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Court : Mumbai Aurangabad

Decided On : Feb-12-2014

Judge : R.M. Borde & N.W. Sambre

Appeal No. : Writ Petition No. 7848 of 2012

Appellant : Sunita

Respondent : The Zilla Parishad, Through Chief Executive Officer and Others

Judgement :

Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. In the present petition the petitioner, a widow, has prayed for quashing of the process of appointment of Anganwadi Karyakarti/Sevika for mauja Ardhapur, District Nanded, initiated by the respondents vide notice dated 19.7.2012. The petitioner has also prayed for ancillary reliefs like that of consequential appointment on the post of Anganwadi Karyakarti/Sevika. The petitioner has prayed for interim relief for stoppage of the recruitment process.

3. This petition came to be filed on 4.9.2012 and this Court on 24.9.2012 has granted time upto 22.10.2012 to respondents no.1 to 3 for filing reply. The matter was adjourned from time to time and as affidavit in the petition was not filed, on 19.12.2012, the Court has passed following order:

"Respondents shall file affidavit-in-reply within four weeks.

Stand over to 18.1.2013.

The appointment to the post of Anganwadi Karyakarti/Sevika, if any, in the intervening period, shall be subject to outcome of the petition."

The matter thereafter was again adjourned from time to time. Lastly, on 29.1.2013 the Court was required to pass the following order:

"Respondents are directed to file affidavit in reply within three weeks from today. In the event of failure to file affidavit in reply, the Chief Executive Officer, Zilla Parishad, Nanded, shall personally remain present in the Court."

In view of above, respondent no.1 has filed its affidavit-in-reply opposing the claim of the petitioner.

4. The petitioner submitted that pursuant to the selection process, the petitioner applied for appointment to the post of Anganwadi Karyakarti/Sevika for Taluka Ardhapur, District Nanded with the respondent, in view of the fact that she holds following educational qualification:

S.S.C. passed with 53.86%,

12th passed with 65.17%

Awarded First Class in a certificate course conducted by Yeshwantrao Chavan Maharashtra Open University in educational stream of Child Nourishment and Amusement.

Petitioner belongs to O.B.C. category.

5. Consequent to the application and educational qualification of the petitioner, she was called for interview by the respondent on 24.3.2011 with the relevant documents. The petitioner was interviewed and was awarded following marks:

Written test 63 out of 90,

Oral 2 out of 10

Total percentage of marks - 65

6. It is an admitted position that there were in all six posts and the petitioner was shown at sr.no.7 in the final merit list, she was given status of wait listed sr.no.1 candidate first in the wait list.

7. The petitioner further claims that the candidate, namely, Seema Angadrao Sarode, who was selected at sr.no.1 in the said select list for Ardhapur, tendered her resignation on 12.7.2011. The petitioner since was first in the wait list came to know about the same and also about a communication dated 14.7.2011 issued by the Child Development Project Officer to Deputy Chief Executive Officer, Child Welfare, seeking permission to appoint the candidate from the wait list.

8. The petitioner expected that she will be given appointment as she was first in the wait list for Ardhapur. However, to the dismay of the petitioner, she was not accommodated and was informed by communication dated 10.8.2012 that as the wait list for the post of Anganwadi Karyakarti/Sevika was valid only for one year from the date of its preparation and since one year is over, her claim cannot be considered for appointment.

9. An important fact required to be taken note of is that after the selection process was over, the petitioner lodged her protest on 21.4.2011 pointing out that in spite of her above referred qualifications i.e. first class in 12th standard Arts faculty and first class in Child Nourishment and Amusement course, she was given only two marks in the oral interview, though she, in fact, had answered all the three questions correctly.

10. The petitioner further noticed that in spite of she being the first wait listed candidate and though the Child Development Project Officer had requested the Deputy Chief Executive Officer, Child Development to permit appointment of wait listed candidate, she was not issued appointment order, but she noticed that one Gokarna Gangadhar Patil, who was working as Anganwadi Assistant, was called upon to submit application and requisite documents for appointment as Anganwadi Sevika on the post which fell vacant because of the resignation of Seema Sarode, the post which was claimed by the petitioner.

11. In response to the claim put-forth by the petitioner, respondent no.1 Zilla Parishad has filed affidavit in reply and has sought to support the action of not appointing the petitioner on the post which fell vacant, though she was at sr.no.1 in the wait list, on the ground that the wait list had expired as it was valid for one year only.

12. The respondent further pointed out that the petitioner was not a resident of Ardhapur, Taluka Ardhapur, District Nanded as is apparent from the fact that the petitioner was drawing pension under the Rajeev Gandhi Niradhar Yojana from some other place which falls within the Tahsil, Basmat. It is further pointed out that one Sahebrao Rangrao Navale of Ardhapur moved a complaint against the petitioner about the above referred fact, which was formed basis for not giving appointment to her. The respondent further pointed out that the post against which the petitioner has sought appointment is already filled in by giving appointment to some other candidate and as such prayed for dismissal of the petition.

