
(2010) 06 CHH CK 0002
In the Chhattisgarh High Court
Case No : W.A. No. 108 of 2009

Smt. Rambai Dansena

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 18-06-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 06 CHH CK 0002

Hon'ble Judges : Prashant Kumar Mishra, J; I.M. Quddusi, J

Bench : Full Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—Heard learned Counsel appearing for the writ appellant as well as learned Counsel appearing for the respondents.

2. This writ appeal has been filed against the judgment and order dated 15.12.2008 passed in W.P.(S) No. 6998/2008 and the order dated 28.2.2009 passed in Review Petition No. 8/2009, by the learned Single Judge.

3. Brief facts of the case are that Gram Panchayat - Kanthipali, Janpad Panchayat Baramkela invited applications for appointment of Anganbadi Worker in village - Sahajpali, in which the writ appellant (Smt. Rambai Dansena) and the respondent No. 6 (Smt. Safed Sidar) applied with the other candidates. The Selection Committee i.e. Village Panchayat Kanthipali made selection and consequently the writ appellant was selected for appointment but the respondent No. 6 was not selected and appointed. The respondent No. 6 challenged the order of appointment of the writ appellant dated 19.1.2007 before the Collector which was allowed but the writ appellant filed a revision before the Director, Panchayat, who allowed the revision on 26.11.2008. Feeling aggrieved the respondent No. 6 filed a Writ Petition (S) No. 6998/2008 before this Court which was heard and allowed by the learned Single Judge. The writ appellant, who was selected and appointed, filed the instant writ appeal.

4. Before proceeding further, it is necessary to peruse the executive instructions issued by the erstwhile Madhya Pradesh Government, Mahila Avam Bal Vikas Vibhag on 6th January, 2000, mentioning conditions for appointment of Anganwadi Worker, which is still in existence and applicable in the State of Chhattisgarh also after reorganization of the State of Madhya Pradesh. The relevant preconditions are as under:

(1) Anganbadi Worker should be resident of the same village/locality and her name should be in the voter list of Gram Panchayat in which village/locality the Anganbadi is to be opened. In any circumstances, a woman should not be appointed as Anganbadi Worker, who is not resident of that village/locality.

(2) A woman who is selected as Anganbadi Worker should be acceptable to the local community and she should be having the quality of leadership so that she may organize Mahila Mandal and undertake the activities in right perspective.

(3) Any government employee or elected or nominated members of Panchayati Raj institutions/Municipal Council or their close relatives will not be appointed as Anganbadi Worker.

5. Though the respondent No. 6 belongs to scheduled tribe but she did not belong to the village Sahajpali. Due to her marriage only about 3 months before the date of selection with Shravan Kumar in the month of December, 2005 she could become resident of that village. Therefore, it is not disputed that the respondent No. 6 was new for the village as she was married just about three months prior to the date of selection of Anganbadi Worker, and her name also did not appear in the voter list of that village, which is a mandatory condition in the executive instructions dated 6th January, 2000, as mentioned above. Her parental house is situated at village Saria Tahsil - Sarangarh, District - Raigarh. The respondent No. 6 in her writ petition filed the affidavit (Annexure P/4) which is dated 11.2.2006 in which she has stated about the above facts and that her name should be entered in the employment exchange as Smt. Safed W/o Shrawan Kumar.

6. It is well settled that when there is no statutory rules, the executive instructions have weightage of statutory Rules and as such the same were mandatory as departure from the same would have amounted to violation of Articles 14 and 16 of the Constitution of India. It was mandatory that a candidate should have brought his name in the voter list of that village to show that she is the native of that village. The intention mentioned in the scheme of Anganwadi Worker and the nutrition programme of Government of India is that a woman appointed as Anganbadi Worker should know the traditions and systems of the village for the welfare of the children and there upliftment and should also be accepted by the local society of the village and should have a quality of leadership to provide leadership as she had to organize Mahila Mandal also.

7. Learned Single Judge allowed the writ petition on the ground that the respondent No. 6 cannot be denied the appointment on the ground that her

name was not included in the voter list. This is a fact that she was new for the village as she married only three months before and it is mandatory for making appointment that her name should have been entered in the voter list. This condition cannot be relaxed by the Court as it is beyond the scope of judicial review. The administrative decisions/policy cannot be altered by while making judicial review. However, we think that in case none inclusion of name in the voter list cannot be taken as mandatory condition in the selection and a departure can be made from administrative instructions, then why departure be taken in only one case and why not in others" cases. Once applications were invited and certain conditions have been imposed, including that a candidate's name should find place in the voter list, then there would have been so many prospective candidates who could not selected and find place in the selection process because of the reason that their names were not included in the voter list. Therefore, we are of the opinion that once a rule has been made and acted upon, the same was to be acted upon for all and no relaxation or departure from the rule was possible for a particular candidate. If that rule was to be relaxed, the same was liable to be relaxed for all and not for an individual. Therefore, once a condition has been imposed in the policy of the appointment of Anganbadi Workers that a candidate's name should find place in the voter list of that village, the candidate whose name does not find place in the voter list of that village cannot be an eligible person and that candidate cannot be selected ignoring that condition.

8. In view of the above facts and circumstances, we allow this writ appeal and set aside the impugned order dated 15.12.2008 passed in W.P.(S) No. 6998/2008 and the order dated 28.2.2009 passed in Review Petition No. 8/2009, by the learned Single Judge. No order as to costs.