

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.7696/2017

Mamta Shalik Lande

..V/s..

Divisional Commissioner, Nagpur Division, Nagpur and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Suyash Agrawal, Advocate h/f Mrs. R.S. Sirpurkar, Advocate for the
petitioner.

Shri A.A. Madiwale, A.G.P. for respondent No.1.

Shri M.M. Sudame, Advocate for respondent No.2.

CORAM : RAVINDRA V. GHUGE, J.

DATED : 23.1.2020.

1] The petitioner is aggrieved by the order passed by the Divisional Commissioner, Nagpur dated 16.11.2017 by which, the appointment of the petitioner was quashed and set aside without hearing her as she was not arrayed as a respondent by the complainant / respondent No.4 herein.

2] The petitioner approached this Court by this petition and was granted *ad interim* protection by order dated 6.12.2017 and notice was issued to the respondents.

3] None present for respondent No.4 despite the name of the Advocate appearing on the daily board and

having been flashed on the display screen.

4] There is no dispute that the petitioner was selected as an Anganwadi Sevika pursuant to the proclamation dated 23.8.2016. She submitted her residence certificate, acquired by her from the Grampanchayat authorized person in the month in which the proclamation was published. Clause (1) of the proclamation on page 2 indicates that the residence proof would be mandatory and it should be in the nature of a certificate issued by the Secretary of the Grampanchayat issued in the month in which the proclamation has been published.

5] The learned A.G.P. points out the G.R. dated 13.8.2014 which spells out from Clause 2(b) that the residence certificate is mandatory for an applicant for the post of Anganwadi Sevika / Mini Anganwadi Sevika / Madatnis. She must belong to the village for which such an appointment is to be made. The proclamation published by the Zilla Parishad indicates that such residence proof should be tendered by acquiring the said certificate in the month in which proclamation is published.

6] The learned Advocate for the Zilla Parishad submits that this condition has been introduced to ensure that a residence certificate has a better credibility and is acquired in the month in which the proclamation is published so that the Authorities would be convinced

that it is not a stale document. This condition has been applied uniformly to all the applicants and in no case, the Zilla Parishad has deviated from the said condition. He further submits that the proceedings initiated by respondent No.4 seeking cancellation of the petitioner's appointment, was considered by the Zilla Parishad and by order dated 16.3.2017, the complaint of respondent No.4 was rejected.

7] I have perused the condition set out in the proclamation which is said to have been uniformly made applicable to every applicant desirous of seeking an appointment under the said proclamation. I have perused the reasons assigned by the Divisional Commissioner, Nagpur concluding that the said condition is unsustainable and entertaining the claim of respondent No.4 though her residence certificate was issued in the month prior to the month in which the proclamation was published.

8] I find that the Divisional Commissioner had no reason to deviate from the conditions set out in the proclamation since he is not vested with the authority or jurisdiction to decide the legality of any specific condition mentioned in the proclamation. In the case in hand, he could not have set aside the condition merely because he finds that the said condition is not favourable to the original complainant.

9] It is pointed out by the learned A.G.P. that he

has not come across any provision which empowers the Divisional Commissioner to quash or modify any condition set out in the proclamation.

10] It is informed that the petitioner was selected and appointed pursuant to the selection process and is continued in service by virtue of *the ad interim* order passed on 6.12.2017 as it was specifically ordered that she will not be discontinued from service as an Anganwadi Sevika.

11] Considering the above, this writ petition is allowed in terms of prayer clause (1). The impugned order dated 16.11.2017, passed by the Divisional Commissioner, Nagpur cannot be sustained and the same is, therefore, quashed and set aside.

(RAVINDRA V. GHUGE, J.)