

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.12823 of 2017
Date of Decision : 29.04.2019**

Anita Devi **....Petitioner**

v/s

State of Haryana and others **....Respondents**

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. A.S. Manaise, Advocate for the petitioner.
Ms. Shruti Jain Goyal, Deputy Advocate General, Haryana.
Mr. Surinder Gandhi, Advocate for respondent No.5.

B.S. Walia, J. (Oral),.

[1] Prayer in the writ petition under Article 226/227 of the Constitution of India is for the issuance of a writ, order or direction especially in the nature of Certiorari to quash the selection and appointment of respondent No.5 as *Anganwari* Worker, as made vide letter (Annexure P-5) dated 17.02.2017. Prayer is also for the issuance of a writ of Mandamus for directing the official respondents to select and appoint the petitioner to the post of *Anganwari* Worker on account of her belonging to BPL (Below Poverty Line) family, being only earning member of the family, besides, a widow of the same village.

[2] Brief facts of the case, leading to the filing of the writ petition are that the Department of Women & Child Development, Rohtak, invited applications for one post of *Anganwari* Worker in *Anganwari* Centre, Village Ismaila, 9-B, Block Sampla, District Rohtak from amongst eligible candidates in April, 2016. Criteria was selection was laid down in Instructions (Annexure

S.No.	Qualification	Marks
01	Eligibility on the basis of 10 th Class	60 marks (Ref. Point-A)
02	Special Preference	15 marks (Ref. Point-B)
03	Experience	07 marks (Ref. Point-C)
04	Daughter in law	08 marks (Ref. Point-D)
05	Interview	10 marks (Ref. Point-E)
	Total	100 Marks

A – Qualification :

As far qualification is concerned, the marks be given as under:-

S.No.	Qualification	Marks
1.	Matric pass and marks below 60%	45
2.	Marks above 60% in Matriculation	60

B – Special Preference:

Widow/divorcee/without any source, whose husband is undergoing life imprisonment.	15 marks
---	----------

C – Experience :

Experience certificate issued by the Government/recognized institutions will be admissible. 7 marks of experience are as under:-

S.No.	Experience	Marks
1.	Anganwari worker/Anganwari helper/Balwari (Being run by District Child Welfare Council only) Worker/1 year experience as Sanjivani Worker.	03 Marks
2.	Anganwari worker/Balwari (Being run by District Child Welfare Council only)/Worker/Experience of 1 to 3 years as Sanjivani Worker.	05 Marks

3.	Anganwari worker/Balwari (Being run by District Child Welfare Council only)/Worker/Experience of more than 3 years as Sanjivani Worker	07 Marks
----	--	----------

D.

Daughter in law (daughter in law of concerned village)	08 Marks
--	----------

E.

Interview	10 Marks
-----------	----------

[3] The petitioner submitted application (Annexure P-2) for the post of *Anganwari* Worker duly attested by the Sarpanch of the Gram Panchayat of the village concerned along with documents Annexure P-3 (Colly) i.e. Matriculation Certificate issued by the Board of School Education, Haryana showing her having passed with 45 % marks, Experience Certificate, of having no other earning member of the family, Certificate of her husband having died on 17.11.2001, affidavit of her not having re-married, Ration Card, reflecting her to be below poverty level etc. As many as 29 candidates including the petitioner and respondent No.5 applied for the post of *Anganwari* Worker. As per merit list prepared by the Selection Committee (Annexure P-4), name of respondent No.5, finds mention at Serial No.2, whereas the name of the petitioner finds mention at Serial No.3. Prior to the interview, both candidates secured 71 marks but in the interview, respondent No.5 was awarded one mark more than the petitioner, resultantly, final merit of the petitioner worked out to 77, whereas that of respondent No.5 worked out to 78 on account of which respondent No.5 was selected for the post of *Anganwari* Worker, while the petitioner was kept at Serial No.1 in the waiting list.

[4] Petitioner claims that respondent No.5 was selected and appointed as *Anganwari* Worker solely on account of respondent No. 5 having been awarded one mark more in the interview on account of influence wielded by the family of respondent No. 5 and same having been exercised over respondent Nos.2 to 4. Aggrieved against the selection of respondent No.5, the petitioner submitted representation (Annexure P-6) to the Chief Minister, whereupon enquiry was marked. On the basis of enquiry, report (Annexure P-7) dated 06.03.2017 was submitted by respondent No.2, stating that marks had been awarded as per the criteria laid down, that there was no reservation for widows, rather extra marks had been given to a widow and respondent No.5 had been selected and appointed on the basis of merit as per the criteria.

