

(2019) 11 SHI CK 0090
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 1212 Of 2017

Anita

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 18-11-2019

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2019) 11 SHI CK 0090

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : R.S. Chandel, Dinesh Thakur, Amit Kumar Dhumal, Seema Sharma, Divya Sood, Sunny Datwalia, Romesh Verma

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J

1. By way of this writ petition, the petitioner has challenged order dated 28.11.2016, passed by Additional District Magistrate (L&O), Shimla, under Clause 12 of ICDS Scheme for the engagement of Anganwari Worker/Helper, in an appeal, filed by the present petitioner against the appointment of private respondent as Anganwari Worker at Anganwari Centre, Banjri, Tehsil Theog, District Shimla, H.P. which stood dismissed on the ground that the appeal was not preferred by the petitioner within the period of 15 days as was envisaged under the Policy/Guidelines and the appellate Authority was not having any power to condone the delay as is envisaged under Section 5 of the Limitation Act.

2. Alongwith the petition, petitioner had appended a notification issued by the respondent-State dated 05.10.2019 (Annexure P-9), i.e. Revised Guidelines for the appointment of Anganwari Workers/Helpers under ICDS Programme in Himachal Pradesh. By placing reliance upon Clause 12 of the same, learned Counsel for the petitioner has argued that in fact under these Guidelines, there was no period specified for filing of the appeal and time period mentioned therein

is only for the purpose of decision of the appeal.

3. To ascertain which Scheme was in force at the time when appointment took place, this Court directed learned Additional Advocate General to produce the relevant Scheme in force when private respondent was selected as an Aanganwari Worker. Learned Additional Advocate General has produced notification dated 13.08.2010 which was in vogue at the relevant time when the private respondent herein was appointed as Anganwari Worker at Anganwari Centre Banjri. Said Notification is ordered to be taken on record.

Guidelines notified vide notification dated 13th August, 2010, envisaged that first and final appeal of any aggrieved candidate could be made to the concerned Deputy Commissioner within 15 days from the date of issuance of appointment orders. This is clearly mentioned in Clause 12 of the same.

4. In the present case, interview for the post in issue were conducted on 09.01.2014. Appointment letter was issued in favour of the private respondent on 10.01.2014. The appeal was filed on 01.02.2014, i.e. admittedly after the period of 15 days from the issuance of appointment letter in favour of the private respondent. It is not in dispute that it was Notification dated 13th August, 2010, which was in vogue and not Notification dated 05.10.2009 (Annexure P-9) at the time of appointment.

5. Learned Counsel for the petitioner has very fairly stated that in view of Clause 10 of Notification dated 13th August 2010, which repeals the previous instructions/ guidelines, he is not pressing that the appointment in issue was governed by Notification dated 05.10.2009. He has further clarified that notification of the year 2009 was appended with the petition because the petitioner was under the BONAFIDE belief that it was said notification which was in vogue at the relevant time.

6. Be that as it may, this Court is not questioning the BONAFIDE of the petitioner in view of the fair stand so taken by his learned Counsel. However, as the fact of the matter remains that the appeal was filed beyond the period of 15 days provided in the Policy, therefore, there is no infirmity in the impugned order, vide which appeal preferred by the petitioner was dismissed by the appellate authority by holding that as the appeal was not filed within 15 days as from the date of issuance of appointment letter in favour of the private respondent, as is provided in the Policy/Guidelines.

7. At this stage, it is relevant to refer to the judgment passed by the Hon'ble Division Bench of this Court in CWP No. 438 of 2017 and other connected matters, decided on 02.08.2019, in which, Hon'ble Division Bench while dealing with the guidelines with regard to the period of limitation, as it stands prescribed in the Guidelines issued by the government of Himachal Pradesh with regard to the appointment of Aanganwari Workers/Helpers, has INTER ALIA held that appellate authority, under the Scheme, where there is provision of 15 days for filing the appeal as from the date of issuance of result or date of appointment, as

the case may be, is not competent to condone the delay and person aggrieved has to prefer an appeal within 15 days as from the date of declaration of the result/appointment of the selected candidate. Hon'ble Division Bench has further held that as the Scheme framed by the State envisages no provision for CONDONATION of delay, therefore, person aggrieved is not entitled to invoke the provisions of Section 5 of the Limitation Act.

8. In view of the findings returned hereinabove, it is held that there is no infirmity in the impugned order, because admittedly, the appeal was filed by the petitioner beyond the period of 15 days. Therefore, as this Court does not find any merit in the present petition, the same is accordingly dismissed. Pending miscellaneous application(s), if any, also stand disposed of. No orders as to costs.