HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR

Case No.	**W.P.No.4372/2019**
Parties Name	**Smt. Salma Khan** **Vs.** **State of M.P. and others**
Date of order	**09/12/2020**
Bench Constituted	**Single**
Order delivered by	**Shri Justice Sujoy Paul**
Whether approved for reporting	**No**
Name of counsels for parties	**For Petitioner: Shri Rajas Pohankar, Advocate.** **For State: Ms. Aishwarya Singh, P.L.** **For respondent No.6: Shri Himanshu Mishra, Advocate.**
Law laid down	
Significant paragraph numbers	

(O R D E R)
09.12.2020

In this petition filed under Article 226 of the Constitution, the petitioner has called in question the order passed by the learned Additional Collector dated 10.08.2017 whereby the appeal preferred by the respondent No.6 against the appointment of the petitioner was allowed. The petitioner has also assailed the appellate order dated 30.08.2017 whereby the appeal preferred by the petitioner is rejected by the Appellate Authority. The consequential order of appointment of the respondent No.6 is also called in question in this petition.

2. In short, the relevant facts for adjudication of this matter are that the petitioner, respondent No.6 and other candidates preferred their candidatures for the post of "Anganwadi Worker" in Ward No.2 of Nagar

Palika Parishad, Itarsi. The last date of submission of candidature was 15.03.2016. The Selection Committee considered the candidatures of the candidates and prepared a merit list (Annexure-P/6). The name of the petitioner finds place at No.1 and she had secured 54.5 marks. The name of respondent No.6 does not find place in the list. Indeed, a note is appended to this list wherein it is mentioned that the respondent No.6 is resident of Ward No.1 whereas selection was conducted for Ward No.2. Hence, her candidature was rejected.

3. The respondent No.6 aggrieved by rejection of her candidature preferred an appeal before learned Additional Collector. After hearing the parties, the learned Additional Collector passed the impugned order dated 10.08.2017 and opined that the respondent No.6 has secured 57.5 marks whereas the petitioner secured only 54.5 marks. The Additional Collector also gave finding that the respondent No.6 falls in BPL Category and is a resident of Ward No.2 as per the report of Block Level Selection Committee. Hence, the appeal was allowed and respondent No.6 was directed to be selected in place of present petitioner.

4. The petitioner unsuccessfully assailed this order by preferring an appeal, which was dismissed on 21.11.2017.

5. Shri Rajas Pohankar, learned counsel for the petitioner urged that Ward No.2 was re-numbered as Ward No.5. By placing reliance on the certificate issued by the Nagar Palika Parishad, Itarsi (Annexure-P/2), it is argued that the relevant Anganwadi Centre No.61 (for which selection was conducted) was in Ward No.2 and after delimitation, the Centre also came

in Ward No.5. For the same purpose, the certificate issued by Shri Arvind Chandrawanshi (Councilor) was filed. It is further pointed out that the candidature of petitioner (Annexure-P/4) shows that she mentioned her address as "Ward No.2, Shastri Nagar, Old Itarsi". In annexure to her candidature, she mentioned that she filed certified copy of the mark-sheets of Class 5th, 8th, 10th and 12th, whereas the candidature of respondent No.6 (Annexure-P/5) shows that her address is "Jai Prakash Nagar, W.No.1, Old Itarsi, Itarsi". In Column No.8, she mentioned her educational qualification as 8th (M.P. Board) and 10th (Delhi Board) pass only. In the column relating to annexures, no annexures were mentioned. Indisputably, the minimum essential qualification for the post in question in urban area is 10+2/12th pass. The respondent No.6 neither disclosed in her candidature that she is Class 12th pass nor filed any such mark-sheet along with the application form.

6. Learned counsel for the petitioner placed heavy reliance on the findings of Appellate Authority wherein it is mentioned that the respondent No.6 filed Class 12th mark-sheets for the first time before the Additional Collector. Shri Pohankar drew support from a review application filed by the department before the Additional Commissioner wherein it was pointed out that alongwith candidature, the respondent No.6 did not file Class 12th mark-sheet and it was filed for the first time before the Additional Collector. Although the review application was not entertained, averments of review application (Annexure-P/18) filed with I.A. No.14336/2019 leaves no room for any doubt that the respondent No.6 did not submit the

certificate of Class 12th along with her candidature. Thus, she did not mention and file Class 12th mark-sheets along with her candidature and could not have been directed to be selected and appointed.

7. Shri Pohankar, learned counsel for the petitioner submits that the qualification of a candidate needs to be examined on the basis of her disclosure in the candidature form submitted before the last date of submission of candidature. No mark-sheet filed subsequent to the last date of filing of candidature can make the candidate eligible. Both the authorities below namely; Additional Collector and Commissioner have miserably failed to see this settled legal position and erred in directing the selection of respondent no.6. Since the Ward No.2 itself is renumbered because of which not only residence of petitioner but the relevant Anganwadi Centre also came in Ward No.5, the petitioner cannot be treated to be ineligible.

