

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-6054-2017 (O&M)

Date of Decision: 06th February, 2019

ANITA DEVI

...Petitioner

Versus

STATE OF HARYANA & ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present:- Mr.Virender Rana, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Ambala dated 20.10.2016 whereby the suit of the plaintiff for declaration to the effect that the appointment/selection of defendant/respondent No.7 Jasvir Kaur W/o Shri Trilochan Singh S/o Sh. Kura Singh R/o Village Soundha, Tehsil and District Ambala and issuance of the appointment letter dated 29.06.2011 as a consequence of the said selection, is illegal, null and void as the said selection has been carried out by an ulterior motive and to appoint the appellant/plaintiff to the post of Anganwari Worker of Village Soundha, Tehsil and District Ambala (Block Ambala-1) being meritorious than respondent/defendant No.7 with all consequential benefits with further relief of permanent injunction restraining respondent Nos. 1 to 6 to permit defendant No.7 to join and work on the post of Anganwari Worker of Village Soundha, Tehsil and District Ambala (Block Ambala-1), stands dismissed, appeal against which preferred by the appellant stands dismissed vide judgment and decree dated 31.03.2017.

It is the contention of the learned counsel for the

appellant-plaintiff is that the appellant/plaintiff is much more meritorious than respondent/defendant No.7 on all parameters except for the interview marks where, with the mala-fide intention, the Selection Committee has proceeded to grant her 10 marks out of 10 in the interview, whereas the appellant/plaintiff has been assigned only 2 marks out of 10 in the said interview. He contends that the interview and the selection process has not been fairly carried out. The Constitution of the Committee is not in consonance with the instructions issued by the Director Women and Child Development Department, Haryana. Even the criteria has not been properly followed and therefore the selection and appointment of the respondent/defendant No.7 being based upon the mala fide intention of the Members of the Committee, who at the behest of some political persons have assigned full marks in interview to respondent/defendant No.7 and granted lesser marks to the appellant/plaintiff with an intention to deny her rightful claim for appointment to the post of Anganwari Worker.

I have considered the submissions made by the learned counsel for the appellant/plaintiff and with his assistance have gone through the impugned judgments as have been passed by the Courts below, but do not find myself in agreement with the submission as raised by the counsel for the appellant.

The admitted facts are that an advertisement was published in Hindi newspaper "Dainik Bhaskar" dated 29.08.2010 whereby applications for the post of Anganwari Workers and Anganwari helpers were invited in various villages including Village Soundha, Tehsil and District Ambala (Block Ambala-1). Appellant/plaintiff as well as

respondent/defendant No.7 along with others applied for the said post. As per the schedule, interview for the post of Anganwari Workers in Village Soundha, Tehsil and District Ambala was held on 22.11.2010. The Selection Committee was constituted as per the letter issued by the Director, Women and Child Development Department, Haryana dated 22.08.2010 and 10.11.2010 (Exhibit P-4 and P-5) respectively. Instructions were also issued with regard to the criteria to be followed regarding the marks to be allocated for educational qualification, special preference, experience and interview/viva voce (Exhibit P-6) by the Director Women and Child Development Department, Haryana. As per the said criteria 10 marks were assigned for interview out of the total marks of 100.

On the basis of the evidence led by the parties, the Court came to the conclusion that by and large the case of the appellant/plaintiff is based on documentary evidence.

The primary issue which was raised by the appellant/plaintiff was that the appellant/plaintiff has been intentionally granted lesser marks with an intention to deprive her appointment to the post of Anganwari Worker whereas with a mala fide intention granting full marks in interview to the respondent/defendant No.7. It is asserted that the selection in interview was so manipulated and carried out in such a manner by the Members of the Committee at the behest of some political person that the marks were granted as per the command of that person, which led to the selection and appointment of respondent/defendant No.7 whereas depriving the appellant/plaintiff of the post on which she would have been appointed on merit as per the other criteria except for the interview. He thus, it was

asserted that the whole selection process having been manipulated and put into force with an intention to oust the appellant/plaintiff and to select respondent/defendant No.7, the same cannot sustain and deserves to be set aside.

These assertions cannot be accepted in the light of the following (i) that nothing has been brought on record which would indicate that the Committee, which was constituted, was not as per the instructions issued by the Director Women and Child Development Department, Haryana for the said purpose. (ii) She having participated in the selection process and not raised such an objection earlier and even after the interview having been held or prior to the declaration of the result such an objection has not been raised this plea cannot be permitted now specially when nothing has come out in evidence which would indicate that the Committee, did not work in consonance with the instructions of the Director Women and Child Development Department, Haryana. (iii) Allegations of mala-fide are bald assertion as nothing specific has been asserted against any of the Members of the Committee nor has any Member of the Committee been impleaded in person. The allegation that the Members of the Committee had acted at the behest and at the dictates of a political person are all bald assertions as none has been named what to being impleaded as party to the civil suit. Merely because such an allegation has been made, the same cannot be accepted to have been proved on the basis of the bald assertion. The principle in this regard has been settled by this Court in **CWP No. 16504 of 2016 titled as 'Smt. Shallu versus State of Haryana and others'** decided on 16.08.2016 the relevant part thereof has been reproduced by the

lower Appellate Court in Para-23 of the impugned judgment. In the light of the said principle of law having been settled by this Court, the findings as recorded by the Courts below with regard to the allegations of mala fide cannot sustain.

As regards the contention of the learned counsel for the appellant that the appellant/plaintiff has been awarded less marks than that of respondent/defendant No.7 is concerned, it would not be out of way to state that during the process of selection the demeanor of the candidate alertness, initiative, resourcefulness and other qualities of head and heart have to be assessed. The Committee as constituted, its members were the best judges for the said purpose, and the Courts cannot sit over as an appellate authority. The marks so assigned, thus, cannot be said to be based upon mala fide especially when nothing has come on record to specify such a contention. Mere apprehension on the part of the candidate cannot be made the basis for coming to a conclusion that the selection/appointment is not based upon the merits of the candidates.

The findings as recorded by the Courts below being in consonance with the pleadings and the evidence on record as also the law as settled by this Court, no interference in the present appeal is called for. The appeal being devoid of merit stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

06th February, 2019

tarun sahani

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No