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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE SANJAY DWIVEDI
ON THE 17th OF JANUARY, 2024**

WRIT PETITION No. 13338 of 2023

BETWEEN:-

**ROSHNI PATEL D/O SHRI RAMNATH PATEL, AGED
ABOUT 20 YEARS, OCCUPATION: AANGANWADI
SAHAYIKA, GRAM PANCHAYAT KHEJRAMAPHI,
TAHSIL JAISINAGAR, DISTRICT SAGAR (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI D.K. DIXIT - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH
THE SECRETARY, DEPARTMENT OF WOMEN AND
CHILD DEVELOPMENT PROJECT, MANTRALAYA,
VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
- 2. COMMISSIONER, SAGAR DIVISION, SAGAR
(MADHYA PRADESH)**
- 3. ADDITIONAL COLLECTOR SAGAR, DISTT. SAGAR
(MADHYA PRADESH)**
- 4. PROJECT OFFICER, WOMEN AND CHILD
DEVELOPMENT PROJECT, TAHSIL JAISINAGAR,
DISTT. SAGAR (MADHYA PRADESH)**
- 5. TULSA PATEL D/O SHRI NARAYAN PATEL, R/O
VILLAGE KHEJRAMAPHI, JAISINGAGAR, DISTT.
SAGAR (MADHYA PRADESH)**
- 6. ANAMIKA D/O MAAN SINGH RAJPUT, R/O
VILLAGE KHEJRAMAPHI, JAISINAGAR, DISTT.
SAGAR (MADHYA PRADESH)**

.....RESPONDENTS

***(SHRI AMIT GARG - PANEL LAWYER FOR RESPONDENT NOS.1 TO
4/STATE)***

(NONE FOR RESPONDENT NO.5)

(SHRI SHYAM YADAV - ADVOCATE FOR RESPONDENT NO.6)

This petition coming on for admission this day, the court passed the following:

ORDER

Pleadings are complete. With the consent of learned counsel for the parties, the petition is finally heard.

2. By the instant petition filed under Article 226 of the Constitution of India, the petitioner is challenging the order dated 16.05.2023 (Annexure-P/7) passed by the Commissioner, Sagar Division, Sagar, whereby the appeal preferred by the petitioner against the order dated 04.11.2022 passed by the Additional Collector, has been rejected.

3. The facts of the case in a nutshell are that the petitioner and respondent Nos.5 and 6, all have submitted their applications in pursuance to the advertisement issued for appointment of Aanganwadi Sahayika of Gram Panchayat Khejramaphi, Tehsil Jaisinagar, District Sagar. Along with these persons, other candidates have also applied and total 14 applications were received. Thereafter, appointment was made in favour of the petitioner vide order dated 26.07.2022. The petitioner joined the services in pursuance to her appointment order on the same day i.e. 26.07.2022. However, the appointment of the petitioner has been assailed by respondent No.5 before the Additional Collector Sagar, who in turn, vide order dated 04.11.2022 not only rejected the appeal, but accepted the counter claim of respondent No.6 cancelling the order of appointment made in favour of the petitioner on 26.07.2022. The Additional Collector has further directed that respondent No.6 be granted 60 marks in the final merit list dated 21.04.2022 on the basis grading 'A' already given to her. Resultantly, respondent No.6 came at Sr. No.1 and as such, became entitled to

be appointed on the post of Aanganwadi Sahayika at Gram Panchayat Khejramaphi because she was older in age.

4. Thereafter, the said order of Additional Collector was further assailed in second appeal before the Commissioner, Sagar Division, Sagar, but that was dismissed vide order dated 16.05.2023. Hence, this petition challenging the order of Commissioner, Sagar Division, Sagar as well as the Additional Collector.

5. Shri D.K. Dixit, learned counsel appearing for the petitioner has founded his claim mainly on the ground that the appeal decided by the Additional Collector is without jurisdiction. He submits that as per the policy of Aanganwadi Worker, if any appeal is preferred challenging the appointment of Aanganwadi Worker/Sahayika, the same shall lie before the Collector and it shall be decided by the Collector only. He further submits that the Additional Collector has no authority to decide the appeal and, therefore, the order passed by the Additional Collector is without jurisdiction. He has also assailed the order on the ground that as per the chart prepared by the Selection Committee comparing the merit of the candidates, the petitioner has been shown at Sr. No.2 giving grading 'A' and as such, secured 80 marks whereas according to him, respondent No.6 placed at Sr. No.1 and she was awarded grading on the basis of marks secured by her and as such, in view of the circular dated 27.11.2020 (Annexure-P/9), the marks of respondent No.6 were calculated as 45.33 whereas the petitioner's marks as per the said list, shown as 80 marks. Shri Dixit submits that there were other candidates secured same marks and with a comparative assessment since the petitioner was meritorious, therefore, appointed on the post of Aanganwadi Sahayika and her appointment was rightly made by the respondents. Although, he submits that the Additional Collector

misinterpreted the said circular dated 27.11.2020 and wrongly observed that respondent No.6 is meritorious and as such, appointment on the post of Aanganwadi Sahayika has to be made in favour of the petitioner and according to Shri Dixit said finding is illegal and contrary to the provisions of the circular dated 27.11.2020. In support of his submission, the counsel for the petitioner has placed reliance upon a judgment reported in **[2013(3) M.P.L.J. 386]** parties being **K.K. Gupta vs. State of M.P. and others**.

