

(2010) 09 JH CK 0125
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3810 of 2010

Baby Kumari

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 06-09-2010

Acts Referred:

Citation : (2010) 09 JH CK 0125

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—Learned Counsel for the petitioner has submitted that the present petition has been preferred because of inaction on the part of the respondents in not issuing appointment letter to the petitioner for the post of Lady Supervisor on the ground that when the petitioner was appointed as Anganwari Sewika, she was below the age of 18 years.

2. Learned Counsel for the petitioner further submitted that the petitioner was initially appointed as Anganwari Sewika. She worked several years on the said post and thereafter, the new advertisement was published by the respondents for altogether another post of Lady Supervisor. Applications were invited on 13th November, 2007, for the Post of Lady Supervisor. The petitioner applied for the said post and the petitioner was duly qualified and eligible for the appointment of Lady Supervisor. The Advertisement is at Annexure-1 to the memo of the petition. Thereafter, the petitioner was successful candidate in all the tests taken by the respondents. The petitioner was also selected as a Lady Supervisor. It is also submitted by learned Counsel for the petitioner that the only reason assigned for not giving appointment letter to the petitioner is that when the petitioner was appointed on some other post i.e. Anganwari Sewika, she was below the age of 18 years. In fact, looking to the advertisement, there was no such condition, at all, attached or there was no such eligibility or criteria attached for the selection of Lady Supervisor. The only requirement for the applicant to be

selected for the post of Lady Supervisor is that the applicant should be Anganwari Sewika. and that candidate should have ten years" working experience as Anganwari Sewika, if a candidate is Graduate in any faculty, or 15 Years" experience as Anganwari Sewika, if a candidate is Matriculate. The petitioner is falling within the first category. The petitioner was working as Anganwari Sewika from 14th July, 1984, and she is Graduate and, therefore, as on date, application for the post of Lady Supervisor, the petitioner was duly eligible and qualified as she was appointed as Anganwari Sewika in the year, 1984, and having experience of 10 years with graduation and, therefore, the reason assigned by the respondents that though she is, otherwise, fully qualified and eligible and selected also for the post of Lady Supervisor, the petitioner cannot be appointed as Lady Supervisor because when the petitioner appointed as Anganwari Sewika, she was less than 18 years of age. This ground cannot be added as a criteria after the whole selection process is over. Learned Counsel for the petitioner has relied upon a decision rendered by the Hon"ble Supreme Court reported in 2002(1) J.C.R. Page No. 301, especially, upon Paragraph Nos. 5 and 6 thereof.

3. It is also submitted by learned Counsel for the petitioner that the post of Lady Supervisor is altogether a different post. Post of Lady Supervisor is not a promotional post of Anganwari Sewika and, therefore, the reason given by the respondents that even though the petitioner is otherwise qualified, eligible and selected for the post of Lady Supervisor, cannot be appointed because she was less than 18 years of age, when she was appointed, as Anganwari Sewika, is not tenable at law because post of Anganwari Sewika is different and distinct post. This ground is no ground in the eyes of law. Moreover, such criteria cannot be added subsequently and, therefore, let a writ of mandamus be issued by this Court upon respondents to appoint the petitioner as Lady Supervisor, who has already been selected by the competent respondent-authorities.

4. I have heard learned Counsel appearing on behalf of the respondents-State, who has submitted that the petitioner was appointed as Anganwari Sewika and her age was less than 18 years and, therefore, the petitioner cannot be appointed as Lady Supervisor though she is selected by the respondent-authorities as Lady Supervisor by the appropriate committee, appointed by the respondents, and, therefore, she has not been given appointment.

5. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, this writ petition is allowed on the following facts and reasons:

(I) It appears that the present petitioner was working honestly, sincerely and diligently as Anganwari Sewika with effect from 14th July, 1984 and to the satisfaction of the respondents. Never any objection was raised by the State authorities that her appointment is illegal as Anganwari Sewika. Never any show cause notice was issued by the respondents to the petitioner that when she was appointed as Anganwari Sewika, she was not legally qualified to be appointed as

Anganwari Sewika. Thus, she was working with full knowledge of respondents as Anganwari Sewika with effect from 14th July, 1984 onwards, for a period of more than two decades.

