
(2011) 07 MP CK 0105

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4062 of 2007

Smt. Uma Dubey

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 130 FLR 1039

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Brijendra Mishra, for the Appellant; Sanjeev Kumar Singh and Mohd. Ali, for the Respondent

Judgement

K.K. Trivedi, J.—By this petition under Article 226 of the Constitution of India, the petitioner has challenged the validity, propriety and illegality of the order dated 20th February, 2007 passed by respondent No. 3, by which the order of appointment issued in respect of petitioner appointing her as Anqanwadi worker in ward No. 12 Nagar Panchayat, Mauganj District Rewa has been cancelled, stating that after following due procedure prescribed under the scheme, the appointment order was issued in respect of the petitioner and she joined on the post and started working, was sent for Puls-polio Tikakaran Abhiyan. Without there being any justified reason, only because a complaint was made by respondent No. 4, the impugned order dated 20.2.2007 (Annexure P/8) to the petition has been issued, therefore, the said order is bad in law and is liable to be quashed. It is contended that in terms of the resolution passed, the procedure followed as per the scheme, there was no question of giving such a direction to remove the petitioner from the post only on the complaint made by respondent No. 4. On the basis of these contentions, it is urged that the order impugned is bad in law, liable to be quashed and respondent No. 2 is liable to be commanded to conduct an enquiry and pass suitable order.

2. This writ petition was entertained and interim relief was granted to the

petitioner, notices were issued to the respondents and official respondents have filed their return. It is categorically submitted by the official respondents that the scheme for appointment of Anganwadi worker was formulated by the State Government in Women and Child Development Department and instructions were issued on 27.5.2006 superseding all earlier instructions issued in this respect. It was categorically provided in the said scheme, (copy of which has been placed on as record as Annexure R/1 with the return of official respondents), that the woman candidate should not be less than 18 years and over 45 years of age, the name of the candidate should have been recorded in the voter list of that village/ward, the woman candidate must be a resident of very same village ward where the Anganwadi centre is to be established and appointment of Anganwadi worker is to be made. Restriction is also placed that those, who are closer relatives to the office bearers of the Panchayat or the Government employees posted in the same area will not be given opportunity to be appointed as Anganwadi worker. The educational qualification prescribed for such woman candidate is Higher Secondary/Inter passed. Relaxation in the tribal area is granted to the extent that in case in such area a woman candidate with the qualification of Class-10 passed is not available, the candidate, who has obtained education up to Class-8th will be given appointment as the last recourse.

3. The scheme further formulated the order of preference which is to be given; first preference is required to be given to candidate living under poverty line and belonging to scheduled tribe community, second preference is to be given to the member of scheduled caste and then in the descending order to widow, deserted woman, unmarried woman over 30 years of age then the other candidates. A preference is also given to those who have worked as Anganwadi Sahayika for a period of five years.

4. The manner of selection prescribed under the scheme is that where the Gram Panchayat is functioning, the recommendation will be made by the Gram Panchayat and at least three names will be included in the panel which will be referred to the observer and the same will be sent to the Project Officer, Child Development. The preference order will be shown in list panel prepared by the Gram Panchayat and out of the said panel the selection will be made by the competent authority. The selected candidate will be issued the order of appointment.

5. It is the contention of the official respondents that when the applications were submitted, a resolution was passed by the Gram Panchayat for appointment of Anganwadi Worker in respect of ward No. 12 Nagar Panchayat, Mauganj District Rewa. However/respondent No. 4, made a complaint before the Collector by filing an appeal, stating that the improper order of appointment was issued in respect of the petitioner whereas the candidature of respondent No. 4 was not considered, in appropriate manner. It was contended by the said respondent No. 4 that she being a lady belonging to OBC category, was local resident of ward No. 12 and she should have been given preference over and above the petitioner

who belongs to general category. That being so, a direction was issued to make enquiry and the respondent No. 3 after getting enquiry done found that in fact, respondent No. 4 was the local resident of ward No. 12, belonging to OBC category and entitled to be given preference. Accordingly, the order of cancellation of illegal appointment of the petitioner was issued vide order dated 20.2.2007 Annexure P/8. It is submitted that this order was challenged before the Collector, therefore, no interference in the writ petition filed under Article 226 of the Constitution of India was necessary. It was further contended that the appeal is provided under the scheme and such appeal should have been filed before the competent authority. This being so, it is contended by the official respondents that the present writ petition was devoid of any substance and deserves to be dismissed.

