

(2024) 03 CHH CK 0052
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 6015 Of 2011

Dineshwari Jaiswal

APPELLANT

Vs

State Of Chhattisgarh ?

RESPONDENT

Date of Decision : 19-03-2024

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Chhattisgarh Panchayat Raj Adhiniyam, 1993 — Section 91

Citation : (2024) 03 CHH CK 0052

Hon'ble Judges : Deepak Kumar Tiwari, J

Bench : Single Bench

Advocate : Aman Upadhyay, Rajeev Bharat, Tarun Dansena

Final Decision : Dismissed

Judgement

1. This petition has been filed to quash the order dated 22nd July, 2011 (Annexure-P/1) passed by the Commissioner, Bilaspur Division, Bilaspur whereby the Commissioner has affirmed the order passed by the Additional Collector, Raigarh dated 27.8.2009 (Annexure-P/2) whereby appointment of the petitioner on the post of Aangan Badi Worker at Aangan Badi Centre, Bhimsendih was cancelled and respondent No.6 was given the said appointment.

2. Facts of the case are that the petitioner was appointed on the post of Aangan Badi Worker, Bhimsendih by respondent No.5 by order dated 13th October, 2008. The said appointment was challenged by respondent No.6 by way of appeal under Section 91 of the CG Panchayat Raj Adhiniyam, 1993 on the ground that she is the resident of village Bhimsendih, her marriage was solemnized with one Nand Kumar Jaiswal, resident of the said village and after the marriage, she started residing with her husband. After recording statements of village Kotwar Bhogi Lal, Panch Smt. Sushila & others and after enquiry, respondent No.6 was given appointment on the said post, as she was more meritorious and as per the guidelines for appointment of Aangan Badi Worker issued on 2nd April, 2008 (Annexure-P/7). As per clause 1.6 d of the said guidelines, for appointment of

Aangan Badi Worker, minimum educational qualification is 12th or 11th Board and only in case of non-availability of the suitable candidate, then said educational qualification could be relaxed for a particular centre and the candidate having minimum educational qualification of 10th standard may be appointed. The petitioner has not passed 11th or 12th Board Examination and in the appointment order issued on 13th October, 2008, her qualification was mentioned at Sr. No.5 as 'High School passed?', whereas respondent No.6 has passed the examination as required under the guidelines, though earlier her candidature was rejected only on the basis that she was not resident of the said village. The order passed by the Additional Collector was further challenged by the petitioner before the Commissioner, Bilaspur Division, which was also dismissed by the impugned order dated 22nd July, 2011. The Commissioner has also observed that respondent No.6 is the only candidate who is possessing minimum qualification of 12th standard and she has also submitted requisite certificate issued by the village Panchayat, Sarpanch and Secretary regarding her domicile. On the complaint, the matter was again enquired into and the statements were also recorded and it was found that respondent No.6 was resident of the village Bhimsendih. Hence this petition.

3. Learned counsel for the petitioner submits that the name of respondent No.6 was not included in the voter list. Whenever any dispute occurs, the certificate issued by the competent authority has to be taken into consideration, as per clause 1.5 of the guidelines. For the sake of brevity, the said clause of the guidelines issued on 2nd April, 2008 (Annexure-P/7) reads thus:-

4. As respondent No.6 has not produced any certificate of domicile issued by the competent authority and her name in the voter list has also been included subsequently after the appointment of the petitioner, both the Courts below i.e. the appellate Court and the Revisional Court have committed material irregularity while dismissing the petition. Learned counsel for the petitioner further submits that though this Court in WP No.6998/2008 (Smt. Safed Sidar Vs. State of CG & Others, decided on 15.12.2008) has allowed the Writ Petition by observing that the petitioner therein was married to a person resident of Village Sahajpali, she was resident of Sahajpali, Gram Panchayat Kanthipali and she could not be denied appointment only on the ground that her name is not included in the voter list, but in Writ Appeal No.108/2009, the Division Bench of this Court allowed the appeal and set aside the order passed by the learned Single Judge dated 15.12.2008 in WPS No.6998/2008, vide its order dated 18.6.2010 by materially observing at para-6 which reads as under:-

¶6. It is well settled that when there is no statutory rules, the executive instructions have weightage of statutory Rules and as such the same were mandatory as departure from the same would have amounted to violation of Articles 14 and 16 of the Constitution of India. It was mandatory that a candidate should have brought his name in the voter list of that village to show that she is the native of that village. The intention mentioned in the scheme of Aanganwadi

Worker and the nutrition programme of Government of India is that a woman appointed as Anganbadi Worker should know the traditions and systems of the village for the welfare of the children and there upliftment and should also be accepted by the local society of the village and should have a quality of leadership to provide leadership as she had to organize Mahila Mandal also.?

Considering all these aspects, the writ petition deserves to be allowed.

5. On the other hand, learned State Counsel and learned counsel for respondent No.6 would submit that in the matter of Smt. Safed Sidar, relied on by learned counsel for the petitioner in WA No.108/2009, other documents/conditions for the purposes of domicile were not at all considered. As per clause 1.5 of the guidelines, when a candidate is not having his name registered in the voter list, he could furnish the certificate issued by the Village Panchayat, Sarpanch and Secretary jointly signed or by the Patwari or any Ward Member in support of the said certificate verifying the same. In the instant case, the Commissioner has categorically observed at para-4 of the impugned order that at the time of submission of application, such nature of certificate was furnished, however, wrong appointment order has been issued in favour of the petitioner which was rightly cancelled, as respondent No.6 was more meritorious and was fulfilling the eligibility criteria. When the candidate having educational qualification of 12th standard is available, appointment of less meritorious candidate is not possible. Hence the writ petition deserves to be dismissed.

6. I have heard learned counsel for the parties at length and perused the documents annexed with the writ petition with utmost circumspection.

7. It is not in dispute that respondent No.6 was married on 16th April, 2008 with one Nand Kumar Jaiswal, resident of village Bhimsendih. It is also not in dispute that her name was not included in the voter list till the appointment order is issued in favour of the petitioner and her name was included in the voter list on 29th October, 2008. As respondent No.6 was newly married, therefore, as per the guidelines, she has filed the certificate issued by the Village Panchayat Sarpanch and Secretary, which was duly considered by both the Courts below i.e. the appellate Court and the Revisional Court. In the enquiry also, it has been found that respondent No.6 was the resident of village Bhimsendih. The said finding of fact is based on evidence available on record, which cannot be interfered with.

8. For the foregoing, this Court does not find any illegality or infirmity in the findings recorded by the appellate Court or the Revisional Court, as the appointment was made strictly on the basis of merit and as per the guidelines.

9. The Writ Petition being devoid of any merit deserves to be and is hereby dismissed.