

(2017) 03 SHI CK 0034
In the High Court Of Himachal Pradesh
Case No : 5812 of 2011

Achhri Bibi

APPELLANT

Vs

State of Himachal Pradesh and others

RESPONDENT

Date of Decision : 29-03-2017

Acts Referred:

Citation : (2017) 03 SHI CK 0034

Hon'ble Judges : Ajay Mohan Goel

Bench : Single Bench

Advocate : Ajay Sharma, V.S. Chauhan, Vikram Thakur, N.K. Thakur, Divya Raj Singh

Judgement

1. By way of this writ petition, the petitioner has prayed for the following reliefs:
"a) That impugned orders, Annexure P-6, dated 22.06.2011 may very kindly be quashed and set aside with direction to respondents No. 1 to 3 to allow the petitioner to continue working as Anganwari Helper at Anganwari Centre No. 6 in villahe Ambota, Tehsil Amb, District Una, H.P. with all consequential benefits in favour of the petitioner and against respondents.

b) That respondents No. 1 to 3 may very kindly be directed to release the honorarium fixed in favour of the petitioner from the date the same has not been released to her till date forthwith;

c) That the entire record pertaining to the case may also be summoned by this Hon"ble Court for its kind perusal.

d) That cost of the writ petition may also be awarded in favour of the petitioner;

e) Any other or further relief as this Hon"ble Court may deem just and proper keeping in view the facts and circumstances of the case may also be passed in favour of the petitioner Bar Association and against the respondent."

2. Brief facts necessary for the adjudication of the present writ petition as culled out from the pleadings are as under. The petitioner was selected as Anganwari

Helper, Anganwari Centre Ward No. 6 village Ambota, in the year 2007 and her selection as such was assailed by the private respondent. In the appeal so filed by the private respondent against the selection of the present petitioner, the Appellate Authority set aside the appointment of the present petitioner as Anganwari Helper. Pleadings further demonstrate that in Appeal No. 34 of 2008, Divisional Commissioner Kangra passed orders for conducting fresh interviews for selection of the candidate, in which the petitioner as well as private respondent participated. On the basis of fresh interviews so conducted, the private respondent was selected as Anganwari Helper and accordingly, vide order dated 05.12.2009 (Annexure P-5), the petitioner was intimated that her services stood terminated with immediate effect.

3. Feeling aggrieved, the petitioner filed CWP No. 4712 of 2009 in this Court which was disposed of by this Court vide common judgment dated 17.05.2010 by remanding the matter back to the Appellate Authority i.e. Deputy Commissioner concerned for decision afresh in the matter as per the guidelines laid down by this Court in its judgment dated 17.05.2010.

4. Appellate Authority/Deputy Commissioner, Una vide order dated 22.06.2011 held private respondent to be ineligible to be considered for being engaged as Anganwari Helper in Ward No. 6 on the ground that it stood established that Shanti Devi i.e. private respondent in fact belonged to Ward No. 8 and thus she was not eligible to be considered for being engaged as Anganwari Helper in Anganwari Centre for Ward No. 6. Said authority also held that it was clear that in the earlier interview Shanti Devi had been given more weightage as she was a widow and she belonged to OBC category but these factors would have been counted only if she was otherwise eligible to appear in the interview as per guidelines issued by the Government. Appellate Authority thereafter held that interview chart reflected inconsistency as far as date of interview was concerned as two dates were mentioned therein i.e. 30.01.2009 and 06.07.2009 which gives rise to doubt. On these bases, it directed fresh interviews between two candidates i.e. the present petitioner and the private respondent as per criteria existing on 01.01.2004.

5. Feeling aggrieved by the order so passed by the Appellate Authority dated 22.06.2011 (Annexure P-6), the petitioner has filed this writ petition.

6. Reply to the petition has been filed by respondents No. 1 to 3. Respondent No. 4 has adopted the reply filed on behalf of respondents No. 1 to 3.

7. During the course of arguments, learned counsel for the petitioner has drawn the attention of this Court to the averments made in preliminary submission No. 2 in its reply filed by respondents No. 1 to 3, which are quoted hereinbelow. "The Deputy Commissioner, Una heard the case and after carefully going through the arguments adduced by the parties concerned concluded that family of the respondent No. 4 has separated on 17.10.2006 i.e. after the cut of date 1.1.2004 and that the respondent No. 4 belongs to Ward No. 8 whereas the post was

meant for ward No. 6. Further there was inconsistency reported in the date of interview held on 30.01.2009 and 6.7.2009 which creates doubt, hence in view of the circumstances ordered fresh interview between these two candidates (petitioner and respondent No. 4) vide order dated 22.6.11. Against this order the present petition has been filed by the petitioner."