6. Respondent No. 4 has filed a separate reply to the writ petition contending inter alia that earlier she was residing in ward No. 5 where her parental house is situated. After her marriage she started living in ward No. 12 Nagar Panchayat, Mauganj District Rewa. The name of respondent No. 4 is categorically recorded in the voter list of the said ward with effect from 2004. The other allegations with respect to the membership of political party has been specifically denied by the respondent No. 4. It is contended that the petitioner has suppressed true facts that in fact candidature of the petitioner was not to be looked into inasmuch as it was resolved by the committee after getting the names of persons who have applied for appointment on the post of Anganwadi worker that the petitioner was not eligible. On the other hand, the name of respondent No. 4 was duly recommended and it was stated that she was eligible to be appointed. However such recommendation of the Committee was over looked and the petitioner was given the order of appointment. It is further contended that the appeal filed by the petitioner was pending before the Collector, as is clear from the order-sheet dated 12.4.2007, copy of which is placed on record as Annexure R/4-3 with the reply of respondent No. 4. It is further contended that the appeal filed by respondent No. 4 came for hearing on 27.2.2007. Since the fact was intimated that the illegal appointment of the petitioner is cancelled by the order of respondent No. 3 on 20.2.2007, the appeal of respondent No. 4 was disposed of, saying that nothing was to be decided in the said appeal. Thus, it is contended that after filing of appeal, no right was available to the petitioner to approach this Court by filing the present writ petition, therefore submission is made that the writ petition filed by the petitioner is liable to be dismissed.

7. On being asked the learned Counsel for the petitioner categorically stated that since this writ petition was entertained on 9.5.2007 and interim stay was granted, therefore, the appeal preferred before the Collector was withdrawn by the petitioner and, therefore, now, there is no alternative remedy available to the petitioner to challenge the order impugned.

8. Heard learned Counsel for the parties at length and perused the record.

9. In the considered opinion of this Court, the course adopted by the petitioner

for challenging the order impugned is not correct. Since the order of appointment of the petitioner was cancelled, as per the scheme under which the petitioner is claiming appointment, an appeal is provided. It is categorically provided in the scheme that in case of removal of Anganwadi Worker/Sahayika in any case, the appeal will be filed. Apparently, the Collector and decision of the Collector will be final. Apparently, the petitioner has filed the appeal against the order of respondent No. 3 before the Collector which as per the certified copy of the order sheet (Annexure R/4-3) was entertained and protective order was passed on 12.4.2007. In what circumstances the petitioner rushed before this Court even before passing of this order, to file the present writ petition on 19.3.2007 is not clear. If she was aware of the fact that the appeal is to be filed she should not approach this Court by filing the writ petition. Further in para-9 of the writ petition the petitioner has made declaration that she has no other alternative remedy except to approach this Court by filing the writ petition. Such a declaration was made by suppressing material facts by the petitioner. The writ petition is duly supported by an affidavit filed by the petitioner where in para 3 she has categorically stated that the contents from para Nos. 1 to 12 of accompanying writ petition are true to her personal knowledge and belief and also as per information received from the relevant documents and believed to be true. Thus, it is the case where a specific alternative remedy was available which was subsequently resorted to and interim protection was obtained but deliberately such declaration was made before this Court in the writ petition by the petitioner. Therefore, it can very safely be said that the petitioner has not come with the clean hands before this Court.

