
(2023) 02 CHH CK 0035
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 4296 Of 2014

Parvati Verma

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 10-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 21, 226, 311

Citation : (2023) 02 CHH CK 0035

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : Prateek Sharma, Sameer Uraon

Final Decision : Allowed

Judgement

1. This petition is filed under article 226 of the Constitution of India for setting aside/quashing the impugned orders dated 28.03.2014 (Annexure P/1) and 21.07.2014 (Annexure P/2) and to direct the respondents to reinstate the petitioner in her service on the post of supervisor with all consequential benefits.

2. Brief facts of the case are that petitioner was married to Mahendra Kumar Verma, thereafter, through wedlock, three children were born and on 22.11.2001, the last and third child was born. Petitioner's relative being issueless requested the petitioner and her husband for adoption of the third child of the petitioner and after long discussion and due consideration, the petitioner accepted the request of the said relative and the adoption deed (Annexure P/3) was executed between the parties in the Stamp paper before the Notary at Raipur on 28.04.2008. Thereafter, about 8 months later, an advertisement was published in the daily newspaper in the month of February, 2009 inviting applications for appointment on the post of Supervisor under respondent No.1 and the petitioner being eligible, applied for the same. The petitioner being meritorious, qualified and successfully appointed on the post of Supervisor vide order dated 07.05.2010 and since then the petitioner was working with utmost sincerity and honesty to the satisfaction of her higher authorities without any

complaint related to her work. A complaint was made with mala-fide intension on the political behest against the petitioner alleging that the petitioner had third child after 26.01.2001 and therefore she became disqualified to hold the post of Supervisor and on the basis of said complaint, the respondents issued a notice to the petitioner only to fulfill the formality and without affording proper opportunity of hearing and without initiating full-fledged Departmental Enquiry, terminated the service of the petitioner vide order dated 28.03.2014 passed by respondent No. 3.

3. Being aggrieved by the said order, the petitioner filed a Writ Petition (S) No.1934 of 2014 before this Court which was dismissed as withdrawn vide order dated 30.04.2014 with liberty to file a representation before the competent authority. The petitioner filed a detailed representation before respondent No.1 which has been rejected vide impugned order dated 21.07.2014. Hence, this petition filed by the petitioner for the following reliefs:-

10.1 this Hon'ble Court may kindly be pleased to set aside/quash the impugned orders dated 28.03.2014 (Annexure P/1) and 21.07.2014 (Annexure P/2) and further be pleased to direct the respondents to reinstate the petitioner in her service on the post of Supervisor, with all consequential benefits, in the interest of justice.

10.2 this Hon'ble Court may kindly be pleased to direct the respondent State for issuance of advertisement, categorically mentioning therein the posts reserved for particular disabled category, in all future process of direct recruitment, in accordance with law.

10.3 any other relief/order which may deem fit and just in the facts and circumstances of the case including award of the costs of the petition may be given.

4. Learned counsel for the petitioner submits that the impugned orders dated 28.03.2014 (Annexure P/1) and 21.07.2014 (Annexure P/2) are arbitrary, unreasonable, unauthorized, unwarranted, illegal, discriminatory and mala-fide, therefore hit by the postulates of Articles 14, 16, 21 & 311 of the Constitution of India. The impugned order dated 28.03.2014 is passed without affording proper opportunity of hearing to the petitioner. The petitioner had only two children as on date, therefore, her services ought not to have been terminated on the ground of having third child after 26.01.2001.

5. The petitioner had executed the adoption deed on 28.04.2008 which was around 8 months prior to the date of her appointment, thus, at the time of submitting candidature, the petitioner had only two children and was not even having any knowledge of issuance of advertisement. The conduct of the petitioner is bona-fide which is evident from the said adoption deed dated 28.04.2008. The law disqualified the petitioner only if at the time of appointment, she is having third child who has born on or after 26.01.2001 whereas in the instant case, the petitioner is having two children after

28.04.2008 and till date, she is having only two children. If the impugned order is allowed to sustain then the petitioner would be punished from both the sides as one by losing the child and other by losing the service, despite being bona-fide and eligible.

6. The service of the petitioner was terminated without initiating full-fledged Departmental Enquiry and without affording opportunity of hearing in complete violation of Article 311 of the Constitution of India, therefore, the impugned termination order is not sustainable in the eye of law. Reliance has been placed on this Court's order dated 02.05.2012 passed in Writ Petition No. 1827/2004.

7. Learned counsel for the respondents submits that on 12.03.2014 respondent no. 3 issued a show-cause-notice to the petitioner alleging that the petitioner is having 3 children out of which two children were born after 26.01.2001 and further she is directed to file reply within 7 days failing which her appointment shall be cancelled. Thereafter, petitioner replied to the said show-cause-notice mentioning that her daughter (third child) was adopted by her relative thereafter, the impugned termination order dated 28.03.2014 has been passed and being aggrieved by the said order, the petitioner has filed Writ Petition (S) No. 1934/2014 before this Court which was dismissed as withdrawn vide order dated 30.04.2014 (Annexure P/8) with liberty to file a representation before the competent authority. Accordingly, the petitioner filed a detailed representation before the respondent State authority which has also been rejected vide impugned order dated 21.07.2014.

