
(2019) 08 JH CK 0119

In the Jharkhand High Court

Case No : Writ Petition (S). No. 1040 Of 2019

Fatima Bibi

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 06-08-2019

Acts Referred:

Citation : (2019) 08 JH CK 0119

Hon'ble Judges : Dr. S.N. Pathak, J

Bench : Single Bench

Advocate : S. S. Shekhar, Aman Shekhar, Anoop Agarwal

Final Decision : Allowed

Judgement

1. The petitioner has approached this Court with a prayer for quashing and setting aside the letter No. 313 dated 02.02.2019 (Annexure-3) by which the recommendation of name of the petitioner as Anganwari Sevika of Centre Bengadubbi, Nayabasti, East Narayanpur has been rejected. Further, prayer has been made for a direction upon the respondent to consider the case of the petitioner for appointment to the post of Anganwari Sevika of Centre Bengadubbi, Nayabasti, East Narayanpur.

2. The factual exposition as has been delineated in the writ petition is that in view of the Notification floated by the Welfare Department, an Aam Sabha was held on 18.01.2019 for selection of Anganwari Sevika in the Anganwari Centre Bengadubbi (II), Nayabasti, Panchayat- East Narayanpur, the petitioner and others applied for the same and after due verification and due deliberation, the petitioner was found most suitable candidate and accordingly, her name was recommended for the said post. In pursuant to the recommendation of Aam Sabha, provisional selection letter was issued to the petitioner. It is specific case of the petitioner that she was selected, having requisite qualification but was not allowed to join the said post on the ground that her appointment to the said post is not in consonance with the Departmental rules and her provisional selection

was rejected by the respondent No.4 vide impugned letter dated 02.02.2019. Aggrieved by the same, the petitioner has been constrained to knock the door of this Court by filing instant writ application.

3. Mr. S. S. Shekhar, learned counsel for the petitioner submits that the petitioner was selected having requisite qualification and fulfilling the terms and conditions of the appointment/selection process, the candidature of the petitioner was cancelled without any rhyme and reasons reflected in the impugned order and as such, impugned order is not tenable in the eyes of law. He further submits that the petitioner fulfill as the terms and conditions of the appointment process and as such a direction be given upon the respondents to consider the case of the petitioner for appointment to the post of Aaganwari Sevika.

4. Per contra counter affidavit has been filed by the respondents. Mr. Anoop Agarwal, learned counsel appearing on behalf of the respondents vehemently opposes the contention of the learned counsel for the petitioner and submits that the petitioner was having less qualification than one candidate namely, Rabina Khatoon as Rabina Khatoon was having the qualification of M.A. and petitioner was only intermediate pass and as such, the said Rabina Khatoon ought to have been selected to the post of Aaganbari Sevika. Learned counsel further submits that the respondent No.6 is ready to follow the selection procedure afresh in accordance with the Departmental Rules as directed by the District Authorities. Justifying the impugned order, learned counsel submits that there is no illegality or infirmity in the order of rejection.

5. Be that as it may, having gone through the rival submissions of the parties and on perusal of the records, this Court is of the considered opinion that the case of the petitioner needs consideration. Admittedly, the petitioner fulfills the requisite qualification as required for selection to the post of Aagnawari Sevika and also the consideration was shown by the Aam Sabha and she was duly selected. The respondents have not been able to prove that which Rule has been violated in the selection process by the petitioner.

6. Similar issued fell for consideration before this Court in case of Sumati Devi Vs. State of Jharkhand & Ors., reported in 2009 4 JLJR 626 and Hon'ble Division Bench of this Court has held thus :-

However, when we tested this argument in the light of the rule for selection to the post of Anganwari Sewika, it disclosed that an Anganwari Sewika is to be selected by the majority of votes of the members of the Aam Sabha, where the beneficiaries, i.e. the villagers of the locality, were entitled to participate. There is also a rider that only those candidates who are referred by the Selection Committee to the Aam Sabha will be allowed to be considered by the Aam Sabha and therein, the essential qualification for the candidate is the certificate of class X pass. It is not the case of the appellant that the selected candidate is not possessing class X pass certificate but it is her case that she was better qualified since she had an Intermediate Certificate to her credit. But in the process it is

missed that the essential qualification was only the condition of eligibility for reference of a candidate to the Aam Sabha for selection and when the names of the appellant having Intermediate degree and of the respondent no.5 possessing the certificate of class X pass were referred to the Aam Sabha, then as per the rule, it is the majority of votes of the members of the Aam Sabha, which was the final authority, to decide upon the selection. In the instant matter, the Aam Sabha, by majority of votes of the members, selected respondent no.5 and that selection is clearly in consonance with the rules indicating that it is the Aam Sabha which is vested with the power of selection although reference of names of the candidates is to be made by the Committee. Respondent no.5 having been selected by the majority votes of the members of the Aam Sabha, which is vested with the power of selection, we find no reason to interfere with the impugned order of the learned Single Judge. Hence the appeal is dismissed at the admission stage itself.

7. Further, the impugned order is fit to be quashed and set aside on the other grounds also that as the grounds for rejection is shown in the counter-affidavit and as such, counter-affidavit cannot be a ground for improving the impugned order, nothing can be supplemented by way of counter-affidavit. Law is very clear that no reasons can be supplemented by way of counter-affidavit. The said proposition of law has been held in case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, AIR 1952 SC 16, which has been reiterated in case of Mohinder Singh Gill & Anr. Vs. the Chief Election Commissioner, New Delhi & Ors. reported in 1978 Volume 1 SCC, 405.

8. As a sequel of the aforesaid observation, rules, guidelines and judicial pronouncements and also in view of the fact that petitioner was appointed having requisite qualification and declared successful to be appointed by the approval of the Aam Sabha by its majority of votes, the impugned order at Annexure -3 dated 02.02.2019 is hereby quashed and set aside. Accordingly, the respondents are directed to consider the case of the petitioner for appointment to the post of Aaganwari Sevika, if there is no other legal impediment and appointment letter shall be issued, within a period of six weeks' from the date of receipt of a copy of this order.

9. Resultantly, writ petition stands allowed.