

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 588 of 2019***{Arising out of order dated 13.11.2019 passed by the learned Single Judge in
WPS No. 3243 of 2017}*

- Smt. Sarita @ Sarita Dewangan W/o Narendra Dewangan Aged About 29 Years R/o Village Khamhariya, Police Station Than Khamhariya, Tehsil Khamhariya, District Bemetara Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh Through Its Secretary, Department of Women and Child Welfare, Ministry, Mahanadi Bhawan, Capital Complex Atal Nagar, PO and PS Rakhi, Naya Raipur, District Raipur Chhattisgarh.
2. The Divisional Commissioner Durg Division, Durg Chhattisgarh.
3. Collector Bemetara, District Bemetara Chhattisgarh.
4. Sub Divisional Officer (Revenue) Sub-Division Saja, District Bemetara Chhattisgarh.
5. Chief Municipal Officer Nagar Panchayat Than Khamhariya, District Bemetara Chhattisgarh., District : Bemetara, Chhattisgarh
6. District Programme Officer Women And Child Welfare Department, Saja Division District Bemetara Chhattisgarh.
7. President President-In-Council, Nagar Panchayat Than Khamhariya, District Bemetara Chhattisgarh.
8. Kunti Bai D/o Bali Ram R/o Than Khamhariya , Tehsil Khamhariya, District Bemetara Chhattisgarh.

---- Respondents

For Appellant : Shri Ishan Verma, Advocate

For Respondents/State : Shri Chandresh Shrivastava, Deputy Advocate General.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Per, Parth Prateem Sahu, Judge****10/12/2019**

1. Declining to interfere with the order passed by the Commissioner, Durg in a Revision No.319 A-89 Year 2013-14, by the learned Single Judge made the Appellant to file this appeal.
2. The brief facts of the case are that an Advertisement was issued on 12.01.2010 for appointment of Anganbadi Worker for Anganbadi Centre

Ward No.13 at Than Khamhariya, District Durg including some other wards of Than Khamhariya. Appellant alongwith Respondent No.8 submitted their applications for the post of Anganbadi Worker. A comparative merit list was prepared by the competent authority based on submission of the applications by the different candidates in which the Appellant has been shown at Sl. No. (1) and the Respondent No. 8 has been shown at Sl. No. (2) an additional marks being member of family belonging to 'Below Poverty Line' (BPL). The Respondent No.8, looking to the preliminary merit list prepared by the competent authority, had raised an objection before the Committee and also produced certificate of her belonging to family living below poverty line. The Committee did not considered the said certificate and has selected the Petitioner on the post of Anganbadi Worker of Centre at Ward No. 13. The order of appointment of the Appellant as Anganbadi Worker was challenged by the Respondent No.8 initially before the Sub Divisional Officer, who dismissed the application on the ground of jurisdiction and thereafter, the order of appointment was challenged by way of appeal before the Collector. The Collector, after considering the facts and circumstances of the case and also considering the fact that the Respondent No.8 has already mentioned the Serial No. of the list entered in the register of the village panchayat of families identified living below poverty line held that the Respondent No.8 though belonging to below poverty line category, but she has not been awarded additional 'six' marks and thereby the Committee, appointing the Appellant as Anganbadi Worker, has committed error and set aside her appointment. Order of the Collector was challenged by the Appellant before the Commissioner, who after hearing the respective parties, has upheld the order of the Collector and dismissed the revision preferred by the Appellant. The order of Commissioner was made to challenge by the Appellant in Writ Petition (S)

No.3243/2017 which came to be dismissed. The learned Single Judge while dismissing the writ petition has recorded following finding :

“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 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 give 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.”

3. Learned counsel for the Appellant submits that the Respondent No.8 failed to produce her certificate of belonging to below poverty line category and therefore, while preparing the merit list, the Committee constituted for appointment of Anganbadi Worker have rightly not awarded the additional 'six' marks to her. He also submits that the candidates are required to file all the documents and testimonials along with the application form and even from perusal of the certificate produced by the Respondent No.8 before the Committee at the time of raising objection, it bears the date as 16.12.2010, which is much later than the date of submission of the application for the appointment on the post of Anganbadi Worker. He submits that the certificate, which has been obtained after the submission

of the application form could not have been considered to be a proper document for taking into consideration the qualifications of the candidates. He also submits that Serial No. mentioned in the application form of BPL candidates is different than the Serial No. mentioned in the BPL certificate produced by Respondent No.8 which itself shows that the document is concocted one.

