

(2011) 07 MP CK 0037
In the Madhya Pradesh High Court
Case No : Writ Petition No. 918 of 2005

Basanti Suryawanshi (Smt.)	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1)
Foreign Service (Conduct and Discipline) Rules, 1961 — Rule 18(4), 8(1), 8(2)
Madhya Pradesh Panchayat Samvida Shala Shikshak (Niyukti Evam Seva Sharetein) Niyam, 2001 — Rule 8

Citation : (2011) ILR (MP) 2727 : (2012) 1 MPHT 101

Hon'ble Judges : S.R. Alam, C.J.;Alok Aradhe, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.R. Alam, C. J.

1. The petitioner in the instant writ petition has impugned the legality and validity of the order (Annexure P/15) dated 27.1.2004 by which her services have been terminated from the post of Samvida Shala Shikshak and the consequential order dated 29.1.2004 (Annexure P/16) as well as the Ocircular (Annexure P/12) dated 27.5.1996.

2. Facts leading to the filing of the present petition, briefly stated, are that petitioner submitted an application dated 28.9.1998 (Annexure P/1) for appointment on the post of "Aaganwadi" worker in Mahidpur, District Ujjain. Clause (3) of the advertisement reads as under:-

Any Government Servant or any person elected or nominated in panchayats or local bodies or their relatives shall not be appointed as "Aaganwadi "worker.

Subsequently, by a notice dated 06.10.1998 Municipal Council, Mahidpur, District Ujjain, invited applications for appointment on the post of "Aaganwadi" workers in 11 "Aaganwadi" centres situate within the limits of Municipal Council, Mahidpur.

On the recommendation of Municipal Council, Mahidpur, petitioner was appointed by an order dated 2.1.1999 (Annexure P-3) as "Aaganwadi" worker in the centre situate in Ward No. I, Municipal Council, Mahidpur.

3. Thereafter, an advertisement (Annexure P/6) dated 17.7.2001 was issued by Janpad Panchayat, Mahidpur inviting applications for appointment on the post of Samvida Shala Shikshak. In response to the aforesaid advertisement, the petitioner submitted an application (Annexure P/7) on 23.7.2001. The petitioner was selected and an order of appointment dated 26.9.2001 (Annexure P/8) was issued. The petitioner was posted in Government Middle School, Dhulet, Tahsil Mahidpur, District Ujjain. Thereafter the petitioner was served with a show-cause notice dated 18.8.2003 (Annexure P/10) by which petitioner was asked to show-cause as to why her services should not be dispensed with, on the ground that petitioner was found ineligible for appointment as "Aaganwadi" worker in view of instructions dated 27.5.1996 issued by the State Government the husband of the petitioner was already in Government service. The petitioner submitted reply to aforesaid show-cause notice. Thereafter by an order dated 27.1.2004 (Annexure P/15), services of petitioner were dispensed with. A consequential order dated 29.1.2004 (Annexure P/16) was also passed.

4. The respondents have filed return, inter alia, contending that against the impugned order dated 27.1.2004 (Annexure P/15), remedy of appeal is provided under the Rules framed under the provisions of Madhya Pradesh Panchayat Avam Gram Swaraj Adhiniyam, 1993. It has further been averred that petitioner was ineligible for appointment on the post of "Aaganwadi" worker as her husband was employed as an Assistant Teacher. The petitioner by suppressing the aforesaid material fact secured appointment on the post of "Aaganwadi" worker and also took advantage of her experience on the post of "Aaganwadi" worker at the time of her selection on the post "Samvida Shala Shikshak". The executive instructions dated 27.5.1996 (Annexure P/12) have been issued by the State Government in consonance with the instructions issued by the Department of Women and Child Development, Ministry of Human Resources Development, Government of India regarding Integrated Child Development Service Programme. The Executive Instructions contained in Annexure P/12 have no force of law. The impugned order of termination of services of the petitioner, is in accordance with law and has been passed after following the principles of natural justice. The petitioner having accepted the terms and conditions enumerated in the executive instructions contained in Annexure P/12 dated 27.5.1996 cannot now challenge or assail the same. At this belated stage she cannot now be allowed to take a somersault and challenge the conditions incorporated in the executive instructions Annexure P/12.