8. *Per contra*, Ms. Aishwarya Singh, learned P.L. urged that the stand of department is same which is reflected in the review application dated 29.4.2019 Annexure P-18. She fairly stated that as per the averments of this application dated 29.4.2019, it is clear that respondent no.6 was not selected because she was only Class 10th pass. The review application further shows that respondent no.6's Class 10th mark-sheet was found to be forged one and she submitted her Class 12th mark-sheet after selection process was over. It is clearly averred in the said application that respondent no.6 filed mark-sheet of Class 12th for the first time before the Additional Collector.

9. Shri Himanshu Mishra, learned counsel for the respondent no.6 submits that the mark-sheet of Class 12th has been filed by the respondent no.6 along with her candidature. Before the Additional Collector, the said mark-sheet was resubmitted. It is reiterated at the cost of repetition that Class 12th mark-sheet was later on again submitted before the Additional Collector. He submits that Column No. 8 of petitioner's candidature shows that it was kept blank. Thus, petitioner's candidature is doubtful. He placed reliance on the Tahsildar's report Annexure R-1 and paragraph 5.4 of the petition by contending that the petitioner has not disputed that respondent no.6 is also resident of Ward No.2. The candidature of respondent no.6 was rejected solely on the ground that she is not a resident of Ward No.2. He supported the impugned orders passed by the learned Additional Collector and Commissioner. The parties confined their arguments to the extent indicated above.

10. I have heard counsel for the parties at length and perused the record.

11. Admittedly, the minimum essential qualification for the post of Anganwadi Worker for urban area is Class 12th. The petitioner along with her candidature filed the mark-sheet of Class 12th. Neither the learned Additional Collector nor the Commissioner gave any finding against petitioner that she does not possess the Class 12th certificate. The candidature of respondent no.6 Annexure P-5 shows that *she herself disclosed her qualification as Class 8th and 10th passed*. She nowhere mentioned that she has passed Class 12th. Interestingly, she has not even annexed the document of Class 12th as annexure to the candidature (Page

31). If the respondent no.6 would have filed the mark-sheet of Class 12th with candidature, there was no reason why she should not have disclosed it in relevant place where she disclosed her "Educational Qualification". In addition, she should have mentioned it in the annexure column. Thus, the argument of Shri Himanshu Mishra, learned counsel does not inspire confidence that respondent no.6 filed the said mark-sheet along with her candidature and it was merely resubmitted at the level of appeal before the Additional Collector.

12. I find support in my view by the finding of appellate order which reads as under :

> ''.....प्रतिअपीलार्थी गणेशी बाई का आवेदन अमान्य किया गया था क्योंकि उनके द्वारा न्यूनतम शैक्षणिक योग्यता 12 उत्तीर्ण की अंकसूची प्रस्तुत नहीं की थी। <u>प्रतिअपीलार्थी द्वारा अधीनस्थ न्यायालय अपर कलेक्टर होशंगाबाद के समक्ष 12वीं उत्तीर्ण की अंकसूची प्रस्तुत कर पुनः मूल्यांकन करने के उपरांत प्रतिअपीलार्थी</u> को 57.5 तथा अपीलार्थी को 54.5 अंक होने से वरीयता सूची में प्रथम स्थान पर प्रतिअपीलार्थी का नाम आने पर पूर्व की नियुक्ति आदेश निरस्त कर प्रतिअपीलार्थी को नियुक्ति प्रदान किये जाने के आदेश दिनांक 10.08.2017 पारित किया है।.....''
>
> *(Emphasis Supplied)*

This finding of appellate authority is in tune with the stand taken by the government in their review application dated 29.4.2019.

13. The courts have consistently taken the view that educational qualification of a candidate is to be seen on the last date of submission of

candidature. The candidate needs to mention his/her qualificaton in specific in the candidature form. The respondent no.6 has neither disclosed her qualification of 12th pass in the candidature nor annexed the said certificate. This Court in ***Writ Petition No.933/2017 [Bharat Singh Vs. State of M.P.]*** opined that "*this is settled in law that eligibility of a candidate has to be seen on the basis of documents of qualification relied upon by him till the last date of submission of candidature. Admittedly, the petitioner has not relied upon the certificate issued by the Board of Secondary Education. On the contrary, he relied on the certificate issued by the Gurukul University. Since this Court has already held that on the basis of such certificate, the candidate cannot be treated to be eligible."*

14. Thus, in my view, the certificate of Class 12th is filed by the respondent no.6 after the selection had taken place and at the level of appeal before the Additional Collector. This, by no stretch of imagination, could have improved the case of respondent no.6. 12th Class mark-sheet filed subsequently by respondent no.6 does not make her eligible in the instant selection.

15. It could not be established that the petitioner does not belong to the relevant Ward in which the Anganwadi Centre was situated even after de-limitation.

16. In view of the foregoing analysis, learned Additional Collector has clearly erred in allowing the appeal of respondent no.6 by impugned order dated 10.8.2017. Similarly the appellate authority has erred in disallowing

the appeal preferred by the petitioner by passing the order dated 30.8.2017. Resultantly, both the orders dated 10.8.2017 and 30.8.2017 are set aside. Consequently, the appointment of respondent no.6 is also set aside. The respondents are directed to continue the petitioner on the post of Anganwadi Worker in place of respondent no.6.

17. The writ petition is allowed.

(Sujoy Paul)
Judge

P/Biswal

Digitally signed by MRS PREETI TIWARI
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