4. Per contra, the learned counsel for Respondent-State submits that the learned Single Judge had taken into consideration the documents submitted along with reply filed by the Respondent No.8 in the writ petition, wherein the list of the families of village Than Khamhariya, who are identified as living below poverty line, has been produced as Annexure-R-8/1. In the said list, name of the father of Respondent No.8 is mentioned at Sl. No. 649 and also that the submissions made by the learned counsel for the Respondent No.8 that the subsequent certificate which has been produced before the Committee as well as by the Petitioner / Appellant has been obtained after submission of the application for the appointment which is of the year 2007-08 and therefore there is slight difference in the Sl.Nos. which have been entered in the register maintained by the competent authority of the families belonging to the below poverty line. He submits that the learned Single Judge has rightly appreciated the submissions made by the learned counsel for the parties as well as the materials placed on record and passed the order which do not call for interference.
5. We heard the learned counsel for the Appellant as well as the learned counsel representing the State and perused the records.
6. Perusal of the writ petition, particularly, the reply filed by the Respondent No.8 would show that the Respondent No.8 had filed a list of the family

members belonging to the below poverty line of village Than Khamhariya and of different wards. In that list, name of Baliram, the father of Respondent No.8 is mentioned at SI.No. 649 which is list of the year 1997-98. Other submission is made by the learned counsel for the Appellant that there was a difference in Serial Nos. as mentioned in the application form of the Respondent No.8 as well as the documents subsequently procured and produced before the Committee bears a different Serial No. creating doubt on the genesis of the certificate. We do not find any force in the said argument of the learned counsel for the Appellant because perusal of the list annexed with the reply would show that the list has been prepared for the year 1997-98, whereas the certificate which has been submitted was issued on the basis of the list prepared in the year 2007-08 and therefore, it is a natural consequence that on re-survey, the number of families in the said below poverty line may reduce or the Serial No., itself can be change on preparing new list. In view of the above, the said argument is not sustainable and the same is repelled.

7. As evident from the facts of the case it is apparent that Appellant secured only 34.96% of marks in 12th Class, whereas Respondent No.8 secured 41.12% of marks. After adding six marks Respondent No.8 will get 47.12%, whereas Appellant having 41.96% only. There is no specific mentioning in advertisement about enclosing all the relevant documents along with application form itself. The Appellant mentioned the SI.No. of register maintained by the Panchayat of family living in below poverty line. At the stage of claim and objection as fixed in advertisement Respondent No.8 submitted its certificate of below poverty line issued by competent authority which was not challenged by the Appellant. The Respondent No. 8 fulfills all requirements of the advertisement for her appointment on the post of Anganbadi Worker and considering her merit both the authorities as

well as learned Single Judge ordered in her favour. There is concurrent finding by the three forums against Appellant.

8. So far as the other ground raised by the Appellant that as per law laid down by the Hon'ble Supreme Court in the matter of ***Dolly Chhanda v. Chairman, Jee and Others*** reported in ***(2005) 9 SCC 779*** the requirement of having the qualification/certificate of the category is on the date of application so that the applicant who is making an application for appointment on particular post should possess qualification on the date of filing an application is concerned, as we have already considered and held that the Respondent No.8 was already belonging to a family living below poverty line, which is evident from the list of the year 1997-98 and therefore, it is not a case, where only after submission of her application, she has been identified as belonging to family living below poverty line and therefore the case law relied upon by Appellant is not applicable in the facts of present case and is of no help to her.
9. For the foregoing reasons, we do not find any infirmity in the order passed by the learned Single Judge. The appeal being devoid of any substance, is liable to be dismissed and is hereby dismissed.

Sd/-
(P.R. Ramachandra Menon)
 Chief Justice

Sd/-
(Parth Prateem Sahu)
 Judge