

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :19/11/2020

Order passed on :07/12/2020

WP227 No. 5076 of 2010

- Kunti Bai W/o Shri Parasram Sen, Aged about 27 years, R/o Village Bharchhatti, Tahsil Berla, District Durg (Chhattisgarh)

---- Petitioner/Revisioner

Versus

1. Basantibai W/o Ramji Patil, R/o Village Bharchhatti, Tahsil Berla, District Durg (Chhattisgarh)
2. Chief Executive Officer, Janpad Panchayat, Berla, District Durg (Chhattisgarh)
3. Project Officer, Integrated Women and Child Development Project, Berla, District Durg (Chhattisgarh)

Non-applicants No.1 to 3

4. Commissioner, Raipur Division, Raipur (Chhattisgarh)
5. Additional Collector, Bemetara, District Durg (Chhattisgarh)

---- Respondents

For Petitioner – Shri H.B. Agrawal, Senior Advocate with Shri Pankaj Agrawal, Advocate.

For Respondent No.1 – Shri F.S. Khare, Advocate.

For State/Respondents 2 to 5 – Shri D.P. Singh, Deputy Advocate General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Order

07-12-2020

1. This petition has been brought under Article 227 of the Constitution of India seeking indulgence of this Court for quashing the order dated 04-02-2010 passed by the Addl. Collector Bemetara, order dated 25-02-2010 passed by the Additional Collector Bemetara in Panchayat Appeal (Revenue) Case No.87A/89/2007-08 and order dated 28-08-2010 passed by the Commissioner, Raipur Division.

2. The facts of the case are these, that the petitioner was appointed as Anganbadi worker in Village Panchayat Bharchhatti vide order dated 30-12-2006. The petitioner had all the qualifications for such appointment. The

petitioner has also received training for the post she was appointed as per requirement. The respondent No.1 then filed appeal No.87A/89 of year 2007-08 before the Additional Collector Bemetara challenging the appointment of the petitioner. The appeal filed was time barred. Learned Additional Collector Bemetara by order dated 04-02-2010 allowed the application of respondent No.1 under Section 5 of Limitation Act and admitted the appeal in an erroneous manner and subsequent to that, the final order was passed in the appeal proceeding on 25-02-2010 by allowing the appeal and dismissing the appointment of the petitioner. The petitioner then preferred revision before the Commissioner Raipur Division. The revision was dismissed by the order dated 28-08-2010.

3. It is submitted by learned senior counsel for the petitioner that order passed by the Additional Collector dated 25-02-2010 in the appeal is erroneous and illegal. The petitioner was rightful candidate to be appointed to the post of Anganbadi worker having qualifications, regarding passing out from class – 8th in the year 1997, regarding her being a person of below poverty line, regarding her being a voter in the voter list of Gram Panchayat Bharchatti and also being a voter in the voter list of the constituent assembly. The petitioner has worked as Anganbadi worker after her appointment from 17-02-2007 to 18-03-2007 and also received requisite training for the same.

It is submitted that the respondent No.1 had earlier made a representation before the Collector (Women and Child Development Department) Durg, C.G. regarding which she was communicated by memo dated 13-03-2007 (Annexure-P/10), in which the respondent No.1 was informed that the petitioner had all qualifications required and she also has seniority compared to the respondent No.1 and the representation was rejected.

It is submitted by learned senior counsel for the petitioner that the

Additional Collector has decided the appeal by dismissing the appointment of the petitioner subsequent to the decision taken by the Collector on the representation made by the respondent. The Additional Collector being subordinate to the Collector had no authority to review the decision taken by the Collector or vary the same or set aside the same, therefore, the order passed by the Additional Collector dated 25-02-2010 is illegal and similarly the order upheld by the Commissioner on 28-08-2010 is also illegal, which have no force of law. It is prayed that the petition be allowed and the impugned orders be quashed and relief be granted in favour of the petitioner.

4. Learned counsel for respondent No.1 submits that no error has been committed by the Additional Collector in allowing the appeal and dismissing the appointment order in favour of the petitioner and the order has been rightly upheld by the Commissioner. The main ground to contest in the appeal was this, that the petitioner's name was not present in the voter list of Gram Panchayat on the date she was appointed as Anganbadi worker. Learned appellate Court of Additional Collector Bemetara has held accordingly that the petitioner was not a voter of Gram Panchayat Bharchatti on the date she was appointed and on the same ground her appointment was dismissed.