5. We have heard learned counsel for the parties at length. Shri Sanjay Agrawal, learned counsel for the petitioner contended that clause 3 of the executive instructions in so far as it provides that no person shall be appointed on the post of "Aaganwadi" worker in case his or her near relatives are in Government

service or in employment of any local bodies, is arbitrary and discriminatory and is violative of the constitutional guarantee contained in Articles 14 and 16 of the Constitution of India. The impugned action of termination of services of the petitioner from the post of Samvida Shala Shikshak by the respondents, is arbitrary, illegal and is unconstitutional. It has further been contended that respondents have not furnished any justification for incorporation of such a clause in the executive instructions which amounts to prohibition and is not a reasonable restriction as the same tantamounts to violation of Articles 14 and 16 of the Constitution of India. The appointment of the petitioner on the post of Aanganwadi Worker was not cancelled and as she has worked on the post of Aanganwadi Worker, she is entitled to 20 bonus marks therefore, there is no justification to cancel the appointment of the petitioner on the post of Samvida Shala Shikshak by discarding the bonus marks awarded to her. Learned counsel for the petitioner in support of his submissions has placed reliance on *Budhan Choudhry and Others Vs. The State of Bihar*, *Krishan Chander Nayar Vs. The Chairman, Central Tractor Organisation and Others*, *Miss C.B.Muthamma vs. Union of India and others*, AIR 1979 SC 1868, *State of Madhya Pradesh Vs. Ramashanker Raghuvanshi and Another*, *V.N. Sunanda Reddy and others Vs. State of Andhra Pradesh and others*, *Ganga Ram Moolchandani and Others Vs. State of Rajasthan and Others*, *Kailash Chand Sharma Vs. State of Rajasthan and Others*, and Division Bench decision of Punjab & Haryana High Court in *Tarsem Singh Vs. Bharat Sanchar Nigam Ltd. Etc.*,

6. On the other hand, Shri Sanjay Dwivedi, learned Government Advocate submitted that petitioner secured appointment on the post of Aanganwadi worker by suppressing material fact that her husband was a "Government Servant". Petitioner was ineligible for appointment on the post of "Aanganwadi" worker in view of the bar contained in clause (3) of the executive instructions dated 27.5.1996 (Annexure P/12). The petitioner on the basis of her experience as "Aanganwadi" worker got bonus mark as provided under Rule 8 of Madhya Pradesh Panchyat Samvida Shala Shikshak (Niyukti Evam Seva Sharetein) Niyam, 2001, illegally at the time of appointment on the post of Samvida Shala Shikshak. The Instructions contained in Annexure P/12 dated 27.5.1996 have been issued which are in tune with the scheme framed by the Department of Women & Child Development, Ministry of Human Resources Development, Government of India. It has further been contended that person cannot be appointed on the post of "Aanganwadi" worker de hors the executive instructions contained in Annexure P/12 dated 27.5.1996.

7. It is well settled in law that Article 14 of the Constitution of India forbids class legislation but does not forbid reasonable classification. The classification in order to be reasonable must be founded on intelligible differentia and that differentia must have rational relation to the object sought to be achieved. An arbitrary imposition of bar against the employment of certain person would certainly amount to denial of right of equal opportunity of employment as guaranteed under Article 16(1) of the Constitution of India. Object of Articles 14 and 16 of

the Constitution is to ensure equality to all those who are similarly situated. In other words, all the citizens applying for employment under the State are entitled to similar treatment.

8. In *Miss C.B.Muthamma (supra)*, the Supreme Court while dealing with Rule 8(1) of the Indian Foreign Service (Conduct & Discipline) Rules, 1961 which required a female employee to obtain permission of the Government in writing before her marriage is solemnized, held that aforesaid Rule is discriminatory and accordingly struck down the same. However, in para 7 of the aforesaid judgment, Supreme Court has held as follows:-

7. We do not mean to universalize or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern. This creed of our Constitution has at last told on our governmental mentation, perhaps partly pressured by the pendency of this very writ petition. In the counter affidavit, it is stated that Rule 18(4) (referred to earlier) has been deleted on November 12, 1973. And, likewise, the Central Government's affidavit avers that Rule 8(2) is on its way to oblivion since its deletion is being gazetted. Better late than never. At any rate, we are relieved of the need to scrutinize or strike down these rules.

In view of aforesaid enunciation of law by Supreme Court, it is clear that requirement of a particular employment, peculiarities of societal sectors may provide a reasonable basis for intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group failing which rule of equality must govern.

9. The Department of Women & Child Development, Ministry of Human Resources Development, Government of India has issued instructions regarding Integrated Child Development Service Programme. Clause 3.2.12 of the aforesaid instructions provide that an "Aanganwadi" worker should be a woman aged in between 18 to 44 years from the local village and should be acceptable in the local community. The aforesaid clause further provides that special care should be taken in her selection so that children of Scheduled Castes and other weaker sections of the society are ensured free access to "Aanganwadi". Thus, the object of the instructions is to make appointment of a woman on the post of "Aanganwadi" worker who should be a resident of the local village and should be acceptable in the local community so that children of Scheduled Castes and other weaker sections of the society have free access to "Aanganwadi" centre. In accordance with aforesaid instructions, State Government has issued instructions dated 27.5.1996 (Annexure P/12) which prescribe the procedure for appointment to the post of Aanganwadi" workers, the conditions of eligibility for appointment and the procedure for removal from the post of Aanganwadi" worker. Clause 3 of the said instructions stipulates that close relative of any Government servant or

persons in the employment of local bodies cannot be appointed as Aaganwadi" worker.

