

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WA No. 144 of 2020**

- Anita Bai W/o Shri Dhaniram Aged About 48 Years Caste - Mahar, R/o Village Mujgahan, Post Pinkapat, Police Station Devri, Tehsil Daundi Lohara, District Durg Chhattisgarh.

---- Appellant**Versus**

1. State Of Chhattisgarh Through Collector, Durg, Office Situated At Durg Chhattisgarh.
2. Chief Executive Officer Janpad Panchayat, Daundilohara, District Durg Chhattisgarh.
3. Project Officer Ekikrat Bal Vikash Pariyojna, Daundilohara, District Durg Chhattisgarh.
4. Mahila Bal And Swasthy Sthayi Samiti Through Head Of Samiti Daundi Lohara, District Durg Chhattisgarh.
5. Sarpanch Gram Panchayat Mujgahan Block Daundi Lohara, District Durg Chhattisgarh.
6. Deokala Sinha Wd/o Late Chaggan Lal R/o Mujgahan, Block Daundi Lohara, District Durg Chhattisgarh.

---- Respondent

For Appellant : Shri Sunny Agrawal, Advocate.
For Respondent/State : Shri Gagan Tiwari, Deputy GA.
For Respondent No.2 : Shri Vikram Sharma, Advocate.
For Respondent No.6 : Shri B.P. Singh, Advocate.
Shri Deepak Thakur, Chief Executive Officer, Janpad Panchayat, Dondilohara is present in the Court.

Hon'ble Shri Prashant Kumar Mishra, Ag CJ &
Hon'ble Smt. Rajani Dubey, J

Judgment On Board By Prashant Kumar Mishra, Ag CJ

28/09/2021 :

1. The appointment on the post of Aangan Badi worker of village Mujgahan, Block Dondilohara, District Durg (now District Balod) is the subject matter involved in the present Writ Appeal.
2. The issue concerning the appointment to the said post first arose by an appointment order dated 28.1.1997 by which respondent No.6 – Deokala Sinha was appointed. However, on 4.2.2004, she was removed from the post and the order of termination was the subject matter of challenge before this Court in WP No.697/2004. The final order passed in this writ petition on 31.3.2010 is the subject matter of the present Writ Appeal. The writ petition was allowed by the learned Single Judge. However, neither any interim relief was allowed in favour of respondent No.6 – Deokala Sinha during pendency of the writ petition nor it was brought to the notice of the Court that during the pendency of the writ petition, the present appellant has been appointed on the said post vide order dated 5.12.2005.
3. As a result of the final order dated 31.3.2010 in WP No.697/2004, the present appellant was removed from the post on 19.5.2010 and respondent No.6 – Deokala Sinha was allowed to join. She worked on the post till 11.1.2012. In the meanwhile, the appellant preferred WPS No.2622/2010 challenging the order dated 19.5.2010 by which she was removed from the post of Aangan Badi worker. In the said writ petition, an interim order was passed on 9.6.2010. Alleging non-compliance of the said interim order, the present appellant preferred a Contempt Petition No.251/2010, which was disposed of on 21.1.2011, when it was informed to the Court that the contempt has been purged.

Thus the present appellant was again allowed to continue on the post till WPS No.2622/2010 was decided.

4. In the present Writ Appeal also, the appellant is enjoying the interim order of status quo granted on 11.2.2020. Thus, as on date, the present appellant is working on the post of Aangan Badi Worker of village Mujgahan.
5. When the appellant preferred WPS No.2622/2010 challenging the order of termination dated 19.5.2010, this Court refused to entertain the writ petition on the ground that a writ has already been issued in favour of respondent No.6 – Deokala Sinha in WP No.697/2004, therefore, if the appellant's writ petition is allowed, there would be a contrary writ issued by this Court in respect of the same post. However, it was left open for the appellant either to move Review Petition or Writ Appeal in respect of the order passed in WP No.697/2004. Availing the said liberty, the appellant has preferred the present Writ Appeal.
6. As a result of the litigation for the last 17 years i.e. from 2004 onwards, on the one hand, the appellant is continuing on the post on the strength of interim order from the date of her appointment till date, barring the period 19.5.2010 to 11.1.2012, during which respondent No.6 – Deokala Sinha was allowed to work, on the other hand, there is a writ issued in favour of respondent No.6 – Deokala Sinha, although the same is subject matter of challenge in this Writ Appeal.
7. In Writ Petition No.697/2004, this Court was not called upon to examine the rival candidature of the appellant and respondent No.6 – Deokala Sinha, because as in 1997, the appointment order was issued

only in favour of respondent No.6 – Deokala Sinha and the appellant was not a candidate in that selection. The present appellant came in the picture by way of separate appointment order dated 5.12.2005, which was issued when the appointment of respondent No.6 – Deokala Sinha was cancelled and she was removed from the post on 4.2.2004 and there was no interim order by this Court in WP No.697/2004. The matter became complicated because respondent No.6 – Deokala Sinha neither brought to the notice of this Court that during the pendency of the writ petition, the present appellant has been appointed on the post nor the present appellant was made a party in the writ petition before the learned Single Judge.

8. We are now faced with a situation where the appellant is working on the post for about 15 years and at the same time, respondent No.6 – Deokala Sinha is legally entitled to hold the post, as the order of removal has been set aside by this Court.
9. In the obtaining factual matrix this Court is required to take equitable view of the matter, therefore, this Court had called upon Shri Deepak Thakur, Chief Executive Officer, Janpad Panchayat Dondilohara to inform as to whether any other post of Aangan Badi worker is vacant in his project area.
10. Shri Deepak Thakur, Chief Executive Officer, Janpad Panchayat Dondilohara has filed an affidavit sworn on 21.9.2021 stating that 4 posts of Aangan Badi Workers under different Gram Panchayats namely, Bhandera (Mini Centre), Singarpur (Centre No.1), Pasaud (Centre No.3) and Ganjaideeh (Centre No.2) are vacant. The post

vacant at Singarpur (Centre No.1) is nearest to Village Mujgahan.

11. Shri Vikram Sharma, learned counsel appearing for the respondent No.2 – CEO, Janpad Panchayat, Dondilohara, has drawn attention of the Court to the situation that the appellant has not assailed the order of termination dated 19.5.2010 and thus the same has attained finality and she is not entitled for any benefit by challenging the impugned order.
12. The submission appears to be impressive. However, it is to bear in mind that the order dated 19.5.2010 has its roots in the writ issued by this Court by way of impugned order. Therefore, if the impugned order is modified and appropriate directions are issued by this Court, the efficacy of the order dated 19.5.2010 would be wiped off.
13. While considering moulding of relief in exercise of power under Article 226 of the Constitution of India, this Court is required to balance the equity to see that a party or parties litigating before this Court do not suffer because of interim order/(s) passed by this Court from time to time. This Court is alive to the legal principle that writ Court is not entitled to issue an order of appointment in favour of the appellant. However, at the same time, power under Article 226 of the Constitution of India is required to be exercised in a pragmatic manner to do complete justice to the parties.
14. The appellant has been continuing in the office since last 15 years and there is no complaint against her in the matter of performance of duties. She is presently aged about 48 years. Similarly, respondent No.6 – Deokala Sinha is the beneficiary of the writ issued by this Court. Therefore, in our considered view, ends of justice would be served if the

respondent No.6 – Deokala Sinha is allowed to continue as Aangan Badi worker of Village Mujgahan. At the same time, respondent No.2 is directed to issue appropriate orders adjusting the appellant to work as Aangan Badi worker of Village Singarpur (Centre No.1) within Block Dondilohara, District Balod.

15.The Writ Appeal is accordingly disposed of by modifying the writ issued by this Court in the above stated terms.

16.Before parting, we deem it appropriate to record our appreciation for the assistance rendered by Shri Gagan Tiwari, Deputy GA and Shri Vikram Sharma, Advocate in resolving the issue.

Sd/-
(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-
(Rajani Dubey)
Judge

Barve