IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 1556 of 2014

Decided on: 22.12.2020

Sushma Devi .....Petitioner.

Versus

State of Himachal Pradesh & ors. .....Respondents.

Coram

Ms. Justice Jyotsna Rewal Dua, *Judge.*

Whether approved for reporting?[1] *Yes.*

For the petitioner	:	Mr. B.C. Verma, Advocate.
For the respondents	:	Mr. Anil Jaswal, Addl. AG, for respondents No. 1 to 4.
		Ms. Megha Kapur Gautam, Advocate, for respondent No. 5.
		Nemo for respondent No. 6.

(THROUGH VIDEO CONFERENCE)

Jyotsna Rewal Dua, *Judge* (Oral)

Petitioner despite being successful in dislodging respondent No. 6 from the post of Anganwari Worker could not procure appointment in her favour. After her successful challenge to the appointment of respondent No. 6, the resultant vacancy has been filled-in from the second in the merit i.e. respondent No. 5. Aggrieved, the petitioner has preferred

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

instant writ petition with the grievance that she was the torch bearer and, therefore, after having successfully contested the case against the original appointee/respondent No. 6, instead of respondent No. 5 it is the petitioner who deserved to be appointed in place of respondent No. 6.

2(i) Selection process was conducted in 2007 for the post of Angnwari Worker in Anganwari Centre Togi wherein petitioner alongwith others participated. The selection committee headed by the Sub Divisional Officer (Civil), Anni selected and appointed respondent No. 6 as an Anganwari Worker. Petitioner challenged the selection and appointment of respondent No. 6, inter-alia on the ground that annual family income of respondent No. 6 was beyond the prescribed ceiling limit. The appellate authority i.e. Deputy Commissioner, Kullu vide order dated 10.1.2008 allowed petitioner's appeal and set aside the selection and appointment of respondent No. 6 after conforming that annual family income of respondent No. 6 was beyond the prescribed income limit. The Deputy Commissioner also ordered to offer the appointment to respondent No. 5 being first in the waiting list. Respondent No. 5 was accordingly appointed and is working as such w.e.f. 3.3.2008.

2(ii) The petitioner as well as respondent No. 6 challenged the order dated 10.1.2008 passed by the Deputy Commissioner before the learned Divisional Commissioner, Mandi/respondent No. 2 by filing two separate appeals. Petitioner in her appeal

contended that income of respondent No. 5 was also beyond the prescribed limit, therefore, she despite being next in the merit, could not be appointed as an Anganwari Worker. Whereas respondent No. 6 in her appeal challenged cancellation of her appointment. Both these appeals were dismissed by respondent No. 2 vide order dated 23.6.2008. Not satisfied, petitioner instituted CWP No. 1548 of 2008 before this Court, which was decided on 3.6.2010. The matter was remanded to the appellate authority for afresh decision. Paragraph-6 of the judgment, being relevant, is extracted hereinafter:

> *"6. There will be a direction to the appellate authority in these cases, to take appropriate steps in the cases where a dispute on income is involved, to get the same duly processed by the competent authority, in the matter of cancellation. Necessary steps in that regard will be taken and action finalized within a period of four months from the date of production of this judgment to the competent authority. That competent authority will also afford an opportunity to the affected party to participate in that proceedings. Subject to the outcome of the action thus taken by the competent authority, on the income certificate already issued to the incumbent, the appellate authority will take appropriate action within two months. We also make it clear that in the event of any appointment being cancelled, the appellate authority will also issue necessary directions for the next person from the list, to be appointed, in case a list is available. Needless to say that until the process, as above said, is completed, the incumbents now working, will be continued. We may make it clear that the inquiry will be on the basis of the Policy/Guidelines as existed at the time of appointment."*

2(iii) After remand, the appellant authority on 29.11.2010 directed the competent authority to ascertain the correctness of income certificates of the parties. The competent authority conducted the proceedings for ascertaining the income

certificate of respondent No. 5 being disputed by the petitioner. Despite being directed to remain present in the proceedings, the petitioner did not associate herself in the proceedings. At the conclusion of the proceedings, the income certificate dated 15.5.2007 issued in favour of respondent No. 5 was held to be correctly issued. Accordingly, appeal filed by the petitioner before the learned appellate authority was dismissed on 22.6.2011 reserving liberty to her to challenge the correctness of the income certificate before the competent authority. Further appeal preferred by the petitioner against the order dated 22.6.2011 was also turned down by the Divisional Commissioner/respondent No. 2 on 3.12.2013.

3. Aggrieved, instant writ petition has been preferred by her claiming following reliefs:

> "*(i)* *That the respondent No. 1 to 4 may be ordered to produce entire record of the case.*
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> *(ii)* *That the order Annexure P-2 and Annexure P-3 as passed by the Respondent No. 2 and 3 may be ordered to be set aside and quashed and consequently this Hon'ble Court may be pleased to pass order for selection and appointment of the petitioner as Anganwari Worker in Anganwari Centre, Togi, Tehsil Ani, District Kullu, H.P."*

4. I have heard learned counsel for the parties and gone through the pleadings and record appended therewith.

4(i) Learned Counsel for the petitioner urged that annual family income of respondent No. 5 was more than the prescribed

limit, therefore, she was ineligible for appointment as an Anganwari Worker.