6. The counsel for the State has supported the finding given by the Additional Collector and Commissioner and submitted that nothing wrong is committed by the said authorities while making comparative assessment holding that respondent No.6 was meritorious.

7. Shri Syam Yadav, learned counsel appearing for respondent No.6 in response to the submission made by Shri Dixit has submitted that the order passed by the Additional Collector cannot be said to be an order passed by the incompetent authority for the reason that even in M.P. Land Revenue Code, 1959 when appeal preferred to the Collector, the same is decided by the Additional Collector. Meaning thereby, the Collector must have delegated the power to the Additional Collector under which he has decided the appeal, therefore, nothing wrong is committed by the Additional Collector and order deciding the appeal cannot be said to be without jurisdiction. He has further submitted that though the appeal challenging the appointment of the petitioner has not been preferred by respondent No.6, but in an appeal preferred by respondent No.5, a counter claim was also raised by respondent No.6 and that counter claim was considered and allowed by the Additional Collector holding that respondent No.6 is meritorious and as such, appointment was directed to

be made in her favour. He has further submitted that though there is no provision for filing counter claim, but ultimately had a counter claim not been there, the Additional Collector would have decided the appeal holding the entitlement of the candidate to have been appointed on the post of Aanganwadi Sahayika. He has submitted that nothing illegal is done by the Additional Collector entertaining the counter claim and holding that respondent No.6 is meritorious and entitled to be appointed on the post of Aanganwadi Sahayika.

8. Considering the rival submissions made by the counsel for the parties and perusal of record, especially the circular dated 27.11.2020, which is a clarificatory circular, it is clear that if a mark-sheet issued awarding grading instead of marks, as to in what manner the selection would be made. It also clarifies that if mark-sheet is issued on the basis of marks, then as to how calculation would be made awarding marks to the candidates.

9. As per Shri Dixit, the total marks awarded to respondent No.6 as per the Clause-IV of the said clarificatory circular were 45.33 whereas in a comparative chart, the marks of the petitioner has been shown 80 marks and according to him, the petitioner should have placed at Sr. No.1 as she was meritorious candidate for the reason that other candidates who have secured same marks when comparatively assessed, the petitioner was found a meritorious candidate and therefore, given weightage and as such, she was entitled to have been appointed. The Additional Collector, therefore, misinterpreted the said circular and instead of placing the petitioner, placed respondent No.6 at Sr. No.1 holding her meritorious.

10. Thus, in my opinion, the finding given by the Additional Collector is not proper and it is contrary to the provisions of the clarificatory circular dated 27.11.2020. Even otherwise, the order of Additional Collector deciding the

appeal wherein the order of appointment of Aanganwadi Sahayika was questioned is otherwise not proper for the reason that the scheme of Aanganwadi Sahayika very clearly provides that if any challenge is made to the appointment, the appeal shall lie to the Collector and the Collector is the only authority which can decide the appeal, but no other authority having power to do so. Even if the submission made by the counsel for respondent No.6 is accepted, the said submission is contrary to law because the law very categorically provides that a power delegated to a particular authority cannot be re-delegated to other.

11. The case in which the counsel for the petitioner has placed reliance i.e. **K.K. Gupta** (supra), this Court has held that the authority which is earmarked to do a particular thing in a particular manner, in its place, the other authority even holding current charge cannot perform said statutory function.

12. Further, the Supreme Court in a case reported in **AIR 1967 SC 295 (Barium Chemicals Ltd. and Aother vs. Company Law Board and Others)**, has observed as under:-

"36. As a general rule, whatever a person has power to do himself, he may do by means of an agent. This broad rule is limited by the operation of the principle that a delegated authority cannot be re-delegated, *delegatus non potest delegare*. The naming of a delegate to do an act involving a discretion indicates that the delegate was selected because of his peculiar skill and the confidence reposed in him, and there is a presumption that he is required to do the act himself and cannot re-delegate

his authority. As a general rule, "if the statute directs that certain acts shall be done in a specified manner or by certain persons, their performance in any other manner than that specified or by any other person than one of those named is impliedly prohibited". See *Crawford on Statutory Construction*, 1940 Edn., Article 195, p. 335. Normally, a discretion entrusted by Parliament to an administrative organ must be exercised by that organ itself. If a statute entrusts an administrative function involving the exercise of a discretion to a Board consisting of two or more persons it is to be presumed that each member of the Board should exercise his individual judgment on the matter and all the members of the Board should act together and arrive at a joint decision. Prima facie, the Board must act as a whole and cannot delegate its function to one of its members."

13. Considering the aforesaid, performing the function of Collector deciding the appeal of Aanganwadi Sahayika by the Additional Collector, in my opinion, is not proper and said order can be considered to be without jurisdiction. If the order of Additional Collector goes, the subsequent order passed by the Commissioner would automatically fall as such, this petition is allowed. The order passed by the Additional Collector and the Commissioner dated 04.11.2022 and 16.05.2023 respectively are hereby set aside. Consequently, it is directed that the Project Officer, Women and Child Development Project shall

immediately make appointment of the petitioner on the post of Aanganwadi Sahayika at Aanganwadi Centre Khejramaphi, Gram Panchayat Khejramaphi, Tahsil Jaisinagar, District Sagar.

14. With the aforesaid observations, the petition filed by the petitioner stands **allowed**.

15. Pending interlocutory application, if any, shall stand disposed of.

(SANJAY DWIVEDI)
JUDGE

ac/-

