

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3233 of 2012

- Smt. Vimla Bai Pathare, W/o Shri Maniram Pathare, Aged About 46 Years
R/o Purani Basti, Baloda Bazar, Ward No.9 Thana Bloda Bazar, Tahsil And
Distt. Baloda Bazar, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through - Secretary, Deptt. Of Panchayt And
Samaj Seva, D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh
2. Collector, Distt. Raipur, Chhattisgarh
3. Upper Collector, Baloda Bazar Distt. Raipur, Chhattisgarh
4. Sub Div. Officer (Revenue) Baloda Bazar Distt. Raipur, Chhattisgarh
5. Project Officer Integrated Child Development Project, Baloda Bazar
District : Balodabazar-Bhathapara, Chhattisgarh
6. Smt. Nisha Jaiswal, W/o Shri Chandrika Prasad Jaiswal Aged About 39
Years R/o Thakur Dev Chowk, Ward No. 09, Thana Baloda Bazar,
District : Balodabazar-Bhathapara, Chhattisgarh

---- Respondents

For Petitioner	: Shri Awadh Tripathi, Advocate
For Respondents/State	: Shri Vimlesh Bajpai, GA
For Respondent-6	: Shri Goutam Khetrapal, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

13.09.2021

1. Petitioner aggrieved by dismissal of her appeal by the Collector,
District Baloda Bazar, Bhatapara vide impugned order Annexure P1 dated
14.06.2012, has preferred this Writ Petition with following reliefs:

“10.1 That the petitioner most humbly and respectfully pray to
this Hon'ble Court to issue appropriate writ/direction to the
respondent Competent Authority for considered the case of
petitioner and issue selection /appointment order in favour of
petitioner as such she is entitled for preferential right, because
she having extra qualification for scheduled caste candidate
rather than the respondent No.6 not belongs to scheduled caste
candidate and in fact she belongs to other than backward
category.

10.2 Any other relief, which may deem fit and proper in the facts and circumstances of the case, may also be allowed.”

2. Facts of the case are that the Office of Project Officer, Elementary Child Development Project, Baloda Bazar issued notification/advertisement for appointment of Anganwadi Workers and Anganwadi Assistants for District Baloda Bazar City area on 31.01.2006. In the advertisement, post of Anganwadi Workers of Guru Ghasidas Ward-9, Baloda Bazar was also advertised. In pursuance of advertisement, four candidates of Guru Ghasidas Ward No.9 Baloda Bazar submitted their applications for Anganwadi worker (karyakarta).

3. Respondent-5 issued appointment order on 18.09.2006 in respect of all Wards of Baloda Bazar City/Town, including Ward-9 ie Guru Ghasidas Ward. Order of appointment of respondent-6 was challenged by filing representation before the Collector, which was transferred to the Sub-Divisional Officer (for short, 'SDO'), for adjudication. Vide Annexure P2 order dated 10.08.2010, SDO dismissed the appeal, overlooking the Guidelines, 2000 for considering application Form and appointment on the post of Anganwadi Worker. He submits respondent-4 arrived at a conclusion that appointment of respondent-6 is in accordance with law and Guidelines of 2000 and further, appeal was filed with delay. Order of SDO (Annexure P2) was put to challenge in Writ Petition- WPS 348 of 2011, which was dismissed as withdrawn granting liberty to petitioner to approach alternative forum available to her. Thereafter, order of SDO was challenged before the Collector, District Baloda Bazar, Bhatapara. The Collector, vide order dated 14.06.2012 (Annexure P1) dismissed the appeal holding respondent-6 to be meritorious candidate and further, recorded

that appellant failed to produce any documentary evidence that any of the family members of respondent-6 is in government employment.

4. Shri Awadh Tripathi, learned counsel for the petitioner submits that appointment of Anganwadi Worker is to be made in accordance with the Guidelines issued by the State Government on 06.01.2000. Under Clause-3 of guidelines, it is specifically mentioned that relatives of any Government servant or Elected member of Panchayat, Local body or nominated member will not be appointed as Anganwadi Worker. In this case, petitioner has taken specific plea that relative of respondent-6 is a Government servant and working as Teacher. He further contended that guidelines further provide for giving preference to Women belonging to family members of Below Poverty Line, SC/ST and they should possess qualification of Matriculation. If Matriculation pass candidate is not available, then, she should have passed Middle School, and if Middle School pass candidate is not available, then, less qualified lady of that village can be appointed. For Municipal areas/City areas, candidate for Anganwadi worker passing Matriculation is mandatory. He submits that guidelines further provide for giving preference to candidates who are widow, deserted, or SC/ST, if all the candidates possess equal qualification. In the case at hand, candidates who applied for Ward-4, all are residents of Guru Ghasidas Ward-9. Out of 4 candidates, 3 belong to families living below poverty line, including petitioner and respondent-6. Petitioner and respondent-6 possess qualification of matriculation. Petitioner belongs to SC community, hence, she should have been given preference as per guidelines. Both the authorities have not considered clause of giving preference under Guidelines, 2000, and have recorded a finding that respondent-6 is meritorious candidate

amongst applicants and dismissed the case of petitioner erroneously. Hence order passed by authorities is not sustainable.

5. Shri Vimlesh Bajpai, Government Advocate appearing for the State submits that respondent-6 was appointed after following due procedure prescribed in advertisement, and selection is made after considering entitlement and merits of candidates. Appeal filed by the petitioner before SDO was dismissed on merits as well as on the ground of limitation in challenging the order of appointment. Respondent-2/Collector dismissed her appeal on merits. There is concurrent finding of facts, hence, petitioner is not having any case on merits.

6. Shri Goutam Khetrapal, learned counsel for respondent-6 submits that appointment of respondent-6 is made after following due process of law. Respondent-6 was found to be most suitable amongst 4 applicants for appointment on the post of Anganwadi Worker for Guru Ghasidas Ward-9 of Baloda Bazar City area. After appointment on the post of Anganwadi Worker on 18.09.2006, respondent- 6 joined the post, underwent training and is continuously working for about 15 years. He further pointed out that respondent-6 on the date of appointment, was 26 years of age. Petitioner in view of her date of birth (05.07.1962) mentioned in impugned order, is now more than 59 years of age. Hence, petitioner is not entitled for the relief sought for by her. Appointment made is strictly in accordance with law and guidelines issued by the State Government. He submits that in the facts of the case, Writ Petition be dismissed.

7. I have heard learned counsel for the parties and also perused record of Writ Petition.

8. Perusal of Annexures P1, P2 and P3 Order of Collector, Order of SDO and Order of appointment of respondent-6 respectively would show that order of appointment of Anganwadi Worker/Anganwadi Assistants/Sahayika is to be made under Guidelines, 2000. Perusal of guidelines would show that candidates, whose family members are government servants, elected members of Panchayat, or Municipal Council or Corporation or nominated members, are not eligible for appointment as Anganwadi Workers/Anganwadi Assistants. If candidates possess equal qualification, then preference is to be given as mentioned therein under Clause-2(c) of Guidelines, 2000. In the impugned order, Collector arrived at a finding that ground raised by the petitioner that family member of respondent -6 is in government service was not proved. Before this Court also no documentary or admissible piece of evidence is brought on record in this regard. Hence, said finding cannot be said to be erroneous.

9. So far as 2nd ground raised by the counsel for petitioner of giving preference to candidates in Clause 2.2(c) is concerned, perusal of impugned order would show that chart is prepared showing eligibility of all four candidates. Petitioner and respondent-6 have passed Matriculation. Their names are included in chart and family members residing below poverty line. Petitioner belongs to SC community, which is appearing from Caste mentioned in chart against each of the candidate. On perusal of Guidelines, 2000 and chart prepared in impugned order, it appears that clause-2.2(c) of Guidelines was not followed.

