

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

CIVIL APPLICATION (O) NO.2048 OF 2019

IN

MISC. CIVIL APPLICATION (ST) NO.21042 OF 2019.

{Christina Chandraiya Jittaboina ...**Versus**... State of Maharashtra and
Ors.}

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri. S. V. Deshpande, Advocate for Applicant.

Ms. H. N. Jaipurkar, AGP for the Respondent Nos.1 to 3.

Shri. V. M. Vishwarupe h/f Shri. R. R. Vyas, Advocate for Respondent
No.5.

CORAM : SUNIL B. SHUKRE AND
SMT. M. S. JAWALKAR, JJ.

DATE : 25th APRIL, 2022.

Heard.

2. Although, the grounds taken in this application, in our considered view, do not disclose any sufficient cause for condoning the delay, we find even then that this application needs to be allowed in the interest of justice. The reason is simple. When Writ Petition No.275 of 2018 was finally disposed of by this Court, the Applicant-the original Respondent No.5, was not present. It is a different matter that the Respondent No.5 i.e. the present Applicant was given sufficient opportunity to take a stand and defend herself which, she did not avail of.

3. Now, that the Applicant- original Respondent No.5, by this application has pleaded for grant of hearing to her, we have thought it fit to grant hearing to her just in case, injustice, if at all it has been caused, should not continue any further.

4. The application, is therefore, **allowed**. No costs.

MISC. CIVIL APPLICATION (ST) NO.21042 OF 2019.

1. Heard learned Counsel for the Applicant, who is original Respondent No.5 and the learned Assistant Government Pleader for Respondent Nos.1 to 3. None appears for the Respondent Nos.4 and 6.

2. By this application, the Applicant has sought review of the judgment and order dated 07.08.2019, delivered by this Court in Writ Petition No.275 of 2018.

3. In Writ Petition No.275 of 2018, filed by Respondent No.5 (original Petitioner), the grievance was that an appointment of this Applicant (original Respondent No.5 in writ petition) as Anganwadi Helper was illegal, it having been obtained by playing fraud upon the Respondent Authorities. It was submitted by

the original Petitioner that the review Applicant (original Respondent No.5) produced before the Authorities a fraudulent certificate dated 23.09.2016, in support of her claim that she was, at the time of making of application, ordinary resident of Sironcha although, the fact was, she was not resident of Sironcha, but an ordinary resident of State of Telangana. The original Petitioner submitted that this document, in particular, was relied upon by the Authorities and the Authorities accepted the claim of the review Applicant that she was, at the time of application, resident of Sironcha and thus the Authority appointed the review Applicant as Anganwadi Helper. The original Petitioner (Respondent No.5 in this application) contended that this review Applicant was ordinary resident of Telangana State and in support of this contention, the original Petitioner filed several documents including Aadhar Card issued to the review Applicant and her two children namely Akil and Mahalaxmi showing that they are ordinary residents of a place known as Tanugu Wada, Mahadevpur, Karimnagar, Telangana. According to the original Petitioner, this was the latest address of the review Applicant after her marriage with a person from Telangana and even

though, initially the review Applicant was residing at Sironcha, after her marriage, she become ordinary resident of Mahadevpur, Karimnagar, Telangana, and therefore, was dis-entitled to be appointed as Anganwadi Helper in the State of Maharashtra.

4. These submissions of the original Petitioner were found to be having substance in them. This Court, while disposing of Writ Petition No.275 of 2018, in particular, considered the certificate dated 23.09.2016 relied upon by the Authorities as a proof of ordinary residence of the review Applicant at Sironcha at the time of application and found that the certificate in fact only showed that the review Applicant was native of Sironcha Tahasil. This Court also found that there was a difference between a person originally belonging to a particular place i.e. being a native of that place and the person ordinarily residing at his original place. In other words, this Court found that there can be difference between the place of ordinary residence and the native place. Having noted the difference between native place and place of ordinary residence, this Court found that there was no proof available on record which showed that the review Applicant was ordinary resident of

Sironcha at the time of making of an application by her. On these grounds, this Court held that the appointment order dated 10.08.2017 issued to the review Applicant could not stand to scrutiny of law, and therefore, it was quashed and set aside by this Court. At the same time, this Court also directed the original Respondent Nos.1 to 4 i.e. Secretary, Women and Child Development, Mumbai, The Collector, Gadchiroli, The Child Development Project Officer, Sironcha, District Gadchiroli and Woman and Child Development Officer, Zilla Parishad, Sironcha to consider the application of the Petitioner submitted by her, in terms of the merit list prepared already in pursuance of the advertisement dated 15.09.2016 for appointing her as "Anganwadi Sewika-Madatnis", Sironcha in accordance with law.

5. It appears that till date, the application submitted by the original Petitioner seeking her appointment to the post of 'Anganwadi Sewika-Madatnis', which was filed by her in pursuance of advertisement dated 15.09.2016, has still not been considered in accordance with law by the Respondents. We hope that due consideration to this application of the original Petitioner would be accorded by the

Respondents as soon as possible.

6. Coming back to the merits of the application, we do not think that any case has been made out by the review Applicant for reviewing the judgment and order in question by us. We find neither any manifest error therein nor any mistake of fact of such nature as would warrant interference with the judgment and order in question.

7. Learned Counsel for the review Applicant points out that the original Petitioner had submitted a fraudulent document in the nature of certificate dated 16.09.2016 and that the genuine document has now been filed on record of this application which is at page 31. On comparing the certificate dated 23.09.2016 filed by the review Applicant, with the same certificate filed by the original Petitioner in the petition (page 27), we find that there is no difference except for the seal of President, Nagar Panchayat, Sironcha which appears in certificate filed by review Applicant and which is not there in the certificate filed by the original Petitioner. Except for this difference, both the certificates are identical. The said difference pertains to clarification of the designation of the issuing Authority and not to the

contents of both the certificates, which are identical. Therefore, argument that original Petitioner filed a false certificate is incorrect and is, therefore, rejected.

8. While interpreting the said certificate, we have found that this certificate only showed the review Applicant to be native of Sironcha and not ordinary resident of Sironcha and this conclusion remains the same even upon consideration of certificate now filed on record by the review Applicant (page 31). Even this certificate at page 31, indicates the same fact, the fact of the review Applicant being native of Sironcha and not ordinary resident of Sironcha. Thus, we find that there is no manifest error appearing in the finding recorded in this regard in the judgment under review.

9. Of course, while rendering the judgment in question, we have also found that this certificate is not clear as to the Authority which had issued it. But, this conclusion, in the ultimate analysis, would not have any bearing upon the contents of the certificate in respect of which, we have already drawn our inference. This inference, even after consideration of the certificate filed on record of the review application (page 31), remains the same. Therefore, the submission made in this regard by

the learned counsel for original Petitioner is rejected.

10. The original Petitioner had filed several other documents in the petition, which had indicated that after marriage, the review Applicant became resident of Mahadevpur, Karimnagar, Telangana. Not only that one of the documents, a copy of Aadhar Card, showed that even her two children namely Akil and Mahalaxmi were also ordinary residents of Mahadevpur, Karimnagar, Telangana. There were other documents filed on record of the petition by the original Petitioner which showed that the Petitioner had informed all these facts to the Respondent No.3 when she made a representation to them to cancel the appointment order issued to the review Applicant on the ground that she was not ordinary resident of Sironcha at the time when she made an application. But, while issuing the appointment order to the review Applicant, all these documents as well as the notice issued by the original Petitioner to Respondent No.3 were ignored by the Authorities. However, the Respondent No.1, the Secretary, did concede to the fact that *prima facie*, the evidence showed that the review Applicant was not resident of Sironcha but was resident of Telangana. But, it was also submitted on behalf of

Secretary (Respondent No.1 in writ petition) that further enquiry was necessary. This Court, accepted the contention that the documents placed on record showed that the review Applicant was not the resident of Sironcha, but, was a resident of Telangana, but this Court rejected the contention that the further enquiry in the matter was necessary. The reason being that the documents available on record were clear in their pointer towards place of residence of the review applicant, which was in Telangana and not in the State of Maharashtra. That was the reason, why this Court directed that the appointment order issued to review Applicant be quashed and set aside. But, at the same time, this Court did not direct that the original Petitioner should be given an appointment order straightaway and this Court only directed the Authorities to consider her application seeking appointment as Anganwadi Madatnis in accordance with law.

11. Considering all these facts and circumstances available on record, we do not think that any manifest error could be seen in the judgment and order in question. Apart from what is noticed by us in this case, there is one more aspect which prominently strikes our mind. The

copies of Aadhar Cards filed by the original Petitioner on record of the writ petition have not been explained in any manner by the review Applicant. Of course, the learned Counsel for review Applicant submits that some time after her marriage, the review Applicant again shifted her residence from Telangana to Sironcha. But, there is no averment made in this application in this regard. There is no explanation whatsoever submitted by the review Applicant regarding her residence having been shown in her Aadhar Card as being in the State of Telangana. Silence of the review Applicant on this material aspect of the case speaks loudly against the case of the review Applicant.

12. The learned Counsel for the review Applicant further submits that there was an alternate remedy available to the Petitioner which she ought to have taken recourse to before approaching this Court. He relied upon the alternate remedy provided in Government Resolution dated 31.08.2014. We have gone through the GR and it does appear that it provides for alternate remedy in such a matter. The alternate remedy so provided under the GR is two fold. Firstly, a complaint can be made by the aggrieved person to the concerned Chief Executive Officer

and if, the grievance is not redressed to the satisfaction of the aggrieved person, the aggrieved person can file an appeal before the Authority named in Clause "A" of paragraph 6 of the GR.

13. In this case, the original Petitioner has already made her complaint to the concerned Authority when she sent legal notice to them on 05.08.2017. But, it was not taken cognizance of by the concerned Authority. Then, the Petitioner had alleged submission of a false document by the review Applicant on which, reliance was placed by the Authorities. On these grounds, the Petitioner instead of filing an appeal before the concerned Authority, approached this Court by invoking its jurisdiction under Article 226 of the Constitution of India. Such an effort on the part of the original Petitioner cannot be seen to be a misplaced one and completely out of the legal framework. The availability of an alternate remedy, of course, is relevant consideration for invoking the extra ordinary jurisdiction of this Court. But, it is certainly not a bar on the extra ordinary jurisdiction of this Court. In appropriate cases, this Court inspite of availability of alternate remedy can take cognizance of the grievance and interfere in the matter for removing patent illegality or justice. This case

is one such and, therefore, the petition under Article 226 of the Constitution of India did lie before this Court in this case. Besides, this objection was never raised by the review Applicant in the petition. The argument is, therefore, rejected.

14. In the result, we find no substance in the review application. The review application stands dismissed.

(JUDGE)

(JUDGE)

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