It is submitted, that voter list on which the petitioner is relying upon is with respect to State Assembly constituency and not of Gram Panchayat. The name of the petitioner Kunti Bai appears in Serial No. 348 in the voter list of the year 2009. It is submitted that the guidelines issued by the State Government on 27-05-1996 very clearly lays down the condition, that candidate for Anganbadi worker must be a voter of the respective Gram Panchayat or Nagar Panchayat where he or she is proposed to be appointed. Therefore, it is clear that the petitioner has misled the authority at the time of her appointment because of which the order was issued in her favour, despite her ineligibility for the appointment. It is submitted that it has been held by this Court in **Writ**

Appeal No.108/2009 between parties Smt. Rambai Dansena Vs. State of Chhattisgarh and others by order dated 18-06-2010 that condition for appointment of a candidate as Anganbadi worker, as laid down in the guidelines cannot be relaxed by the Court and the condition that has been settled in the policy for appointment of Anganbadi worker has to be complied with. It is submitted that in the case of **Draupati Tiwari Vs. State of M.P. and others**, 2013 (2) M.P.L.J. 407, by the Division Bench of Madhya Pradesh High Court, it has been similarly held that the scheme of appointment of Anganbadi worker has to be followed as it is. Therefore, dismissal of the appointment of the petitioner is well founded and in accordance with law. The present petition is without any substance which may be dismissed.

5. Learned counsel for the State appearing for respondents 2 to 5 submits that the impugned orders have been lawfully passed in exercise of the jurisdiction vested in the appellate authority and the revisional authority and no error has been committed in passing of these orders. Therefore, present petition is baseless and without any substance which may be dismissed.

6. In reply it is submitted by learned senior counsel for the petitioner that it is a case in which judicial propriety of the order passed needs consideration as the Additional Collector has reviewed the decision taken by the Collector who found the appointment of the petitioner justified. Therefore, the order of the Additional Collector passed by allowing the appeal is unsustainable. Similarly the order of the Commissioner Raipur Division is also liable to be set aside.

7. Heard learned counsel for the parties and perused the documents.

8. Considered on the submissions and perused the documents present in the petition. The main issue in this case is whether the petitioner had all the qualifications for appointment as Anganbadi worker for her appointment for Anganbadi Kendra at Bharchatti under Gram Panchayat Bharchatti. The

scheme for the appointment of Anganbadi worker was issued by the State Government by circular dated F-8-3/95/50-2 on 27-05-1996 in which there appears to be no challenge till date. The first condition for the appointment of Anganbadi worker set out is this, that the proposed candidate should be a voter of the voter list of Gram Panchayat or Nagar Panchayat, as the case may be. This is the only ground in contest in this case.

The petitioner claims that she was a voter of the voter list of Gram Panchayat Bharchatti on the date she was appointed. Relevant date of her appointment is 30-12-2006. The learned Additional Collector has while deciding the appeal on 25-02-2010 has made observation in the impugned order that the name of the petitioner is not reflected in the voter list of Gram Panchayat Bharchatti, on the other hand, the voter list on which the petitioner is placing reliance is a supplementary voter list of State Assembly. Therefore, the appointment of the petitioner was against the guidelines. As it is claimed by the petitioner that her name is present in the voter list of Gram Panchayat, copy of the voter list that has also been filed along with the petition shows her name in Serial No.348, but this voter list has been prepared for the year 2009. Copy of the voter list for Gram Panchayat Bharchatti that was prepared earlier in the year 2004, does not show the name of the petitioner in Serial No.348 which has been filed as Annexure-R/1/1 by the respondent No.1. Hence, it is found that the submission made by the petitioner side that the petitioner had been a voter in the voter list of Gram Panchayat Bharchatti at the time of her appointment in the year 2006 is not supported with any documentary proof.

The principle with regard to the appointment of Anganbadi worker as laid down in the case of Draupati Tiwari Vs. State of M.P. and others (supra) and this Court in Writ Appeal No.108/2009 is very clear that the scheme for appointment of Anganbadi worker settled by the State Government cannot be varied or modified by Courts. Hence, I am of this view that the impugned orders

passed do not suffer from any infirmity and appear to be within jurisdiction of the said authorities. Hence, the present petition is without any substance, which is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge