

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.2541 of 2013

Smt. Leena Soni, D/o Raj Kumar Soni, Age about 36 years, R/o Sheetala Nagar, Marar Para, Ward No.5, Near Santoshi Mandir, Thana Durg City Kotwali, Post, Tah. & Distt. Durg (C.G.)

---- Petitioner

Versus

1. Smt. Neelam Madame, W/o Jitendra Madame, age about 32 years, R/o Sheetala Nagar, Marar Para, Ward No.5, Near Santoshi Mandir, Thana Durg City Kotwali, Post, Tah. & Distt. Durg (C.G.)
2. Commissioner, Municipal Corporation, Durg (C.G.)
3. R.K. Jamulkar, Child Development Officer, Ekikrit Bal Vikash Sewa Pariyojana (Town), Durg (C.G.)
4. Director, Rohit Yadav, Urban Administration and Development, Raipur (C.G.)

---- Respondents

 For Petitioner: Mr. Jitendra Gupta, Advocate.
 For Respondent No.1: Mrs. Fouzia Mirza, Senior Advocate with
 Mr. Shobhit Mishra, Advocate.
 For Respondent No.2: Mr. Kanwaljeet Singh Saini, Advocate.
 For Respondent No.3: Mr. S.P. Kale, Advocate.
 For Respondent No.4 / State: -
 Mr. Animesh Tiwari, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

30/09/2021

1. In a recruitment process initiated for appointment on the post of Aanganbadi Karyakarta, Ward No.5, Sheetal Nagar, Marar Para, Durg, the petitioner herein, respondent No.1 herein and two other candidates made their candidature on which the competent authority by order dated 25-3-2011 appointed respondent No.1 as Aanganbadi Karyakarta which was challenged by the petitioner herein by filing an appeal before the Additional Collector and the Additional Collector by

order dated 12-2-2013 allowed the appeal and directed for remanding the matter for taking fresh decision in accordance with law which was challenged by respondent No.1 in appeal preferred before the Director, Urban Administration & Development, and in turn, the Director, Urban Administration & Development, by its impugned order dated 11-7-2013 set aside the order of the Additional Collector and restored the order of the competent authority appointing respondent No.1 on the post of Aanganbadi Karyakarta in sum and substance which has been sought to be challenged by the petitioner herein by way of this writ petition under Article 226 of the Constitution of India in which specific relief has been asked for setting aside the order of the Director, Urban Administration & Development.

2. Mr. Jitendra Gupta, learned counsel appearing for the petitioner, would make two fold submissions: -
 1. The application filed by respondent No.1 for the post of Aanganbadi Karyakarta was not duly filled-in by her as it was not duly initialed by her, therefore, her candidature could not have been considered for the said post.
 2. 15 marks that have been awarded to the petitioner have wrongly been deleted by the competent authority while assessing the marks obtained by the petitioner and therefore the impugned order is liable to be set aside the matter be remitted for fresh decision in accordance with law.
3. Mrs. Fouzia Mirza, learned Senior Counsel appearing for respondent No.1; Mr. S.P. Kale, learned counsel appearing for respondent No.3; and Mr. Animesh Tiwari, learned Deputy Advocate General appearing for the State / respondent No.4, would support the impugned order

and submit as under: -

1. Though the application form of respondent No.1 was not initialed, but she had already filed photographs duly signed and her name has also been mentioned in the select lists; it is not the case that it is a forged application and respondent No.1 did not apply for the said post, even then her candidature has rightly been considered.
2. The mistake, if any, that has been committed by respondent No.1 of not putting initial is too technical in nature and on that very ground, her candidature cannot be ignored and as such, her candidature has rightly been accepted by the competent authority as well as by the Director, Urban Administration & Development.
3. The petitioner herein did not submit her certificate that she is a deserter as required by clause 1.10 of circular dated 2-4-2008 duly certified by the competent authority and therefore 15 marks awarded to her have rightly been deleted after objection, by the competent authority, as such, the petitioner being a non-meritorious candidate, has rightly not been selected.
4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
5. In a recruitment process initiated for the post of Aanganbadi Karyakarta, Marar Para, Ward No.5, Shitala Nagar, Durg, applications of suitable candidates along with that of the petitioner and respondent No.1 were considered and initially, the petitioner was also awarded 15 marks on the ground that she is a deserted woman and similarly,

respondent No.1 was awarded 10 marks as she belongs to Scheduled Caste category and accordingly, respondent No.1 was awarded 57.20 marks and the petitioner was awarded 53.12 marks, but after the disposal of objections, 10 marks of respondent No.1 were deleted as the caste certificate submitted by her was not in accordance with the circular dated 2-4-2008 and similarly, 15 marks of the petitioner were deleted on the ground that she failed to produce the desertion certificate as per circular dated 2-4-2008 by which respondent No.1 secured 47.20 marks, Smt. Manju Sharma who is not party in this writ petition has secured 46.13 marks, Smt. Sushma Shrivastava who is also not party herein has secured 38.27 marks and the petitioner herein has secured 38.13 marks. As such, respondent No.1 being the highest marks scorer was selected and appointed on 25-3-2011. Thereafter, the petitioner filed appropriate proceeding before the Additional Collector and the Additional Collector by order dated 12-2-2013 held that respondent No.1 did not submit the requisite certificate of her desertion and has not made initial on the application form and the caste certificate of respondent No.1 is also temporary caste certificate which could not have been accepted, and remanded back the matter to the competent authority. The Director, Urban Administration & Development, on appeal preferred by respondent No.1, reversed the finding of the Additional Collector holding that though respondent No.1 did not put initial on the application form, but she has filed the signed photographs attached with the application form and she has also put her initial on the receipt-dispatch register duly certified by the Project Officer, Integrated Child Development Services (City), therefore it cannot be rejected and further held that the appointment made is strictly in accordance with law.

6. So far as the first objection raised by learned counsel for the petitioner that respondent No.1 has not put her signature on the proper place in the application form therefore her candidature could not have been accepted is concerned, the learned Director, Urban Administration & Development has considered the issue and held that respondent No.1 has signed on the photographs affixed with the application form and she has also put her initial on the register while submitting her application form and more over, initial of respondent No.1 is also in the receipt-dispatch register, and thus, the learned Director proceeded to ignore the said objection holding that on the above-stated finding, the application / candidature of respondent No.1 cannot be rejected. In the considered opinion of this Court, the application of respondent No.1 has been accepted by the competent authority as well as by the Director, Urban Administration & Development holding that not making signature is human error which can be rectified and according to them it is too technical in nature. It is not the case that respondent No.1 did not make application for appointment and her identity is not established, rather her identity is duly established as she put her initial on the photographs affixed on the application form and also put her initial on the receipt-dispatch register and therefore her identity is duly established and there is no allegation of misrepresentation or any other kind of irregularity except not making signature in prescribed form. Therefore, the competent authority and the Director, Urban Administration & Development, both are justified in holding that merely on the basis of application not having been signed, the identity of the applicant is established by other means and proceeded to consider the candidature of the petitioner on merits that respondent No.1 cannot be non-suited on the post of Aanganbadi Karyakarta as she is

working on the said post since 11-7-2013. Accordingly, this argument of learned counsel for the petitioner cannot be accepted.

7. The next submission of learned counsel for the petitioner is, 15 marks awarded to the petitioner on the ground that she being deserted woman, have wrongly been deleted and if 15 marks were awarded to her, she would be No.1 and would get more marks than that of respondent No.1 and thus, would be entitled for appointment on the post of Aanganbadi Karyakarta.
8. At this stage, it would be appropriate to notice circular dated 2-4-2008 in accordance with which the appointment has been made. Clause 1.10 of circular dated 2-4-2008 clearly provides that deserted woman would be entitled for additional marks. It states as under: -

1.10 आंगनबाड़ी कार्यकर्ता/सहायिका/मिनी आंगनबाड़ी कार्यकर्ता के पद पर चयन में विधवा, परित्यक्ता एवं तलाकशुदा महिलाओं को मूल्यांकन में अतिरिक्त अंक निर्धारित किये गये हैं। इस हेतु परित्यक्ता अथवा तलाकशुदा महिला होने पर संबंधित आवेदिका को आवश्यक प्रमाण पत्र प्रस्तुत करना होगा।

स्पष्टीकरण:- (क) परित्यक्ता के संबंध में निम्न में से कोई एक प्रमाण पत्र मान्य होगा-

- 1) संबंधित ग्राम पंचायत के सरपंच तथा सचिव द्वारा संयुक्त हस्ताक्षरित प्रमाण पत्र/नगर पंचायत के अध्यक्ष तथा नगर निगम/नगर पालिका क्षेत्र में वार्ड के पार्षद द्वारा प्रमाण पत्र दिया गया हो तो उसे प्रस्तुत किया जावे।

अथवा

- 2) न्यायालय द्वारा जारी तत्संबंधी आदेश।

(ख) तलाकशुदा महिला होने के संबंध में न्यायालयीन आदेश की प्रति प्रस्तुत करनी होगी।

(ग) यदि शासन से किसी प्रकार की आर्थिक सहायता/पेंशन प्राप्त की जा रही हो तो उसका प्रमाण पत्र भी प्रस्तुत किया जा सकता है।

(घ) परित्यक्ता महिला के संबंध में दो वर्ष से अधिक की अवधि को ही मान्य किया जावेगा।

9. A careful perusal of the aforesaid provision would show that a

deserted woman applying for the said post would be entitled for additional marks if she submits certificate in case of Gram Panchayat, jointly signed by the Sarpanch and Secretary; in case of Nagar Panchayat signed by the President; and in case of Municipal Corporation / Municipal Council signed by the Councillor.

10. In the present case, the Additional Collector as well as the Director, Urban Administration & Development both have recorded a finding that the petitioner herein made a self-serving statement on affidavit that she is deserted woman. The Explanation given in clause 1.10 of circular dated 2-4-2008 is quite explicit and clearly provides that certificate as mentioned in the said clause obtained from the competent authority has to be filed, which has admittedly not been filed and on being asked, learned counsel for the petitioner could not point out that certificate has been brought on record that the petitioner is a deserted woman. Once application is made, according to circular dated 2-4-2008, the petitioner was bound to produce certificate in order to get additional marks being deserted woman. Therefore, the competent authority has rightly deleted the additional marks awarded to the petitioner while considering the objection. As such, deletion of 15 marks granted to the petitioner is justified and same have rightly been deleted. If that be the position, the petitioner's number in merit would be 4, whereas respondent No.1 would be No.1 in the order of merit which has been assigned by the competent authority.

11. In that view of the matter, I do not consider that the impugned orders passed by the Additional Collector and by the Director, Urban Administration & Development need interference. Thus, no interference is warranted in the orders impugned in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India.

I do not find any merit in this writ petition. The writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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