10. On bare perusal of the facts as stated here in above, it is the duty on the part of the petitioner to indicate as to how she was selected. Merely because order of appointment was issued, it was not correct on the part of the petitioner to say that she was rightly selected and appointed. As has been categorically pointed out, the scheme contemplate that panel is required to be prepared in which the names of the persons are to be mentioned in order of merits. The documents placed on record by the petitioner as Annexure P/4 simply indicates that the name of the petitioner was mentioned as Smt. Uma Dubey, Anganwadi worker, but nowhere indicates that there was any proposal to make appointment of the petitioner out of panel prepared by the competent selection committee. Thus, it is also incorrect to say on the part of the petitioner that she was rightly selected. The official respondents have refuted such claim of the petitioner. On the other hand, the documents produced along with the return of respondent No. 4 clearly indicates that the claim as made by the petitioner was misconceived inasmuch as the name of the petitioner though was mentioned in the list but it was stated that she was not eligible to be appointed. Her candidature was in fact rejected. On the other hand, panel was prepared the name, of respondent No. 4 was categorically mentioned and it was stated that she has experience of working and otherwise eligible belongs to the other backward class and the local resident of area of ward No. 12 and was fully eligible to be appointed. There

were name of other four candidates who were found to be eligible but all of them were the members of general category. Respondent No. 4 being only candidate of other backward class was at serial No. 1, therefore no other person, was to be appointed except respondent No. 4. No good reason was shown as to how and why such recommendations were not acted upon and out of blue the order of appointment in respect of petitioner was issued. This being so, in case after holding an enquiry on the complaint made by respondent No. 4 if authority have reached to the conclusion that illegality was committed in the matter of appointment of the petitioner and, therefore, she was required to be removed from the post and order was issued in this respect after due consideration, it was not open to the petitioner to say that such order was bad in law. The petitioner is thus not entitled to any relief whatsoever claimed in the petition.

11. The learned Counsel for the petitioner has contended that no opportunity of hearing was given-in the matter of cancellation of appointment of the petitioner before issuing the order impugned. It is contended that the order says that some sort of enquiry was conducted but respondent No. 3 never extended any opportunity of hearing to the petitioner. Thus, it is contended that the rules of natural justice have been violated while passing the order of cancellation of appointment of the petitioner. In the considered opinion of this Court such contention of the petitioner is liable to be turned down on the threshold. Firstly, the petitioner has not come with the clean hands before this Court as has been discussed herein above. After filing of appeal before the Collector and obtaining interim order of protection, petitioner has not disclosed these facts to this Court Secondly, fact relating to demerit of the petitioner was also not disclosed and lastly, the selection of the petitioner could not have been made in view of the recommendation made by the Project Officer, Child Development, Mouganj, Rewa as is contained in Annexure R/4-6 filed with the reply of respondent No. 4.

12. The Apex Court in the case of State of M.P. and Others Vs. Shyama Pardhi etc. etc., has categorically held that if the demerit candidates are appointed by any authority dehere the scheme of recruitment rules, the appointee has no right to claim that before cancellation of appointment, opportunity of hearing should have been given, following the rules of natural justice. In view of this, the petitioner in this particular case was not entitled to be given any opportunity of hearing as on the complaint made by respondent No. 4, it was found by the Project Officer that illegality was committed in granting appointment to the petitioner. Therefore, in the considered opinion of this Court interference in the order Annexure P/8 is not called for.

13. After giving my thoughtful consideration to such pleas since the order passed by the respondent No. 3 do not specifically provides for appointment of any person and only the order of appointment of the petitioner found to be illegal and improper has been set aside it is deemed necessary that respondent No. 2 Collector be ordered to consider the proposal prepared by the competent committee strictly in accordance with scheme which was invogue at the relevant

time and make appointment of a suitable candidate. If it is found that respondent No. 4 is more meritorious than the petitioner the order of appointment in respect of respondent No. 4, be issued. In case it is found that there is any other candidate amongst the persons, who have applied for appointment on the post of Anganwadi worker in Ward No. 12, the direction be issued for appointment of such a candidate. With the aforesaid directions, writ petition filed by the petitioner, is disposed of finally. Interim order passed by this Court on 9.5.2007 is hereby vacated. However, in the facts and circumstances of this case, there shall be no order as to costs.