the same and in the application, she mentioned her BPL No. as 649.

3. It is contended on behalf of the petitioner that at the time of filing of the application, the respondent No.8 had not placed on record any BPL certificate. In the result, in the order of merit, the petitioner secured 42.96 marks whereas the respondent No.8 procured 42.12 marks. Consequently, on the basis of merit since petitioner was having much more marks, she was selected. It is contended that at the time of raising objection i.e. "Dawa Aapatti", the respondent No.8 came out with the BPL certificate bearing No.908, which did not tallied with the number given in the application, which was numbered as 649. Consequently, on the basis of the subsequent certificate which was produced at the time of objection, the same was not taken into account. The petitioner contended that it was not the stage wherein the respondent No.8 could have allowed to improve her case by production of BPL Card; thereby the Scrutiny Committee had rightly rejected the candidature of the respondent No.8. However such finding of the Scrutiny Committee was turned down by the Collector on appeal and affirmed by the Commissioner. It is contended both the authorities failed to take into account the fact that the certificate was not produced initially but was subsequently produced which was not the stage of consideration. It is submitted that both the authorities failed to take into account those facts whereby illegality perpetuated.
4. Per contra, learned counsel appearing for the respondent No.8 submits that the respondent No.8 at the time of making application has mentioned the BPL certificate number as 649 which was of the year 1997-98. Subsequently, when the certificate was procured the serial number of

BPL changed and it changed into 908 as it was of the year 2007-08. He referred to the documents filed along with the return and would submit that only by change of serial number, the status of BPL would not change. It is further contended that the order of the Collector whereby appointment order of the petitioner was set aside is well merited since with addition of 6 number for the BPL holder was not added and after addition of such number, the respondent No.8 would be placed much over and above the petitioner; consequently the order passed by the Commissioner in revision too is well merited.

5. Heard learned counsel appearing for the parties and perused the documents.
6. Perusal of the document Annexure P-7 would show the respondent No.8 had filed her candidature for appointment to the Anganbadi worker/ Assistant which was published for Integrated Child Development Project of Saja. In such application, she mentioned the BPL Card No.649 whereas the certificate of BPL dated 16.12.2010 shows the BPL survey of 2007-08 the number is 908 that of the respondent No.8 and her family. The documents filed by the respondent No.8 shows that in the year 1997-98 the respondent No.8 was placed at survey No.649 in the BPL survey list and for the year 2007-08, the BPL survey number was 908. Consequently, there is no ambiguity as to the change of survey number/ serial number. The fact remains that the respondent No.8 remained to be a BPL card holder and under BPL category shall not be decided by the serial number but it is the actual status which would decide the fact whether a person is under BPL category or not. When the addition of mark were made to the merit of respondent No.8, she secured much more number in order of merit. Therefore, when the order of appointment was subject of challenge by respondent, the Collector passed an order on 15.01.2014 whereby the appeal of the respondent No.8 was allowed.

7. Both the authorities have observed that even though at the time of filing of the application, the certificate of BPL was not produced but it was produced subsequently at the stage of raising objection, such right cannot be taken away. I find force in such finding. If a person belongs to BPL category then the circumstances would speak for itself, the principle of *res ipsa loquitur* would apply. When the person continues to be under BPL category cannot be deprived of right which they are otherwise entitled by way of additional 6 marks in the instant issue in hand. The stage of raising objection itself gives the window to file certain documents and to put a ring-cage to it to observe participants were wrongly allowed to file a document would be too technical to suppress the truth and would defeat the very object of the fact that the BPL card holder are to be given additional 6 marks while considering the merit.
8. Perusal of the merit list also shows that without number being granted to the respondent No.8 she secured 42.12 and if addition of 6 marks are made then it would come to 48.12, therefore, she would be much ahead to the selected candidate i.e. the petitioner, who secured with the BPL number and was limited to 42.96.
9. In a result, in the order passed by the Collector and Commissioner, I do not find any illegality or any finding which appears to be perverse, which necessary warrants exercise of power under Article 226 of the Constitution of India. Therefore, I am not inclined to entertain this petition and accordingly it is dismissed.

Sd/-
(Goutam Bhaduri)
Judge