

(2020) 03 MP CK 0125
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 1198 Of 2018

Smt. Krishna Sharma

APPELLANT

Vs

State Of MP And Others

RESPONDENT

Date of Decision : 17-03-2020

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya Ko Appeal Adhiniyam, 2005 — Section 2(1)

Citation : (2020) 03 MP CK 0125

Hon'ble Judges : Sheel Nagu, J;Rajeev Kumar Shrivastava, J

Bench : Division Bench

Advocate : M.P.S. Raghuvanshi, Pratip Visoriya, Dharmendra Dwivedi, Vivek Khedkar, D.P.Singh

Final Decision : Allowed

Judgement

Rajeev Kumar Shrivastava,J

This writ appeal under Section 2(1) of Madhya Pradesh Uchcha Nyayalaya Ko Appeal Adhiniyam, 2005, has been filed against the order dated 9.8.2018 passed in Writ Petition No. 11548/2018, whereby the writ petition filed by the appellant/petitioner has been dismissed.

2. The impugned order dated 9.8.2018 passed by learned Writ Court reads as under:-

"Affirmation of an order dated 27/06/2016 passed in Appeal cancelling the appointment of the petitioner as Anganwadi Karyakarta at Village Chaprent, Gram Panchayat Chentikheda, Tahsil Vijaypur, District Sheopur, by the Additional Commissioner, Second Appellate Authority on 18/01/2018 has led the petitioner file this petition challenging the order.

Relevant facts briefly are that, in furtherance to the advertisement for appointment of said Anganwadi Karyakarta, 07 candidates applied for the post. Of whom, 06 candidates including respondent No. 6 were found ineligible, either

not possessing requisite educational qualification or were not resident of the village. As a result whereof, the petitioner who was found eligible was appointed by order dated 24/09/2015. The petitioner gave her joining on 03/10/2015. The appointment was challenged by respondent No. 6 before the Additional Collector, Sheopur, wherein various grounds were raised including that, the petitioner is not a permanent resident of village Chaprent and that respondent No. 6 had duly passed the Higher Secondary Examination from the Board of Higher Secondary Education, Delhi. The Appellate Authority, as evident from the order dated 07/06/2016 took into consideration only the issue as to the educational qualification of respondent No. 6. It observed:-

"मूल प्रकरण का अवलोकन किया गया। उभयपक्ष के तर्कों पर विचार किया गया। गैरअपीलार्थी क्रमांक 02 के कार्यालय में आंगनबाड़ी केन्द्र चपरेंट में आगनबाड़ी कार्यकर्ता पद हेतु श्रीमती रामदुलारी आदिवासी, श्रीमती कृष्णा पाराशर, श्रीमती अरूणा सिंह, श्रीमती मायावती कुशवाह, श्रीमती सोनाबाई, श्रीमती सुनीता धाकड ं एवं श्रीमती मंगेश द्वारा आवेदन प्रस्तुत किये गये। अपीलार्थी मायावती द्वारा अपने आवेदन में हायर सेकण्डरी योग्यता बोर्ड ऑफ हायर सेकण्डरी दिल्ली वर्ष 2012 प्राप्तांक 353/500 (70.6 प्रतिशत) उल्लेखित की गई है। आवेदन के साथ परिशिष्ट 2 में अनुलग्नकों की सूची प्रस्तुत की गई है, जिसमें हायर सेकण्डरी परीक्षा की मार्कशीट की सत्य प्रति पर सही का निशान लगाया गया है जिसकी पृष्ठ क्रमांक 41 पर अंकसूची की सत्यापित छायाप्रति संलग्न पाई गई है। गैरअपीलार्थी क्रमांक 02 के द्वारा अपीलार्थी के आवेदन एवं उसके साथ संलग्न शैक्षणिक योग्यता के प्रमाण पत्रों की उपलब्धता की अनदेखी कर अपीलार्थी के नाम के समक्ष निर्धारित न्यूनतम शैक्षणिक योग्यता न होने से अपात्र घोषित किया गया है। गैरअपीलार्थी क्रमांक 02 के द्वारा अनंतिम सूची कब प्रकाशित की गई एवं कहाँ प्रकाशित की गई, इसका कोई उल्लेख नस्ती में अंकित होना नहीं पाया गया है। अनंतिम सूची पर चयन समिति के दो महत्वपूर्ण सदस्यों मुख्य कार्यपालन अधिकारी जनपद पंचायत विजयपुर एवं सभापति स्वास्थ्य एवं महिला बाल समिति के हस्ताक्षर होना नहीं पाया गया। अपीलार्थी के अंक 353/500 (70.6 प्रतिशत) जबकि गैरअपीलार्थी क्रमांक 01 के अंक 310/500 (62 प्रतिशत) थे। स्पष्ट है कि अपीलार्थी के शैक्षणिक योग्यता के अंक गैरअपीलार्थी क्रमांक 01 से अधिक थे। गैरअपीलार्थी क्रमांक 02 के द्वारा आवेदनों का परीक्षण समुचित सर्तकता से नहीं किया गया है जिससे अपीलार्थी की हायर सेकण्डरी की अंकसूची नियुक्ति प्रक्रिया के विचारण में नहीं ली गई है जो गैर अपीलार्थी क्रमांक 02 के द्वारा की गई गंभीर लापरवाही को उजागर करती है जिससे अपीलार्थी की अपील स्वीकार किये जाने योग्य है। अतः अपीलार्थी की अपील स्वीकार कर गैरअपीलार्थी क्रमांक 01 की आंगनबाड़ी कार्यकर्ता के पद पर ग्राम चपरेंट में की गई नियुक्ति का आदेश दिनांक 24.09.2015 निरस्त की जाती है तथा प्रकरण इस निर्देश के साथ प्रत्यावर्तित किया जाता है कि अपीलार्थी की हायर सेकण्डरी की अंकसूची को विचारण में लेकर पुनः अनंतिम सूची तैयार कर दावे आपत्ति आमंत्रित किये जायें तथा नियुक्ति दिनांक 24.09.2015 के पूर्व की तिथि पर आवेदकों के ग्राम चपरेंट के निवासी होने के तथ्य की जाँच कर पुनः चयन समिति नये सिरे से नियुक्ति आदेश समस्त नियम एवं प्रक्रियाओं का पालन कर जारी करें।"

