
(2013) 05 MP CK 0126

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2252 of 2012

Arti Upadhyaya

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Citation : (2013) 3 MPLJ 479

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : J.L. Mishra, for the Appellant; S.S. Bisen, Government Advocate for Respondent Nos. 1 to 5 and Ashok Kumar Gupta, for the Respondent

Judgement

K.K. Trivedi, J.—This petition under Article 226 of the Constitution of India is directed against the order dated 7-1-2012 (Annexure P-1) passed by the Additional Commissioner, Rewa as also the order dated 27-1-2012 (Annexure P-14). Facts giving rise to filing of this petition in short are that in terms of the scheme made by the State Government, an advertisement was issued for appointment of Anganwadi Worker in Aanganwadi Center, Dadar, Gram Panchayat, Badhaiya, Block Hanumuna, District Rewa. The respondent No. 6 was one of the candidates along with one Smt. Archana Tiwari and Smt. Mamta Kol. After making selection, a merit list was prepared by the Programme Officer, Woman & Child Development, Rewa in which the name of Smt. Archana Tiwari was at S. No. 1, the name of Smt. Mamta Kol was at S. No. 2 and the name of respondent No. 6 was at S. No. 3. The selection was made strictly on merits. Consequently, an order of appointment was issued in respect of Smt. Archana Tiwari on 4-10-2007. The said Smt. Archana Tiwari joined on the post on 15-10-2007. However, when an inspection of the Aanganwadi was made, it was found that Smt. Archana Tiwari was not present in the Aanganwadi and a report in this respect was made. A show cause was issued to said Smt. Archana Tiwari by the competent authority but the same was not replied. Again opportunities were granted on several occasions and ultimately a reply was submitted by Smt.

Archana Tiwari on 1-2-2008. The competent authority, the Project Officer, Integrated Child Development Project, Hanumuna, District Rewa, conducted the inspection of Aanganwadi on 11-3-2008 and again found that Smt. Archana Tiwari was absent from duty. Again explanation was called from said Smt. Archana Tiwari. Subsequently, an enquiry was conducted and it was found that Smt. Archana Tiwari was not attending the Aanganwadi regularly. The honorarium was also not paid to Smt. Archana Tiwari because of her absence. Though an immediate action was required to be taken but it appears that nothing was done by the Project Officer at the relevant time. Ultimately, an order was issued on 5-5-2010 removing said Smt. Archana Tiwari from the post of Aanganwadi Worker and it was said that in case she has any objection to such an order, she may submit a representation before the authorities within a week, failing which the order will become operative.

2. As a vacancy occurred on account of removal of said Smt. Archana Tiwari, an advertisement was again issued inviting applications for appointment on the post of Aanganwadi Worker, which was published in Rozgar and Nirman dated 4-7-2011 to 10-7-2011. The proceeding for selection was again started and the respondent No. 6 again applied for her selection, pursuant to the said advertisement. There were other candidates, who have applied including the petitioner herein, Smt. Arti Upadhyaya. The applications of all such candidates were considered, merit assessment was done and then a recommendation was made for appointment of the suitable candidate. The candidature of only one candidate, Ms. Kavita Tiwari, was rejected being ineligible. Rest of the candidates were considered on merit. The petitioner herein obtained 50.34 marks and topped the select list. The second merit holder was Ms. Sudha Upadhyaya who obtained 42.22 marks. Third candidate in the select list was Ms. Kalpana Upadhyaya with 38.89 marks, fourth candidate was Ms. Vandana Shukla who obtained 37.66 marks and the last candidate was the respondent No. 6, who obtained 37.44 marks. Consequent to such a selection, the petitioner was appointed vide order dated 4-11-2011 as Aanganwadi Worker on which post she joined on 22-11-2011 and started working. The respondent No. 6 after taking part in selection filed an appeal against the action of respondents in advertising the post before the competent authority, i.e. the Collector, Rewa. The said appeal was considered on merit and was decided by order dated 12-10-2011. However, the fact remains that petitioner herein was not impleaded as party in the said appeal and after taking part in the selection subsequently initiated by the respondents, the respondent No. 6 has called in question the action of proceedings for selection of Aanganwadi Worker afresh by the said appeal. The ground raised by respondent No. 6 in appeal was that in fact a select list was prepared in the year 2007 in which the respondent No. 6 was at S. No. 3. Smt. Archana Tiwari, who was at S. No. 1 was appointed but she has not performed any duty and subsequently her appointment was cancelled. The candidate at S. No. 2 of the said select list of 2007 had died, therefore, only respondent No. 6 was available to be appointed on the post of Aanganwadi Worker. However, it was stated that the appeal

against the order of Smt. Archana Tiwari was decided by the Collector on 8-4-2010 and the same was rejected. Soon after the order of rejection of appeal since the said Smt. Archana Tiwari was removed from the post, the respondent No. 6 should have been granted the appointment.