A perusal of the inquiry proceedings conducted by the respondents, enclosed at Annexure P-4, reveal that the petitioner was directed by the concerned authority to present her case for challenging the income certificate issued in favour of respondent No. 5. The petitioner however did not attend these proceedings and chose to remain absent. Inquiry was conducted by the concerned authority on the basis of statements of the parties present and record produced by the officials. It was concluded that the income certificate in favour of respondent No. 5 was justly issued in accordance with the factual position. As observed above, neither the petitioner participated in the inquiry proceedings nor did she challenge these proceedings before the competent authority. It is not for this Court to don the role of fact finding authority in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India. The writ petition CWP No. 1548/2008 preferred by the petitioner was decided on 23.6.2010 and matter was remanded. On remand, the appellate authority directed the competent authority to hold inquiry with respect to the income certificate of respondent No. 5 being disputed by the petitioner. Once the petitioner does not participate in the inquiry proceedings conducted by the fact finding authority and does not even challenge these proceedings

then subsequently she cannot be heard to complain about income certificate of respondent No. 5.

4(ii) Another argument raised on behalf of the petitioner is that respondent No. 5 was not entitled to marks given to her for belonging to Schedule Tribes by birth since she had married a person belonging to general category. This argument cannot be countenanced as such benefit is available on the basis of birth mark. It will be apposite to refer to the judgment rendered by Hon'ble Apex Court in ***Sunita Singh*** versus ***State of Uttar Pradesh & others***, reported in ***(2018) 2 SCC 493.*** Para-5 of the judgment is extracted hereinbelow:

> *"5. There cannot be any dispute that the caste is determined by birth and the caste cannot be changed by marriage with a person of scheduled caste. Undoubtedly, the appellant was born in "Agarwal" family, which falls in general category and not in scheduled caste. Merely because her husband is belonging to a scheduled caste category, the appellant should not have been issued with a caste certificate showing her caste as scheduled caste. In that regard, the orders of the authorities as well as the judgment of the High Court cannot be faulted."*

4(iii) It has also been contended for the petitioner that the cut off date for separate of family had to be taken as 1.1.2004 and therefore, respondent No. 5 who alongwith her husband had separated from their family w.e.f. 16.4.2007, was not eligible to claim the benefit of separate family.

A division Bench of this Court in *CWP No. 1096/2010*, titled **Raksha Devi** versus ***State of H.P. & others,***

decided on 17th May, 2010 has considered the issue of separation of families and has held that separation of family as on 1.1.2004 is not a pre-requisite condition to make a person eligible for appointment. Separation of family is mentioned in Clause 4(e) of the scheme for appointment of Anganwari Worker for the purpose of computation of income. Relevant paras from the judgment are extracted hereinafter:

> *"7. Coming to the other cases, issues involved pertain to eligibility conditions other than income. In some cases issue raised is as to the computation of income, based on the family status. Family status is to be decided, based on the cut off date, namely 1.1.2004. The Parivar Register is the basic and conclusive evidence with regard to the family status. Therefore, computation of income should be on the basis of the members of the family, entered in the Parivar Register, as on 1.1.2004 and not on any other certificate. We find that in some of the cases, for the only reason that the family had not been separated as on 1.1.2004, the candidates were disqualified. The separation of the family as on 1.1.2004, is not a pre requisite condition to make a person eligible for appointment. The eligibility criterion, as appearing in the Guidelines, at 4(e) reads as follows:*
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> > *"Those belonging to a family which was legally separated as a separate family as per procedure laid down in the Panchayati Raj Act and Rules before 1st January, 2004"*
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> *Clause 4(f) also has to be read, in conjunction with clause (e), which reads:*
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> > *"Those whose annual income does not exceed Rs.8000 per annum, to be certified / countersigned by an officer not below the rank of Tehsildar."*
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> *8. Separation of the family is specifically mentioned in clause 4(e), only for the purpose of computation of income, and if not it will certainly be a patently unreasonable provision for making a person eligible to apply for the post of Anganwadi Workers/Helpers. Income is the criterion and that was sought to be explained as per clause 4(e). Otherwise, for the only reason that the family is not separate even if the income is far below Rs.12,000/-, an applicant would not*

be entitled to make an application. That certainly is not the object of the prescription of the criterion, as extracted above."

As already observed, income certificate of respondent No. 5 dated 15.5.2007 reflecting her annual family income to be within the prescribed limit has been held to be valid by the fact finding authority.

4(iv) It is also contended that it was the petitioner and not respondent No. 5 who had challenged the appointment of respondent No. 6 as Anganwari Worker. Therefore, after cancellation of respondent No. 6's appointment as a consequence of a litigation pursued by the petitioner, it is only the petitioner who ought to have been appointed as Anganwari Worker. Appointment of respondent No. 5 as Anganwari Worker is contrary to law.

Assertion of the petitioner that she deserved to be appointed as Anganwari Worker instead of respondent No. 5 as it was the petitioner who successfully pursued the litigation seeking cancellation of appointment of respondent No. 6, is untenable. It is not in dispute that respondent No. 5 was next in merit being first in the waiting list. Therefore, in the facts and circumstances of the case it was only just and proper on part of official respondents to have offered the post to respondent No. 5, who was also a respondent in the appeal preferred by the petitioner on 29.9.2010 (Annexure P-1) and had participated in the inquiry proceedings conducted by the fact finding authority in 2011 and

in subsequent proceedings thereafter. Petitioner though carried the torch, but cannot be appointed ignoring the merit of respondent No. 5, who pursuant to her appointment on 3.3.2008 as an Anganwari Worker is continuing working as such. Petitioner is also statedly working as Asha Worker w.e.f. 2016.

5. No other point has been urged.

Considering all above aspects, there being no merit in the instant writ petition, the same is, therefore, dismissed, so also the pending application(s), if any.

Jyotsna Rewal Dua
Judge.

December 22nd, 2020,
(vs)