
(2010) 05 RAJ CK 0011
In the Rajasthan High Court

Harsha Choudhary

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-05-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226

Citation : (2010) 3 RLW 2763

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—Heard learned Counsel for the parties.

2. Mr. D.R. Kawadia, Dy. Government Counsel is directed to accept notice on behalf of State.

3. By this writ petition, the petitioner has sought following relief (s):

(a) The impugned orders dt. 5.3.2010 (Annex. 7) and 11.3.2010 (Annex. 8) respectively so far as the same relates to appointment of private respondent deserves to be quashed and set aside.

(b) The respondents be directed to give appointment to the petitioner on the post of Aanganwadi Worker at Aanganwadi Kendra Ram Chandra Godaraon-ki-Dhani, situated in Village Ed-Sindhari w.e.f. 5.3.2010 along with all consequential benefits.

(c) Any other appropriate order which this Hon"ble Court deems fit and proper may kindly be passed in favour of petitioner.

(d) Cost of the writ petition may kindly be awarded to the petitioner.

4. Learned Counsel for the petitioner making submissions urged that for giving appointment on the post of Aanganwari-Worker"/^lgkf;dk*, following two

conditions are relevant, viz.

(i) The women concerned should be local resident of the village concerned, and in urban areas, should be resident of that particular Mohalla/colony and should be married lady so that trained women candidates for the said posts do not drop out;

(ii) The residence of such women should not be a distance of more than one kilometer.

5. Clause 5 of said terms and conditions which has been relied upon by the learned Counsel for the petitioner is that the condition that the woman candidate being local resident and married lady will not be relaxed, and in case the woman candidate of minimum qualification is not available then out of the available candidates the higher qualified woman can be taken.

6. Learned Counsel for the petitioner submitted that vide Resolution dated 5.3.2010 (Annex. 7) of Gram Sabha, Ed-Sindhari for Ram Chandra Godaraon-ki-Dhani, private respondent No. 5, Smt. Manju was appointed as "Aanganwari-Worker" and the petitioner, Harsha Devi was appointed only Assistant to the "Aanganwari-Worker" which is wrong and illegal, and the appointment of the respondent No. 5, Manju Devi deserves to be quashed.

7. It is further contended by learned Counsel for the petitioner that from the documents sought under the Right to Information Act and produced now before this Court, would show that private respondent No. 5, Manju is resident of nearby Gram Panchayat, namely, Sindhari Chousira, and her address given in Annex-11 is "Smt. Manju Devi W/o Hanumanaram, C/o Durga Ram Beniwal Ghasiyo Ka Bas, Doli, Sindhari, District Barmer." Further, her voter identity card issued by the Election Commissioner of India also shows her address as "Sindhari Chousira". Learned Counsel for the petitioner further submits that Gram Panchayat Sindhari Chousira is about 12 kilometres away from Ed-Sindhari village, where the respondent No. 5 has been appointed, the same is therefore gross violation of the conditions, and her appointment deserves to be quashed.

8. Learned Counsel further submitted that the petitioner was also qualified and eligible to be appointed as "Aanganwari-Worker"s as she also satisfied the twin conditions of being local resident and married lady residing in Ed-Sindhari. Therefore, she should have been appointed as "Aanganwari-Worker" instead of being appointed as Assistant ("lgkf;dk) only viz. at a lower post.

9. A perusal of Resolution dated 5.3.2010 (Annex. 7) shows that private respondent No. 5, Manju Devi has passed her BA examination with 41.94% whereas the petitioner has passed only class 12th. Not only the private respondent, Manju is more qualified than the petitioner but also, both, petitioner and respondent No. 5 may be fulfilling the minimum qualification of 10th pass for the said post. However, if a considered decision has been taken by the Gram Sabha on 5.3.2010 that a higher qualified lady should be appointed at a higher

position of "Aanganwari-Worker", in the opinion of this Court, no valid exception of the same can be taken. So far as the question like place of residence of respondent No. 5 and the candidate being married lady are concerned, in the opinion of this Court, these are all questions of fact, which require proper evidence to be led, established and proved before a competent civil court if any right of the parties is to be adjudicated upon. The final analysis of these evidences produced before this Court with the help of affidavit in extraordinary writ jurisdiction under Article 226 of the Constitution of India cannot be appreciated/weighed in the writ jurisdiction and no final pronouncement can be made of this nature and relief sought in the present writ petition cannot be granted. What is the distance between two Gram Panchayats and the areas, what is the qualification viz. whether the women candidates are married or not etc., are all the questions of facts, relevant to be decided in the present controversy before the validity of the appointment of one or otherwise is pronounced upon by the Court.

10. This Court after hearing the arguments of learned Counsel for the petitioner, is of the considered opinion that such questions of fact fraught with the consequence of the appointment of a person either to be cancelled or maintained and whether such appointments should be given to the petitioner in preference over private respondent or not, and whether the resolution of Gram Sabha can be said to be valid or not; and whether there are any bias or not etc., are all questions which are required to be determined on the basis of properly led evidence, which is required to be proved in accordance with provisions of Evidence Act in a competent Civil Court. In such circumstances simply based on original or photocopies of certain documents, supported by affidavit in writ jurisdiction, cannot be accepted as gospel truths and proved evidence before a Court in extraordinary jurisdiction. Consequently, the writ petition is dismissed, as in the opinion of this Court, petitioner has an alternative remedy of approaching the civil Court u/s 9 of the Civil Procedure Code.

11. This Court is further of the opinion that remedy by way of civil suit will be more appropriate and more easily accessible for the petitioner in a rural background and her likes case. The civil courts are spread all over the State and according to concept "justice at the door Steps", the civil courts are more readily available and accessible to these petitioners and, therefore, not only from the angle of questions of facts involved in the present writ petition, which are required to be established and determined, but also for the reason of more appropriate remedy for the petitioners, they are relegated to the civil courts.

12. In the result, the writ petitions dismissed with no order as to costs.