3. The Additional Collector considered the said appeal of the respondent No. 6 and came to the conclusion that once an order of appointment was issued pursuant to the select list of the year 2007 and the said order of appointment was accepted by Smt. Archana Tiwari and she gave the joining on the post, till she was removed from the post, there was no vacancy available and, therefore, the select list of the year 2007 had become obsolete. After removal of Smt. Archana Tiwari from the post of Aanganwadi Worker since there was a vacancy available, the post was advertised, applications were considered and a new select list has been prepared. Pursuant to this action, the claim made by the respondent No. 6 that she being at S. No. 3 of the select list of 2007, was entitled to be appointed on the post of Aanganwadi Worker, could not be accepted. Further, there was no question of interfering in the order of appointment issued in respect of a new candidate and, therefore, the appeal filed by the respondent No. 6 was dismissed. Against this order, a second appeal was preferred before the Additional Commissioner, Rewa by the respondent No. 6 and since the said appeal has been allowed by the impugned order, this writ petition is required to be filed.

4. It is vehemently contended by learned Counsel appearing for the petitioner that the Additional Commissioner has completely failed to see that the law will not permit continuance of a select list for indefinite period. Once the candidate selected pursuant to the select list of 2007 was given an offer of appointment and that offer was accepted by the said candidate and joining was given, the select list become obsolete. The fact remains that the appointed candidate Smt. Archana Tiwari was not working properly and, therefore, after granting her opportunities of hearing, ultimately her services were terminated on 5-5-2010. That being so, a right action was initiated by the authorities by advertising the vacancy and inviting applications for appointment on the post of Aanganwadi Worker. The advertisement was never called in question by the respondent No. 6 anywhere, on the other hand she took part in the selection and when she was put at S. No. 5, was not selected and appointed, she chose to approach the appellate authority by challenging the selection and the process of advertising the post by way of filing an appeal. However, at no point of time the order passed in respect of the petitioner on 4-11-2011 was called in question by the respondent No. 6. That being so, the Additional Collector has rightly rejected the appeal of respondent No. 6 and there was no occasion for the second appellate authority, i.e. the Additional Commissioner to interfere in the said order. The settled law is that a candidate, who has taken part in the selection unsuccessfully, cannot challenge the process of selection in the Courts of law unless it is demonstrated that serious illegalities are committed in the matter of conducting selection. Thus, it is contended that the order passed by the

Additional Commissioner is bad in law and is liable to be quashed.

5. Per contra the respondents No. 1 to 5 by filing their return have tried to support the order of the Additional Commissioner without showing any justified reasons and without even considering the law. It is not properly examined by the respondents No. 1 to 5 that the respondent No. 6 has never called in question the order of appointment of petitioner herein. On the other hand, she was challenging the entire process of selection, that too after taking unsuccessful part in the said process of selection. The return of respondents No. 1 to 5 is wholly misconceived and need not to be referred at all. Similarly, the stand is taken by respondent No. 6 without showing any justified reason as to how after unsuccessfully challenging the order of Smt. Archana Tiwari in appeal, she could say that the appointment was to be given to her. This being so, the return of respondent No. 6 is also cryptic in nature and need not to be referred.