10. Now, in the aforementioned facts of case, at this stage, it is to be considered whether appointment of respondent-6 should be cancelled, particularly in view of the relief sought for by the petitioner. Petitioner has sought two reliefs in Writ Petition. First, Writ/direction to competent authority for considering her case and issuance of selection/appointment order. In Writ Petition, petitioner has not sought for any relief of cancellation of appointment of respondent-6 nor for setting aside the order passed by authorities in appeal ie the SDO and Collector. When Petitioner has filed Writ Petition against order Annexsure P1 before Collector in appeal, and no prayer is made for setting aside order under challenge, in opinion of this Court no relief can be granted to the petitioner.

11. Further, petitioner's date of birth as mentioned in Higher Secondary School Certificate Exam is 05.07.1962 (available at Page 30 of Writ Petition). Petitioner as of now, is more than 59 years of age and therefore, considering age of petitioner today, in opinion of this Court, it will not be proper to grant any relief as argued by counsel for petitioner, more so when respondent-6 is working continuously for about more than 14 years as Anganwadi Worker. Respondent-6 has not played any mischief, or suppressed any material or document from appointing authority. She submitted all her testimonials and information, as required under advertisement for her appointment on the post of Anganwadi Worker. Appointing authority considered eligibility of all applicants and thereafter, respondent-6 was appointed. It is not that respondent-6 does not fulfil the requisite eligibility criteria. Even if it is considered that benefit as prescribed under guidelines is not extended to petitioner, then also, appointment of respondent-6 cannot be said to be illegal.

12. In view of aforementioned facts of the case, whether it will be equitable to cancel appointment though not prayed by the petitioner in this Writ Petition. Respondent-6 is working as Anganwadi Worker for last about more than 14 years, cancellation of her appointment will adversely affect her, because at this stage, she may not be in a position to get any other job, and would severely affect economic security of her family.

13. Hon'ble Supreme Court in case of **Girijesh Shrivastava and Others** reported in (2010) 10 SCC 707 has held thus:

“29. Coming to the issue of selection and appointment of ex-servicemen as a reserved category, from what has been placed before us, we understand that while in Mehagaon 5 ex-servicemen had been appointed out of a total of 9 applicants, in Raun none had been so appointed. As stated above, if at all there was an issue with respect to the reservation policy of the ex-servicemen it ought to have been brought up as a service dispute and not in a PIL. The High Court, with due respect, should have displayed a little more restraint and balance before quashing a selection process in which the persons selected had already put in 3 years of service.

30. xxxxxxxx

31. More importantly, in deciding these issues, the High Court should have been mindful of the fact that an order for cancellation of appointment would render most of the appellants unemployed. Most of them were earlier teaching in Non-formal education centers, from where they had resigned to apply in response to the advertisement. They had left their previous employment in view of the fact that for their three year long teaching experiences, the interview process in the present selection was awarding them grace marks of 25 per cent. It had also given them a relaxation of 8 years with respect to their age. Now, if they lose their jobs as a result of High Court's order, they would be effectively unemployed as they cannot even revert to their earlier jobs in the Non-formal education centers, which have been abolished since then. This would severely affect the economic security of many families. Most of them are between the age group of 35-45 years, and the prospects for them of finding

another job are rather dim. Some of them were in fact awaiting their salary rise at the time of quashing of their appointment by the High Court. ”

14. Considering facts of the case in light of aforementioned rulings of Hon'ble Supreme Court, and further considering reliefs sought for by the petitioner, wherein she has not prayed for any relief of cancellation of appointment of respondent-6 or setting aside the order passed by the appellate authority, and also looking to age of the petitioner today to be more than 59 years and respondent-6 to be about 48 years, in peculiar facts of the case, I am not inclined to interfere with impugned order passed by the Collector.

15. In the result, Writ Petition is dismissed.

(Parth Prateem Sahu)
JUDGE