
(2009) 01 CHH CK 0004
In the Chhattisgarh High Court

Savita Manoj Kumar (Smt.)

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 30-01-2009

Acts Referred:

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 40, 40(1), 69, 69(1)

Citation : (2009) 2 MPHT 69

Hon'ble Judges : Dharendra Mishra, J

Bench : Division Bench

Judgement

Dhirendra Mishra, J.—With the consent of the parties, the matter was finally heard at the admission stage itself.

2. By this petition the petitioner has impugned the order dated 21-10-2008 of Annexure P-I whereby respondent No. 2-Director, Panchayat has allowed the revision petition of respondent No. 6 preferred against the order dated 4-10-2008 (Annexure P-5) passed by the Additional Collector, Raigarh.

3. Briefly stated, facts of the case are that applications for appointment on the post of Aanganbadi Worker were invited by the Development Project Officer, Gram Panchayat Garhumaria, District Raigarh and the petitioner, respondent No. 6 and others submitted their applications. After scrutiny of applications, Gram Panchayat vide Annexure P-4 recommended name of the petitioner for appointment on the post of Aanganbadi Worker, however, respondent No. 4-Chief Executive Officer appointed respondent No. 6 as Aanganbadi Worker for Gram Panchayat Garhumaria. The Additional Collector, Raigarh vide order of Annexure P-5 dated 4-10-2007 allowed the appeal of petitioner herein; set aside the appointment of respondent No. 6 and remanded the matter to the Chief Executive Officer with a direction to appoint deserving candidate. Appointment of respondent No. 6 was cancelled on the ground that her "Jeth" is the Panch of Gram Panchayat Garhumaria and therefore, she is not eligible to be appointed as per prescribed eligibility in the circular dated 6-1-2000 issued by the then

Government of Madhya Pradesh. However, the Director, Panchayat set aside the order of Additional Collector dated 4-10-2007 and held that appointment of respondent No. 6 is in accordance with law.

4. Learned Counsel for the petitioner submits that as per circular of Annexure P-2, dated 24-1-2006 issued by the Project Officer, Integrated Child Development Project and Circular of Annexure P-3, dated 6-1-2000 issued by the then State Government, no Government servant or elected or nominated members of the concerned Panchayat or their relatives can be appointed as Aanganbadi Worker. The Director, Panchayat has passed the impugned order with a finding that in Explanation I to Section 69 Sub-section (1) and Explanation II of Section 40 Sub-section (1) of the Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short "Act, 1993") the expression "relatives" is defined, however, the same does not include "Jeth" and therefore, respondent No. 6 cannot be held to be ineligible only on the ground that her Jeth is elected Panch of concerned Gram Panchayat. Learned Counsel for the petitioner argued that the circular issued by the State Government only mentions relatives of the elected members of Panchayat and there is no reference to Section 40 or 69 of the Act, 1993. It was further submitted that even otherwise in the Explanations to Section 69 or 40 of the Act, 1993, "Devar, Devrani and Jethani" have been included to be relatives of elected member and since brother of husband (Jeth) is called "Devar" as well as "Jeth", the respondent No. 6 was not eligible for appointment.

5. On the other hand, learned Counsel for respondent No. 6 contended that the Legislature has consciously excluded the expression "Jeth" in the Explanation of Sections 40 (1) and 69 (1) of the Act, 1993 by including Devar, Devrani & Jethani in the definition of relatives and therefore, learned Director, Panchayat as also the Chief Executive Officer have rightly held respondent No. 6 to be eligible for appointment.

6. I have heard learned Counsel for the parties.

7. The short question for consideration in this writ petition is that whether respondent No. 6, whose Jeth is elected Panch of concerned Gram Panchayat, is eligible for appointment as Aanganbadi worker.

8. The Circular of Annexure P-3 issued by the State Government and Circular of Annexure P-2 issued by the Project Officer, Integrated Child Development Project, only mentions that the employees of Government or Panchayat institutions or relatives of elected and nominated members of the said institution would not be appointed on the post of Aanganbadi Worker/Aanganbadi Sahayika.

9. Section 40 of the Act, 1993 provides for removal of office bearers of the Panchayat. Sub-clause (c) of Explanation I to Sub-section (1) of Section 40 of the Act, 1993 provides definition of "misconduct" for the purposes of this sub-section, which reads as under:

(c) the use of position or influence directly or indirectly to secure employment for

any relative in the Panchayat or any action for extending any pecuniary benefits to any relative, such as giving out any type of lease, getting any work done through them in the Panchayat by an office bearer of Panchayat.

Second Proviso to Sub-section (1) of Section 69 of Act, 1993 makes a provision that relatives of any office bearer of the concerned Gram Panchayat shall not hold charge of Secretary of the Gram Panchayat and Explanation appended to Sub-section (1) of Section 69 defines the expression "relatives".

10. The question for consideration is whether "Jeth" would be included in the category of relatives as mentioned in Circular of Annexures P-2 and P-3 in view of the definitions given to the expression "relative" in Explanation I to Sub-section (1) of Section 69 and Explanation II of Sub-section (1) of Section 40 of the Act, 1993.

11. Clause (c) of 1st Explanation appended to Sub-section (1) of Section 40 provides that if an office bearer uses his influence to secure employment or any pecuniary benefit to any relative would constitute misconduct for the purpose of Sub-section (1) of Section 40 of the Act, 1993. Similarly, Second Proviso to Sub-section (1), Section 69 of the Act provides that if a person happens to be relative of any office bearer of concerned Gram Panchayat, he shall not hold the charge of Secretary. The intention behind making the above provisions is to ensure that the office bearer of the Panchayat is not permitted to use his authority to extend any kind of benefit to his relatives.

12. In the Principles of Statutory Interpretation, Eighth Edition 2001, the Hon'ble Justice G.P. Singh at Page No. 102 under Chapter- "The Rule of Literal Construction", it has been observed thus:

The words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strict grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained". The Courts have declined "to be bound by the letter, when it frustrates the patent purposes of the statute". In the words of Shah, J. : "It is a recognized rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature". Therefore, when two interpretations are feasible the Court will prefer that which advances the remedy and suppresses the mischief as the Legislature envisioned. The Court should adopt an object oriented approach keeping in mind the principle that Legislative futility is to be ruled out so long as interpretative possibility permits. The object oriented approach, however, cannot be carried to the extent of doing violence to the plain language used by rewriting the section or substituting words in place of the actual words used by the Legislature.

13. It is also not in dispute that husband's elder brother is called "Jeth" of his wife, whereas, younger brother is called her "Devar", in common parlance. However, since reference to Devar & Jeth both are to the brothers of husband, it can safely be interpreted that intention of the Legislature in using the expression "Devar" in Sections 69 and 40 of the Act, 1993 is in reference to brother of husband of a lady and not to the restricted interpretation that it refers to only younger brother of the husband and the word "Devar" includes Jeth also.

14. On the basis of aforesaid analysis the instant petition is allowed, the impugned order of Annexure dated 21-10-2008 passed by respondent No. 2-Director, Panchayat is hereby set aside and the order of Additional Collector, Raigarh dated 4-10-2007 (Annexure P-5) is hereby restored.

Consequently, LA. No. 2 also stands disposed of.

No order as to costs.