13. Having considered the rival contentions, it is noticed that the petitioner though was more meritorious having regard to the fact that she had secured first class in 12th standard Arts faculty and first class in Child Nourishment and Amusement training programme undertaken by a university, she was allotted just 2 marks out of 10 in the interview , which fact cannot be overlooked. Be that as it may, based upon her merit in the select list, it was not disputed that the petitioner was placed at sr.no.1 in the wait list. The selected candidate Seema Sarode tendered resignation from the post of Anganwadi Sevika on 12.7.2011 and the Child Development Project Officer requested the Deputy Chief Executive Officer to permit appointment of a candidate from the wait list. The above referred developments prompt this Court to believe that the claim of the petitioner ought to have been considered by giving her appointment on the post of Anganwadi Sevika, Ardhapur, but the same was not done by the authorities intentionally. The justification coming forward from the respondent that the wait list was valid only for one year and after expiry of period of one year, the post was offered to some other candidate and as such the claim of the petitioner is liable to be rejected does not hold any basis in view of the fact that the proposal for appointment of a wait listed candidate was within a period of one year from the date of declaration (publication)

of the select list. The date of declaration of select list which is placed on record of the petition at page 15 is 25th March, 2011. The selected candidate Seema Sarode submitted resignation on 12.7.2011 and on 14.7.2011 the Child Development Project Officer requested the respondent Zilla Parishad to permit the appointment of the candidate from the wait list. It appears that the Zilla Parishad had sat tight over the said proposal for giving appointment to the wait listed candidate and now coming forward with a stand that the claim of the petitioner was not considered because the validity of the wait list had come to an end. It is worth to mention here that merely because the period of one year which is termed to be validity period of wait list is over because of the inaction on the part of the Zilla Parishad, the Zilla Parishad cannot be permitted to reap benefit out of its own wrong so as to deny the claim of the petitioner. The fact that bypassing the claim of the petitioner other candidate was given appointment which is already taken care of by the order passed by this Court in the present writ petition on 19.12.2012 making the appointment against the post that is claimed by the petitioner to be subject to the outcome of the present petition. Furthermore, having regard to the fact that the respondent Zilla Parishad is trying to take benefit of its own inaction, does not disentitle the petitioner for grant of relief of seeking appointment on the post of Anganwadi Sevika. The respondent Zilla Parishad has not come out with any reasonable explanation as to why in spite of recommendation by the Child Development Officer the wait listed candidate was not given appointment.

14. In support of the above referred observations, this Court draws support from the law laid down by the Apex Court in the case of **State of U.P. vs. Ram Swarup Saroj**, reported in **AIR 2000 S.C. 1097**. Paragraph 10 of the said judgment reads thus:-

"Similarly, the plea that a list of selected candidates for appointment to the State services remains valid for a period of one year only is primarily a question depending on facts and yet the plea was not raised before the High Court. Secondly, we find that the select list was finalised in the month of November, 1996 and the writ petition was filed by the respondent in the month of October, 1997, i.e. before the expiry of one year from the date of the list. Merely because a period of one year has elapsed during the pendency of litigation, we cannot decline to grant

the relief to which the respondent has been found entitled to by the High Court. We may place on record that during the course of hearing of SLP before this Court, on 29.9.1999 we had directed the learned Additional Advocate General for the State of U.P. to bring on record on affidavit the status of present recruitment of the judicial officers and the present vacancy position in the subordinate judiciary. In the affidavit of Joint Secretary, Department of Appointment, State Government, Uttar Pradesh sworn in on 4.11.1999 and filed before this Court it is stated that as on 14.10.1999 there were 231 vacancies existing in the cadre of Munsif Magistrates (now Civil Judge, Junior Division/Judicial Magistrates). That being the factual position we see no reason why the direction made by the High Court should be upset in an appeal preferred by the State of Uttar Pradesh."

15. One important aspect of which the note is required to be taken is that the scheme under which the petitioner sought appointment provides for priority to the candidates like the petitioner, who is a widow. It is worth to place reliance upon the scheme framed by the State Government on 5.8.2010, based upon which the process for appointments of Anganwadi Sevika was undertaken. Clause 2 (e) (iv) of the said scheme provides that a widow from local area should be given priority over the other candidates, which aspect was given a complete go-by, by the Zilla Parishad.

16. It is not the case of the status of petitioner as that of widow was given due weightage while considering her claim. The further submission of the respondent that the petitioner has incurred disqualification as she is not a resident of Taluka Ardhapur, District Nanded and is a beneficiary under Sanjay Gandhi Niradhar Yojana from Taluka Basmat, District Hingoli is liable to be rejected in view of the fact that while rejecting the candidature of the petitioner, which is for the first time reflected in the affidavit in reply, neither the said material was relied on, nor any notice was addressed to the petitioner about the same prior to this petition. Clause 3 of the above referred scheme of the State Government, dated 5.8.2010 which deals with the employment of Anganwadi Sevika, casts a burden on the Child Development Project Officer to carry out a detailed inquiry about the candidature of a candidate who is selected. In view of the above, the contention of the respondent that the petitioner has incurred disqualification is also liable to be

rejected.

17. For the reasons stated hereinabove, the petition is allowed.

Rule is made absolute in terms of prayer clause (C). In the facts and circumstances of the case, there shall be no order as to costs.

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