(ii) It appears from the facts of the case that Public Advertisement was issued for the post of Lady Supervisor on 13th November, 2007. The said Public Advertisement is at Annexure-1 to the memo of the petition. This post of Lady Supervisor is altogether a different, distinct, separate and independent post. The eligibility criteria for the post of Lady Supervisor is ten years' experience as Anganwari Sewika, if a candidate is Graduate or 15 years' experience as Anganwari Sewika, if the candidate is Matriculate. The petitioner is falling in the first criteria.

(iii) It appears that in pursuance of the said Public Advertisement dated 13th November, 2007, the petitioner applied for the post of Lady Supervisor, as she was already having appropriate qualification and eligibility. The last candidate selected has secured 142 marks whereas, the petitioner has secured 156 marks and she was among top five candidates. The statement to this effect made in the writ petition have not been denied in the counter affidavit.

(iv) It appears from the facts of the case that the present petitioner is not given appointment only for the reason that when the petitioner was appointed as Anganwari Sewika, she has not completed 18 years of age as is evident from para-5 of the counter affidavit. This reason can not be assigned by the respondents to the petitioner. No such criteria was pointed out in the Public Advertisement. The whole selection process is now over. The petitioner has undergone whole selection process for the post of Lady Supervisor. Looking to the Public Advertisement which is at Annexure-1 inviting applications from the candidates dated 13th November, 2007, it appears that the post of Lady Supervisor is altogether a different post from the post of Anganwari Sewika. It is not a promotional post of a Anganwari Sewika, and for a totally new post, Public Advertisement has been issued. The petitioner applied and thereafter, selected and now a new criteria cannot be added by the respondents after the whole selection process is over.

(v) No reason has been given to the petitioner by the respondents that why after her selection as Lady Supervisor, she is not appointed as such. The petitioner is kept in total dark and, therefore, she is compelled to file writ petition. Now the reasons are coming in the counter-affidavit that one more criteria was added later on.

(vi) Similar petition has also been decided by this Court vide order dated 15th January, 2010 in W.P. (S) No. 3527 of 2008 wherein, it has been held by this Court that the criteria added by the respondents subsequently i.e. after the selection process is over is not permissible in the eyes of law.

(vii) It has been held by the Hon'ble Supreme Court in the case of Maharashtra State Road Corporation and Ors. v. Rajendra Bhimrao Mandve and Ors. as

reported in 2002 (1) J.C.R. 301, especially in Paragraph Nos. 5 and 6, relevant portion of which are as under:

5. ...Instead, it would have been well open to the High Court to have declared that the criteria sought to be fixed by the Circular dated 24.6.1996 as the sole determinative of the merit or grade of a candidate for selection long after the last date fixed for receipt of application and in the middle of the course of selection process (since in this case the Driving Test was stated to have been conducted on 27.11.1995) cannot be applied to the selections under consideration and challenged before the High Court. It has been repeatedly held by this Court that the games of the rules meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced.

6. We have held that the Circular Orders dated 24.6.1996 will have no relevance or application to the selections in question, undertaken pursuant to the advertisement issued on 20.9.1995....

(Emphasis supplied)

(viii) In view of the aforesaid decision also, once the selection process is over and candidate is selected for a particular post, no new criteria can be added by the State authorities so as to thwart the selection of the present petitioner.

6. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, the petitioner is entitled to be appointed as Lady Supervisor and the reason assigned by the respondents is not a valid reason, in the eyes of law and is, hereby, quashed and set aside and I hereby, direct the concerned respondents-State or such other authority, more particularly, respondent No. 2 to appoint the present petitioner as Lady Supervisor with immediate effect.

7. Accordingly, the petition is allowed and disposed of.