8. I have heard learned counsel for the parties and have also gone through the pleadings as well as the records of the case.

9. Though this Court is not oblivious to the fact that under the guidelines in issue order passed by first Appellate Authority i.e. Deputy Commissioner concerned was challengeable by way of second appeal before the concerned Divisional Commissioner, however, in my considered view, keeping in view the fact that entire selection was made in the year 2007 and the present writ petition is also pending adjudication since the year 2011, no purpose will be served by relegating the petitioner back to second Appellate Authority and interest of justice will be served in case the case is adjudicated on merits by this Court itself. Besides this neither any objection with regard to maintainability was taken at the time of arguments and even otherwise there is no inherent lack of jurisdiction as far as this Court is concerned in adjudicating upon the present petition on merit taking into consideration its peculiar facts and circumstances.

10. Vide impugned order dated 22.06.2011, Annexure P-6, Deputy Commissioner Una/Appellate Authority under the scheme known as ICDS has categorically concluded that respondent No. 4 stood separated from family on 17.10.2006 i.e. after the cut off date of 01.01.2004 and it stood established that respondent No. 4 was a resident of Ward No. 8 and post in issue was for Ward No. 6. It further correctly held that it appeared that as Shanti Devi was a widow and belongs to OBC category and on that premise, she had been given weightage which could not have had otherwise been given as she was not eligible to appear in the interview as per guidelines for Ward No. 6. However, after holding that respondent No. 4 was not eligible to be considered for appointment as Anganwari Helper, in an Anganwari Centre for Ward No. 6, the Appellate Authority has ordered that as there was inconsistency as far as interview date is concerned in the interview chart, fresh interview for the post be conducted as per eligibility criteria on 01.01.2004 intra the petitioner and respondent No. 4.

11. In my considered view, learned Appellate Authority has erred in issuing directions to the effect that on account of alleged inconsistency of interview date in the interview chart, fresh interview should be conducted between the petitioner and private respondent No. 4. This is for the reason that when the said appellate Authority itself had come to the conclusion that respondent No. 4 was not eligible to be considered for a post belonging to Ward No. 6, then there was no occasion for the Appellate Authority to have had ordered a fresh interview in which the said ineligible candidate was also directed to participate. While issuing these directions, learned Appellate Authority lost sight of the fact that as respondent No. 4 was ineligible to be considered for the post in issue, no purpose

was to be served by directing her to participate in the interview to be conducted afresh. Besides this, findings returned by the learned Appellate Authority that there was inconsistency in the interview date is concerned it has not been elaborated that as to what inconsistency had occurred and the same neither was the bone of contention between the parties. Therefore, in my considered view though there is no infirmity with the findings returned by the learned Appellate Authority to the effect that respondent No. 4 was ineligible to be considered for the post of Anganwari Helper in Ward No. 6, however, said authority has erred in issuing directions to the effect that fresh interview be conducted intra the petitioner and respondent No. 4.

12. Therefore, while upholding order dated 22.06.2011 (Annexure P-6) passed by the Appellate Authority to the extent it has held respondent No. 4 ineligible to be considered for appointment against the post of Anganwari Helper in Ward No. 6, the part of the order whereby Appellate Authority has issued directions for holding fresh interview qua the petitioner and respondent No. 4 is quashed and set aside and respondent/competent authority is directed to re-engage the petitioner as Anganwari Helper at Anganwari Centre, Ward No. 6 with immediate effect if she is not already serving and permit her to continue if she is already serving.

13. Accordingly, this writ petition is allowed and impugned order passed by Appellate Authority dated 22.06.2011, Annexure P-6, is upheld to the extent it has held respondent No. 4 ineligible to be considered for appointment against the post of Anganwari Helper in Anganwari Centre Ward No. 6 and the part of order whereby Appellate Authority has issued directions for holding fresh interview intra the petitioner and respondent No. 4 is quashed and set aside. Respondent/competent authority is directed to permit the petitioner to continue to serve as Anganwari Helper at Anganwari Centre, Ward No. 6 in village Ambota, Tehsil Amb, District Una, H.P. if she is presently serving as such and to engage her forthwith if she is not presently serving. Arrears of honorarium, if any, be also released forthwith.

14. The writ petition disposed of in above terms. Pending miscellaneous application(s), if any, also stand disposed of. No order as to costs.