10. Integrated Child Development Project has been formulated by the Government of India and the same is being implemented through the State Government. The said project has been formulated with an object to ensure development of the children belonging to underprivileged class of the society in rural area and to provide employment to women of local area living below the poverty line. The job of an Aaganwadi" worker is not a full-time employment, but is a part-time one on a fixed honorarium basis. An "Aaganwadi" worker who is possessed of matriculation pass certificate is entitled to receive a fixed honorarium of Rs.400/- per month whereas a non-matric "Aaganwadi" worker is entitled to receive a sum of Rs.350/- per month. The object of imposing the restriction contained in clause (3) of the instructions dated 27.5.1996 is to employ a woman living below the poverty line, as she would be more conversant with the culture and behavioural aspect of the children belonging to underprivileged class of the society. Clause (3) of the instructions ensure that while providing employment to a woman living below the poverty line, object of the scheme is fulfilled that is to say to provide free access to the children belonging to weaker sections of the society to "Aaganwadi" centre and at the same time, the financial condition of the family of such a woman is ameliorated. Thus, there is an intelligible differentia which distinguishes the persons that are grouped together from others which are left out of the group i.e. the candidates who have their near relatives in Government service or in the employment of the local bodies and those whose near relatives are not employed either in Government service or in any local bodies. The intelligible differentia has a reasonable nexus with the object sought to be achieved i.e. to provide free access to children belonging to weaker sections of the society to "Aaganwadi" centre. The requirement in clause (3) of the instructions dated 27.5.1996 (Annexure P/12) has been incorporated by taking into account the requirements of particular employment and peculiarities of societal sectors and, therefore, the same cannot be said to be either discriminatory, arbitrary or violative of Article 14 and 16 of the Constitution of India.

11. Clause(3) of instructions dated 27.5.1996 puts a complete embargo on the person who seeks appointment as "Aaganwadi" worker, if his near relatives are in Government service or in service of local bodies. Since, the petitioner's husband was employed as an Assistant Teacher she was not eligible to be appointed as "Aaganwadi" worker. We are unable to accept the contention of learned counsel for the petitioner that since the petitioner's appointment as Aaganwadi worker was not cancelled therefore, she was entitled to bonus marks, for the simple reason that the same would tantamount to putting premium on illegality which cannot be permitted.

12. Reliance placed by the learned counsel for the petitioner on the decision of the Supreme Court reported in Ramashanker Raghuvanshi (supra) is of no

assistance to the petitioner. In the aforesaid case, services of the teacher employed in Government school were terminated on the basis of police report that he had taken part in Rashtriya Sewa Sangh and Jan Sangh activities. In the aforesaid factual backdrop, it was held that action of respondents in denying employment to an individual because of his past political affinities is violative of Articles Hand 16 of the Constitution of India, unless such affinities are considered likely to affect the integrity and efficiency of individual in the service. In V.N.Sunanda Reddy (supra) it was held that Government order extending 5% weightage to Telgu medium candidates in the examination held by Andhra Pradesh Public Service Commission is arbitrary, as the same amounts to imposing of additional qualification which is de hors the recruitment rules and a special beneficial treatment was being given to the candidates who had passed their graduation examination in Telgu medium, which offended the constitutional guarantee contained in Articles Hand 16 of the Constitution. Thus, the aforesaid decision is clearly distinguishable. In Ganga Ram Moolchandani (supra), while considering the validity of Rules 8(ii) and 15(ii) of Rajasthan Higher Judicial Services Rules which required that only those Advocates are entitled to be considered for direct recruitment to Rajasthan Higher Judicial Service who have practiced in Rajasthan High Courts or courts subordinate thereto; it was held that classification made had no reasonable nexus, as the" same is not founded on any intelligible differentia. Consequently, the Rule was held to be ultra vires Article 16 of Constitution of India. Thus, the aforesaid decision also has no application in the facts and circumstances of the case. Similarly, in Kailash Chand Sharma (supra). Supreme Court had the occasion to deal with the question whether a residence within a district or rural area of the district could be a valid basis of classification for the purpose of public employment. Thus, the aforesaid decision is also of no assistance to the learned counsel for the petitioner in the facts of present case. In Tarsem Singh (supra) the Division Bench of Punjab and Haryana High Court while dealing with validity of the clause contained in the notice inviting tender which debarred the candidates from participating in the NIT whose near relatives were working in BSNL unit, held that sufficient safeguards have been provided to ensure that relatives of prospective contractors do not get any undue advantage. Accordingly, Division Bench opined that impugned clause of tender notice was violative of Article 14 of the Constitution of India. Thus, the aforesaid decision also is of no help to the petitioner.

13. In the result, the writ petition fails and is hereby dismissed. However, there shall be no order as to costs.