

The High Court of Madhya Pradesh
MP 18/2019
Smt. Aarti Parihar vs. Smt. Sunita and Others

Gwalior, dtd. 07/01/2019

Shri JS Kushwah, counsel for the petitioner.

Shri AK Nirankari, Government Advocate for the respondents No.2 to 4/ State.

This petition under Article 227 of the Constitution of India has been filed against the order dated 17/12/2018 passed by the Additional Commissioner, Gwalior Division, Gwalior in Case No.558/2017-18/Appeal, by which the appeal filed by the petitioner has been rejected.

The necessary facts for the disposal of the present petition in short are that an advertisement was issued for appointment on the post of Anganwadi/ Assistant Anganwadi Worker. The petitioner offered her candidature for the said post. The last date for submitting the application was 27/10/2016. The petitioner did not submit her caste certificate along with her application. In spite of that, she was given 10 marks on account of her caste. Accordingly, a tentative merit list was prepared, in which the petitioner was placed at Serial No.2. As the candidate who was placed at Serial No.1 was not eligible, therefore, the petitioner was given appointment on the post of Assistant Anganwadi Worker, Anganwadi Centre Harisinghpura, Gwalior.

It is submitted by the counsel for the petitioner that the respondent No.1 filed an objection as she was placed at Serial No.3 with 46.75 marks, whereas the petitioner was placed at Serial No.2 with 54.42 marks. It was the case of the respondent No.1 that as the petitioner had not annexed her caste certificate along with her application, therefore, she was

not entitled for 10 marks and if 10 marks are deducted from total marks received by her i.e. 54.42, then the marks of the respondent No.1 would be more more than the petitioner. It appears that the objection raised by the respondent No.1 was rejected, against which she filed an appeal before the Court of Additional Collector, District Gwalior which was registered Case No. 0035/Appeal/2016-17. The said appeal was allowed by the Additional Collector by order dated 28/03/2018, with a finding that the last date for submitting the application was 27/10/2016 and only on the said date, the petitioner had applied for issuance of caste certificate and since the application of the petitioner was not accompanied by the caste certificate, therefore, she was not entitled for 10 marks and accordingly, after reducing 10 marks out of 54.42 marks the marks obtained by the petitioner, her total marks would come to 44.42 marks and accordingly, she would come at Serial No.3, whereas the respondent No.1 who had scored 46.75 marks, would come at Serial No.2 and accordingly, it was directed that the fresh appointment order be issued in favour of the respondent No.1.

Being aggrieved by the order dated 28/03/2018, the petitioner filed an appeal before the Court of Additional Commissioner, Gwalior Division, Gwalior which too has suffered dismissal by order dated 17/12/2018.

Challenging the orders passed by the Additional Collector as well as the Additional Commissioner, it is submitted by the counsel for the petitioner that as per the Policy/guidelines for appointment on the post of Anganwadi/ Assistant Anganwadi worker, a tentative merit list is to be prepared inviting objections. In the present case case, it is true that along with the application the petitioner had not

annexed her caste certificate, but on the very same day, she had applied for issuance of caste certificate, however, at the time of consideration of objections, the petitioner submitted her caste certificate, therefore, the objection filed by the respondent No.1 was rejected. It is submitted that there is nothing in the Policy/guidelines for appointment on the post of Anganwadi/ Assistant Anganwadi worker as to when the documents should be filed and under these circumstances, before a final decision could be taken, the caste certificate was placed by the petitioner and accordingly, the authorities did not commit any illegality by rejecting the objection filed by the respondent No.1.

Heard the learned counsel for the parties.

The petitioner has placed the copy of the Policy/guidelines for appointment on the post of Anganwadi/ Assistant Anganwadi worker, dated 10/07/2007 along with IA No.113/2019.

IA No.113/2019 is allowed and the Policy/ guidelines are taken on record.

As per Clause A(1) of the Policy/guidelines, certain minimum qualifications have been provided. For ascertaining the age, the candidate should not be more than 45 years of age on the first day of January of the Calendar year, in which the selection has been made. Thus, if the last date for holding qualification is considered in the light of method of calculation of the date of birth, then it is clear that all the candidates must have the qualification on the first day of the Calendar Year, in which the advertisement was issued. Even otherwise, the candidate must have the qualification on the last date of submission of the application.

In the present case, the last date for submitting the

application was 27/10/2016. Admittedly, on the said date, the petitioner was not having the caste certificate. The documents of the candidates were considered by the Selection Committee in its meeting dated 15/11/2016, in which the petitioner was given 54.42 marks. However, it is also clear that even by that time, the petitioner had not filed the caste certificate before the Selection Committee. Thus, the Selection Committee did not apply its mind before granting 10 marks and in spite of that, granted 10 marks to the petitioner. The last date for submission of form was 27/10/2016 and the objections were considered on 05/12/2016. It appears that on 05/12/2016 the Selection Committee adjourned the proceedings so as to enable the petitioner to file the caste certificate and on 13/12/2016, the meeting of the Committee was held, along with the caste certificate of the petitioner and accordingly, the petitioner was granted appointment. Thus, it is clear that even on the date of consideration of objections by the Selection Committee, the petitioner had not submitted the caste certificate and it appears that in order to facilitate the petitioner, the Selection Committee had adjourned the matter and accordingly, the petitioner placed the caste certificate and the Committee granted appointment in its meeting dated 13/12/2016. In the considered opinion of this Court, the method adopted the Selection Committee cannot be said to be correct. The caste certificate of the petitioner has been placed on record. It is dated 02/12/2016. Thus, it is clear that on the last date for submitting the application the petitioner was not having the caste certificate in her favour and even on the date of preparation of tentative merit list, the petitioner was not having any caste certificate in her favour and thus, grant of

10 marks to the petitioner being the Member of Scheduled Caste was erroneous. Accordingly, this Court is of the considered opinion that Additional Collector by its order dated 28/03/2018 and Additional Commissioner by its order dated 17/12/2018 did not commit any illegality by holding that on the date of filing of application the petitioner was not having caste certificate, therefore, she was not entitled for 10 marks which was granted to her. It is also undisputed that if 10 marks out of total marks obtained by the petitioner are deducted, then she would come at Serial No.3 and the respondent No.1 who was initially at Serial No.3 with 46.75 marks would come at Serial No.2. Accordingly, this Court is of the considered opinion that the Collector did not commit any illegality by directing by order dated 28/03/2018 to give appointment to the respondent no.1.

Accordingly, this petition fails and is hereby **dismissed** *in limine*.

(G.S.Ahluwalia)
JUDGE