8. The order dated 28.03.2014 passed by the Directorate of Women and Child Development Department, Chhattisgarh, Raipur is a speaking order in which it has categorically been mentioned that as per the clause 3(b) of the advertisement dated 11.02.2009, there is specific condition that as on or after 26.01.2001, in the situation of more than two children alive, the concerned candidate will be disqualified, therefore, in violation of the Rule 6 (6) of the Chhattisgarh Civil Seva (Seva ki Samanya Shartein) Rule, 1961, the services of the present petitioner have rightly been terminated after providing due opportunities of being heard to the petitioner. The impugned orders passed by the Respondent State authorities are proper, legal, within the jurisdiction and strictly in accordance with law and there is no infirmity or illegality in the same, therefore, in view of the facts and circumstances of the case the petitioner is not entitled for reliefs as claimed for and the petition filed by the petitioner is devoid of any merit or substance, thus deserves to be dismissed.

9. Heard counsel for the parties and perused the material available on record.

10. It is clear from all documents that respondent passed the impugned order dated 28.03.2014 (Annexure P/1) on this ground that petitioner admitted this fact that she has three children. It is clear from this order that petitioner submitted before respondents that her one child was adopted by her relative but the respondent authority found that in school record of the adopted child, name

of petitioner was written as mother and her husband's name was written as father of the said child. Petitioner filed a Writ Petition before this Court i.e. WP(S) no. 1934 of 2014 which was withdrawn by the petitioner with liberty to file representation before the competent authority. This Court's order dated 30.04.2014 passed in Writ Petition (S) No. 1934 of 2014 is as under:-

- Heard.
- Learned counsel for the petitioner seeks permission of this Court to withdraw this petition with liberty to file a representation before the competent authority.
- Permission granted.
- Accordingly, the writ petition is dismissed as withdrawn with the aforesaid liberty granted in favour of the petitioner.
- However, if the petitioner files any such representation, the competent authority is expected to decide the same expeditiously.

11. Petitioner filed a representation before the competent authority and by order dated 21.07.2014 (Annexure P/2), her representation was also dismissed by the respondents. Petitioner filed an adoption deed (Annexure P/3) dated 28.04.2008 but the respondents authorities found that this deed has no legal value and dismissed her representation. Paragraphs 4 & 5 of the order dated 21.07.2014 (Annexure P/2) are as under:-

4. Jherh oekZ us vius vH;kosnu esa ;g ys[k fd;k gS fd muds }kjk muds ,d larku dks xksnukek fn;k x;k gSA bl izdkj muds ikl nks gh larku gSA

12. It is clear from all documents that petitioner appeared in exam and got selected on the post of Supervisor on 07.05.2010 vide Annexure P/5 and after 4 years of her service, her appointment was cancelled.

13. In the matter of Pawan Kumar Agrawal and another Vs. Government of Chhattisgarh and others passed in Writ Petition No. 1827/2004, the petitioners challenged the legality and validity of selection and appointment of respondents No. 4 & 5 to the post of Civil Judge, Class-II by respondents No. 1 to 3, on the ground that principles governing horizontal reservation of 30% for women have not been correctly applied in computing reservation of women in the Unreserved Category, thereby wrongly depriving the petitioners from being appointed on the said post, despite their securing marks more than respondents No. 4 & 5, who have been appointed on the said post in excess of 30% reservation.

14. This Court vide order dated 02.05.2012 observed in para 15 is as under:-

On the completion of selection process, the candidates were appointed in the year 2004 and have been serving as judicial officers for more than seven years. There have also been subsequent selection and appointments in the year 2006, 2008 & 2011. Respondents No. 4 & 5 have been serving as judicial officers since last more than seven years. In such a state of affairs, we are of the opinion that

it would not be proper to set aside the selection and appointment of respondents No. 4 & 5 at this juncture for no fault of theirs. At the same time, it cannot be denied that the petitioners, who were entitled to be selected and should have been placed immediately below Ku. Shraddha Shukla and above respondents No.4 & 5 in the select list, have been wrongly deprived of their right to be appointed on the post of Civil Judge, Class-II by erroneous interpretation of horizontal and compartment-wise reservation by respondent No.2.

15. In this case petitioner was also working from 07.05.2010 to 28.03.2014 and without any Departmental Enquiry, her appointment was cancelled by the respondents. It is clear from both the orders that only show-cause-notice was issued to the petitioner and, thereafter she has filed reply with documents but the competent authority appreciated all documents and passed the impugned orders during pendency of this petition. The State Government omitted the concerned rule by notification dated 13.07.2017. By the said notification, Rule 6 (6) was omitted, reads as under :-

16. It is clear from this notification that this rule is not in existence and it is also clear that respondent authority did not hold any enquiry and also not initiate enquiry against the petitioner and without any Departmental Enquiry, cancelled the appointment of the petitioner which is not proper and against the natural justice.

17. Looking to the notification of State Government and considering the facts and circumstances of the case, impugned order dated 28.03.2014 (Annexure P/1) and 21.07.2014 (Annexure P/2) are set aside and appointment of the petitioner is restored, however, petitioner is not entitled for back-wages and she will be only entitled for the same from the date of rejoining her service.

18. With the aforesaid observations, the petition is, accordingly allowed. No order as to costs.