[5] Counsel for the respondents on the other hand contended that the selection and appointment of respondent No.5 was made as per merit as per the criteria adopted, therefore it was not open for the Court to sit as a Court of appeal and reassess the relevant merit of the concerned candidates in the oral interview nor could the petitioner urge that she was given less marks though her performance was better as it was for the Interview Committee to judge the relative merits of the candidates interviewed. Besides, the petitioner having participated in the selection process, on the result being unfavourable, she could not turn around and challenge the selection. Reliance was placed on the decision of Hon'ble the Supreme Court in '**Madan Lal and others** versus **State of Jammu & Kashmir**', AIR 1995 SC 1088. Relevant extract of the same is reproduced as under:-

“10. Therefore, ‘the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot

sit as a Court of appeal and try to reassess the relevant merits of the concerned candidates who had been assessed at the oral interview nor can the Petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to Judge the relative merits of the candidates who were orally interviewed in the light of the Guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a Court of appeal over the assessment made by such an expert committee.”

[6] Reliance was also placed on the decision of Hon’ble the Supreme Court in ‘**Mukesh Bala** versus **State of Haryana and others**’, 2015(1) SLR 290, to contend that merely because some candidates, who secured higher marks under the head of academic criteria but were awarded less marks in the interview, would not *ipso facto* lead to a conclusion that exercise had been done intentionally to oust them especially when none of the members of the Selection Committee had been impleaded as respondent nor had any specific allegations in regard thereto been leveled in the writ petition. On merits, it was contended that although the petitioner claimed to be resident of the State of Haryana, yet Aadhar Card (R-1) submitted by none else than the petitioner, revealed that the petitioner was a resident of Delhi. Learned counsel further contended that on the basis of the selection process, respondent No.5 was rightly selected because she was a better candidate in comparison to the petitioner, besides, the post in question was not reserved for a BPL family and all instructions with regard to the selection for appointment to the post of *Anganwari* Worker/Helper in terms

12.06.2008 (Annexure R-2) had been complied with, and there was no provision for reservation for economically backward/poor person, EBP Category for the post of *Anganwari* Worker/Helper. Respondent No.5 has also filed written statement on the same lines as respondent Nos.1 to 3, besides has taken up the stand in paragraph No.5 of the reply on merits that the petitioner’s son was working in the Northern Railway Police in Delhi and getting handsome salary, therefore, the petitioner could not claim to be a candidate belonging to a BPL family merely on the basis of Ration Card which was a decade old. On the basis of stand in the written statement, respondents pleaded for dismissal of the writ petition. No replication was filed by the petitioner.

[7] I have considered the submissions of learned counsel for the parties. Comparative merit of the marks awarded to the petitioner and respondent No.5 is reproduced as under:-

S. No.	Eligibility	Anita Devi (Petitioner)	Dayawati (Respondent No.5)
1	Matric	45	60
2	Special Preference (Widow)	15	0
3	Experience	3	3
4	Daughter-in-law	8	8
5	Interview	6	7
6	Age	Senior	Junior
7	BPL	Yes	No
8	Any other earning member in family	No	Yes
	Total	77	78

A comparative statement of the marks obtained by the petitioner and respondent

the selection process except for in the interview, where respondent No.5 was awarded 07 marks, whereas the petitioner was awarded 06 marks. Respondent No. 5 was awarded 15 more marks on account of her academic achievement whereas the petitioner could level said disparity in marks solely on account of marks awarded to her on account of being a widow. All the candidates were assessed on the basis of their performance in the interview. Petitioner having participated in the selection process and having been declared unsuccessful cannot turn around and question the selection on the ground that her performance was better, therefore, she ought to have been awarded more marks in the interview. No specific allegation of *mala fide* has been leveled nor have the members of the Recruitment Committee been impleaded as a party by name. Only vague allegations of the family of respondent No.5 being influential and having exercised influence over respondent No. 2 to 4 for getting respondent No.5 selected have been leveled. Besides, the petitioner as per her *Aadhar* Card is not a resident of the State of Haryana but of Delhi. On the basis of selection carried out, respondent No.5 was found to be more meritorious than the petitioner. In view of other marks of respondent No.5 and the petitioner being equal, with respondent No. 5 having been awarded more marks on account of her academic achievements, and one mark more than the petitioner in the interview, it was respondent No.5, who was recommended, selected and appointed on the post of *Anganwari* Worker. The post in question is not reserved for BPL Category. The selection was carried out as per instructions issued by the Director, Women and Child Development Department vide letter (Annexure R-2), which do not provide for reservation for economically backward/poor person EBP Category for the post of *Anganwari* Worker/Helper.

Northern Railway Police at Delhi, therefore, the petitioner does not fall under the category of Below Poverty Level. Merely because the petitioner secured marks equal to the marks secured by respondent No. 5 but respondent No. 5 secured one mark more than the petitioner in the interview, is no ground to conclude and declare the selection process invalid or illegal. No doubt, allegations have been leveled in the writ petition that the family of respondent No.5 was influential and exercised influence on respondent Nos. 2 to 4 to get respondent No.5 selected, but in the absence of members of the Selection Committee having been impleaded as party by name, the allegation is misconceived. Apart from the above, there are no specific allegations against any particular member of the Recruitment Committee for showing any favour to respondent No.5. In the circumstances, the selection and appointment of respondent No.5 is immune from challenge. Accordingly, finding no merit in the writ petition, the same is ***dismissed***.

(B.S. Walia)
Judge

April 29, 2019
'Rajneesh'

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No