
(2017) 08 MP CK 0023
In the Madhya Pradesh High Court
Case No : 13798 of 2010

Meharban S/o Kasam Khan and others	APPELLANT
Vs	
Salim S/o Babu Khan and others	RESPONDENT

Date of Decision : 21-08-2017

Acts Referred:

Citation : (2017) 08 MP CK 0023

Hon'ble Judges : Sujoy Paul

Bench : Single Bench

Advocate : Prakash Upadhyay, Devendra Gangrade, Dharmendra Kumar Pandey

Final Decision : Allowed

Judgement

1. This petition takes exception to the order dated 21.09.2010 (Annexure P/16); whereby, learned Additional Commissioner has entertained and allowed the appeal filed by respondent No.6 and set aside the appellate order passed by the learned Collector on 28.01.2010.
2. Briefly stated, the facts are that the petitioner, private respondent and other candidates submitted their candidature for the post of Anganwadi Karyakarta. Admittedly, the last date of submission of candidature was 30.07.2006. The case of the petitioner is that she submitted her candidature along with relevant documents including the BPL certificate. On the strength of BPL certificate, she scored a march over and above the other candidates. The said position is reflected from the provisional select list Annexure P/5.
3. The respondent No.6 raised objection against the petitioner which is reflected in the main select list. Thereafter, the respondent No.6 was selected on 16.03.2007. Against this order, petitioner preferred an appeal before the learned Collector which was decided by order dated 28.01.2010. The learned Collector opined that the petitioner had submitted her candidature and in serial No.8 mentioned that she belongs to a family which is Below Poverty Line.

4. The learned Collector also gave a finding that along with the application, the petitioner had filed the certified copy of the BPL list. Aggrieved, respondent No.6 filed the appeal before the learned Additional Commissioner which was decided by impugned order dated 21.09.2010. The learned Additional Commissioner was apprised that w.e.f. 13.11.2009 the petitioner's family cannot be treated to be living below poverty line. The Tahsildar by order dated 13.11.2009 has declared the same and accordingly, the petitioner cannot claim the benefit of BPL marks. The learned Additional Commissioner on this score alone allowed the appeal and decided that respondent No.6 shall be entitled to get appointment.

5. Shri Prakash Upadhyaya, learned counsel for the petitioner criticized the impugned order by contending that- (i) The petitioner was below poverty line on the date of submission of candidature (30.07.2006). Even if her BPL status is altered later on, this will not deprive her from the fruits of selection. He placed reliance on the order passed by this Court reported in 2016 SCC OnLine MP 5842: Smt.Neelam Dwivedi v. State of Madhya Pradesh . It is submitted that against the cancellation of BPL certificate, the petitioner filed W. P. No.14294/2012 which was decided on 14.07.2016 and matter is remitted back to the Tahsildar to commence with the proceedings as per the earlier remand order of the Collector. The parties appearing before this court fairly admitted that till date no decision has been taken by learned Tahsildar or as per the remand of this Court in the said petition. (ii) The second argument of Shri Upadhyaya is that even if

such an order of cancellation of BPL status was issued, the same is still subjudice, hence, said order cannot be a reason to deprive the petitioner from fruits of selection. (iii) If BPL marks are also not added, the petitioner has secured 53% whereas respondent No.6 has secured 52.8% marks. Thus, petitioner is, even otherwise, more meritorious qua respondent No.6.

6. Shri Devendra Gangrade, Panel Lawyer supported the impugned order.

7. Learned counsel for the respondent No.6 contended that the candidature of the petitioner annexure P/4 shows that in fact petitioner did not file the BPL certificate along with her candidature. Petitioner's name was wrongly inserted in the merit list. Respondent No.6 was having a BPL certificate and if those marks arising out of BPL certificate would have been taken into account, respondent No.6 would have been selected. He further submits that, this petition may be disposed of by holding that, if petitioner succeeds before Tahsildar and cancellation order of BPL status is set aside, petitioner may be declared as selected. The learned counsel for the private respondent further submits that petitioner earlier obtained interim order by misrepresentation of facts and, therefore, the said interim order was vacated and thereafter the respondent No.6 is working as Anganwadi Karyakarta.

8. No other point is pressed by learned counsel for the parties.

9. I have heard the parties at length.

10. The aforesaid factual matrix makes it clear that parties are at logger heads on a very important factual issue i.e., whether the petitioner had filed the BPL certificate alongwith her candidature.

11. The learned Collector mentioned that the said certificate was filed by the petitioner. The learned Additional Commissioner set aside the entire order solely on the ground that the petitioner's BPL status was taken away by order dated 13.11.2009. The learned Additional Commissioner has not taken pains to give any finding whether the order of Collector was as per the record. More particularly, the finding given by Id. Collector that the BPL certificate was submitted by the petitioner was not at all examined by him. The entire edifice of the order dated 21.09.2010 is founded upon subsequent cancellation of BPL status w.e.f. 13.11.2009.

12. In the considered opinion of this Court, the eligibility of a candidate is to be seen on the basis of his application and documents submitted on or before the last date of submission of candidature. No subsequent document can become a feather in her cap. The aforesaid aspect has completely escaped notice of learned Additional Commissioner.

13. The appellate order of learned Additional Commissioner is silent on the legal point whether a subsequent withdrawal of BPL status will deprive the petitioner from the fruits of selection, if on the date of date of submission of candidature, she was an eligible candidate and her name was included in the BPL list.

14. Considering the aforesaid, I deem it proper to set aside the order dated 21.09.2010 and remit the matter back before the Additional Commissioner for fresh decision with following directions-

(1) As agreed, the parties shall appear before the learned Additional Commissioner on 11.09.2017. The learned Additional Commissioner shall fix a date for hearing within 15 days.

(2) The learned Additional Commissioner shall summon and peruse the original record of the selection. He shall examine

whether the petitioner disclosed her BPL status in her main application/ candidature and whether BPL certificate was part of such candidature.

(3) The learned Additional Commissioner shall examine the effects of cancellation of BPL status after submission of the candidature.

15. In the event BPL certificate was not there in favour of the petitioner at the time of selection, the learned Additional Commissioner may examine the comparative merits of the petitioner and respondent No.6. It will also be open to the parties to apprise the learned Additional Commission if Tahsildar decides the matter, in the mean time, in view of remand order of this Court aforesaid and said aspect shall also be examined by learned Additional Commissioner. The

learned Additional Commissioner shall make endeavor to decide the matter afresh expeditiously preferably within two months from 11.09.2017.

16. Till a fresh decision is taken by learned Additional Commissioner, respondent No.6 shall be permitted to perform her duties.

17. It is made clear that this Court has not expressed any opinion on the merits of the matter.

18. The petition is allowed to the extent indicated. No cost.