

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

WRIT PETITION NO.6602/2017

Ms. Sangita Motiram Naitam,
 aged about 26 years, Occ. Nil,
 r/o Morva, Taluka-Pandharkawda,
 Dist. Yavatmal.

.....PETITIONER

...V E R S U S...

1. State of Maharashtra through
 Divisional Commissioner, Amravati.

2. Mrs. Disha Vivek Kodape,
 Occ. Household, r/o Morva (Juna),
 Post Saikheda, Tq. Pandharkawda,
 Dist. Yavatmal.

2A. Chief Executive Officer,
 Zilla Parishad, Yavatmal.

...RESPONDENTS

 Ms M. J. Kulkarni, Advocate for petitioner.
 Ms H. Jaipurkar, A.G.P. for respondent no.1.
 Mr. R. J. Thakkar, Advocate for respondent no.2.

CORAM:- AMIT BORKAR, J.

DATED :- 20.06.2022

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Heard finally
 by consent of learned counsel for the parties.

2. The issue involved in the present petition is about the
 validity of the petitioner's appointment as Anganwadi Sevika.

In 2005, Zilla Parishad started a scheme called 'Bal
 Vikas Seva Yojna Prakalp'. Applications were invited for the

appointment of Anganwadi Sevika. The petitioner, on 17.08.2015, applied for the said post. One of the qualifications for appointment on the said post is that the candidate must be a resident of the village where she is appointed. The objections were raised in relation to the residence of the petitioner.

3. During the pendency of the appointment, an inquiry was held on the issue of residence of the petitioner. After having an inquiry, the petitioner was appointed on the said post by order dated 15.09.2016.

4. Respondent no.2, on 21.12.2016, applied before the Chief Executive Officer, Zilla Parishad, challenging the order of appointment of the petitioner, which he dismissed.

5. Being aggrieved by the said order, respondent no.2 filed an appeal before the Divisional Commissioner, Amravati. By the impugned order, respondent no.1 allowed the appeal holding that the petitioner had failed to prove the fact that she was a resident of village Morwa. The said order is the subject matter of challenge in the present petition.

6. I have heard Advocate for the parties. On close scrutiny of the impugned order, it appears that the appellate authority has not considered the facts relevant for adjudication of the issue involved in the appeal. It must be noted that the inquiry report dated 05.11.2016 submitted by the Police Patil, Morwa, which has a material bearing on the facts involved in the appeal, has not been considered by the appellate authority. On perusal of the said document, the reasons in the impugned order are based on irrelevant considerations. Therefore, the justification is given to conclude that the petitioner was not qualified on the grounds of failure to prove her residence was against the well-settled principles of law. Therefore, the Divisional Commissioner should consider the case of the petitioner and respondent no.2 afresh by considering facts and documents on record, which are relevant for the purpose of adjudication on the issue involved. Hence, I pass the following order.

7. The writ petition is partly allowed.

The impugned order dated 31.07.2017 passed by Divisional Commissioner, Amravati in Case No.12/2016/Morwa/Project Pandharkawda/Dist. Yavatmal is quashed and set aside.

The proceeding is remanded to the Divisional Commissioner, Amravati, for adjudication afresh.

Respondent no.1 shall consider all the material and relevant documents necessary for adjudication on the issue and, in particular, the inquiry report dated 05.11.2016.

It is made clear that during the pendency of proceedings before the Divisional Commissioner, Amravati, the petitioner shall be entitled to continue on her post. Furthermore, the petitioner shall also be entitled to be continued on her post for eight weeks in case the decision of the Divisional Commissioner, Amravati, is adverse to her.

It is made clear that Divisional Commissioner Amravati shall decide the appeal uninfluenced by any of the observations made in the order and shall decide the said proceedings on its own merits.

Parties shall appear before the Divisional Commissioner, Amravati, on 04.07.2022 at 11.00 a.m.

Rule is made absolute in the above terms. No order as to costs.

JUDGE

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Digitally signed by YOGESH
ARVIND KHALE
Signing Date: 01.07.2022
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