The marksheet presented by respondent issued by the Board of Higher Secondary Delhi was directed to be taken into consideration while determining her eligibility. In appeal the order was affirmed by the impugned order.

In this fact situation the issue which arises for consideration is whether it was just and proper for Authorities concern to have acknowledge the certificate issued by the Board of Secondary Education Delhi to confer eligibility to respondent No.6. The relevant clause which lays down eligibility criteria is clause v-1(3) of the circular No. F. 3- 2/06/50-2 dated 10/07/2007 issued by the State of Madhya Pradesh through its Department of Women & Child Development, which stipulates:-

"(3) शैक्षणिक योग्यता- नगरीय एवं सामान्य ग्रामीण क्षेत्रों में महिला अभ्यर्थी अनिवार्यतः हायर सेकेण्डरी (10+2 की बोर्ड अथवा 11 वीं बोर्ड) उत्तीर्ण होना चाहिये। आदिवासी क्षेत्र में महिला अभ्यर्थी अनिवार्यतः न्यूनतम आठवी कक्षा उत्तीर्ण होना चाहिएA "

Thus incumbent it is for the candidate to have passed Higher Secondary (10+2 Board or 11th Board). That a list of approved Higher Secondary Board (10+2) in India is filed by the petitioner stating that the Board of Higher Secondary Education Delhi is not recognized to the Madhya Pradesh Board of Secondary Education. These contentions, however, are belied by the contents of the list filed as Annexure P/15 wherein at Serial No. 11 is mentioned Board of Higher Secondary Education, New Delhi and at Serial No. 15 is Board of Secondary Education, Madhya Pradesh. The petitioner has not commended at any cogent material to establish that the Board of Higher Secondary Education, Delhi is not recognized by the Board of Higher Secondary, Madhya Pradesh.

In view whereof, non-consideration of the certificate issued by the Board of Secondary Education, Delhi in favour of respondent No. 6, was rightly found fault with by the Appellate Authority, as would warrant an indulgence.

Consequently, petition fails and is dismissed. No costs."

3. Annexure P/14 is photocopy of mark sheet of respondent No.6-Mayavati Kushwaha, issued by Board of Secondary Education Delhi and attached at pages No. 92 and 93 of the paper-book. As per Annexure P/15, at serial No.11, Board of Higher Secondary Education, New Delhi is in the list of Approved Higher Secondary Board (10+2) in India, but Annexure P/14 is issued by the Board of Higher Secondary Education, Delhi wherein the word "New" does not exist prior to word "Delhi".

4. Shri Khedkar, learned Standing Counsel for Union of India has produced a notification dated 11. 11.2019, issued by Government of India, Ministry of Human Resource Development, Department of School Education & Literacy, New Delhi. The extract of the said notification runs as under :-

"The Board in question is Board of Higher Secondary Education, Delhi, which as per the available official record had been dissolved w.e.f. 1. 07.1962. The present entity is fraudulently using the name of the said Board to lure innocent students and projecting itself as a recognized Board by MHRD or any other State Government(s)/UT Administration and therefore, fraudulently operating in the name of a Board which has been dissolved w.e.f. 01.07.1962."

5. Thus, from the above, it is clear that Annexure P/14 is not issued by the Board, which is approved by the Board of Secondary Education and on the basis of aforesaid Annexure P/14, the appointment given to respondent No.6-Mayavati Kushwaha is illegal as the same was obtained by submitting forged marksheet.

6. In consequence, this writ appeal is hereby allowed and Rs.10000/- (Ten Thousand) as cost is imposed upon the respondent No.6, who has deprived the

appellant of the right over the post of Aaganwadi Karyakarta. Accordingly, the impugned order dated 9. 8.2018 passed by learned Writ Court in Writ Petition No. 11548/2018 is hereby set aside and the authority concerned is hereby directed to reconsider the matter of appointment of present appellant taking into account the aforementioned facts. Cost be paid to the appellant.