6. Heard learned Counsel for the parties at length and perused the record.

7. As has been referred to herein above, the fact remains that after conducting selection in the year 2007 when Smt. Archana Tiwari was appointed as Aanganwadi Worker, her order of appointment was called in question by respondent No. 6 by filing appeal against the said order before the Collector. The said appeal was dismissed on 8-4-2010 and thereafter nothing was done by respondent No. 6 against the said order. That being so, the order of appointment of Smt. Archana Tiwari became final. Had it been the case that the appeal filed by the respondent No. 6 against the order of appointment of Smt. Archana Tiwari was allowed, the respondent No. 6 could have said that the select list would remain operative till the litigation is decided. However, this is not the position as the challenge to order of appointment of Smt. Archana Tiwari put by respondent No. 5 was decided against the respondent No. 6. Therefore, the select list prepared in the year 2007 became obsolete and was not to be acted upon. When the said Smt. Archana Tiwari was removed from the post on 5-5-2010, it was rightly decided by the authorities to initiate process for selection for appointment of Anganwadi Worker in the said Aanganwadi. Again it has to be seen that respondent No. 6 could have challenged the said selection without taking part in the said selection in case she was of the opinion that the list of 2007 will remain alive. However, this was also not done. On the other hand, respondent No. 6 took part in selection and when she was again not selected and put at S. No. 5 of the select list, respondent No. 6 rushed to the Court of Collector challenging such action of initiating selection process by way of filing the appeal. The fact further remains that when the appeal was filed by respondent No. 6, the selection was not completed but the appeal was decided only in the light of the fact that respondent No. 6 was not to be appointed on the basis of previous select list as the same had become obsolete. The Additional Collector has recorded these facts in his order wherein he has categorically said that when the appointed candidate had worked for a period of three years, the process of selection after removal of the said person from the post was to be started afresh. Fact further remains that

even before filing of the appeal by the respondent No. 6, tentative select list was already prepared and notified. This being so, the Additional Collector was right in holding that respondent No. 6 was not to be given any offer of appointment pursuant to the select list of the year 2007.

8. Against the findings recorded by the Additional Collector, the second appellate authority, i.e. the Additional Commissioner has cursorily said that since the representation of the respondent No. 6 was rejected without any justified reason and when the selected and appointed candidate has not worked even for sometime nor has claimed any honorarium, the select list was required to be looked into and the available candidate was required to be offered the appointment. Such a finding recorded by the Additional Commissioner is wholly unjustified, illegal and not supported by any statutory provision. The Additional Commissioner completely failed to see that the list of 2007 became obsolete the moment order of appointment was issued pursuant to the said select list to the candidate who was at S. No. 1. Had it been the case that selected candidate has not joined on the post, of course the candidate who was at S. No. 2 would have been offered the appointment. Again the respondent No. 6 was not at S. No. 2 of the said list where one Smt. Mamta Kol was said to be selected having more merit marks than respondent No. 6. The Additional Commissioner again failed to see that said Smt. Mamta Kol died only in the year 2010 and, therefore, the select list would not remain operative for all time to come. Even otherwise there was no right available to respondent No. 6 to seek appointment on the post of Aanganwadi Worker when she has taken part in the fresh selection where again she failed to secure such merit marks to get merit order so that she could be appointed. An unsuccessful candidate was not to be given the benefit of appointment in such illegal manner. The order passed by the Additional Commissioner is, thus, without any justified reason or legal foundation.

9. This Court has examined various orders passed by such appellate authorities. Surprisingly, the first appellate authority, i.e. the Collector and Additional Collector, apply their mind more properly than the second appellate authority. Such is the case in hand. The order was rightly passed by the Additional Collector, which has been disturbed by the Additional Commissioner in exercising the power of second appellate authority without any justification, without recording any reasons or without even examining the law. This being so, the order passed by the Additional Commissioner, Rewa, cannot be sustained.

10. Consequently, the writ petition is allowed. The order dated 7-1-2012 passed in Case No. 28/Revision/2011-2012 by the Additional Commissioner, Rewa, is hereby quashed. The order dated 12-10-2011 passed by the Additional Collector, Rewa is hereby affirmed. Consequently, the order of appointment dated 27-1-2012 (Annexure P-14) issued in respect of respondent No. 6 by the authorities in compliance of order of Additional Commissioner is hereby quashed. The petitioner be allowed to continue on the post with all consequential benefits.

11. Let a copy of this order be sent to the Chief Secretary of the State for noting

down such facts as have been recorded by this Court after examining the records and the orders passed by the second appellate authority and to issue instructions to such appellate authorities, who are required to perform quasi judicial function to decide the appeals in accordance to law and not in such cursory manner. In view of the aforesaid, the writ petition is allowed to the extent indicated hereinabove. However, there shall be no order as to costs.