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WP-9155-2021

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

ON THE 23rd OF JULY, 2025WRIT PETITION No. 9155 of 2021*SMT. HEMANT DEVI**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri M.P.S. Raghuvanshi- learned senior counsel with Shri Ashwini Johari- learned counsel for the petitioner.

Shri B.M. Patel- learned Government Advocate for respondents no.1 to 4/State.

Shri Udit Saxena- learned counsel for respondent no.5.
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ORDER

1. The petitioner is aggrieved by the order dated 21/06/2019 (Annexure P/2), whereby the Collector, District- Datia (M.P.) allowed the appeal of respondent no.5 and set-aside the appointment of the petitioner on the post of Aanganwadi Sahayika. She is also aggrieved by the order dated 08/03/2021 (Annexure- P/1), whereby the Additional Commissioner, Gwalior Division, Gwalior has dismissed her second appeal.

2. The facts necessary for decision of this case are that an advertisement was issued by the office of the District Programme Officer, District- Datia on 06/12/2017 (Annexure- P/4) inviting applications for appointment on the post of Aanganwadi Sahayika in various Aanganwadi



Centres. The petitioner as well as respondent no.5 applied for appointment in Aanganwadi Centre at Village Porsa, Tahsil- Bhandar, District- Datia (M.P.). In the merit list, the name of respondent no.5 was placed at serial no.1 while one- Kripa Jatav was at serial no.2 and the petitioner was placed at serial no.3. During scrutiny, the District Programme Officer found that the respondent no.5 does not satisfy the age criteria prescribed in the advertisement, therefore, her candidature was rejected. The candidature of Kripa Jatav was also not found suitable and, therefore, the petitioner was granted appointment on the post vide order dated 05/04/2018 (Annexure-P/3). In the present case, there is no dispute with regard to Kripa Jatav and, therefore, the same is not being considered.

3. The respondent no.5 being aggrieved by cancellation of her candidature, filed an appeal before the Collector, District- Datia (M.P.). The appeal was allowed vide impugned order dated 21/06/2019 passed by the Additional Collector, District- Datia (M.P.), whereby the respondent no.5 has been found eligible for appointment and consequently, the petitioner's appointment has been cancelled. The second appeal filed by petitioner also suffered dismissal vide order dated 08/03/2021 passed by the Additional Commissioner, Gwalior Division, Gwalior.

4. The learned senior counsel for the petitioner submitted that in the advertisement dated 06/12/2017 there is clear stipulation in clause 1 under heading "अनिवार्य अर्हताएँ" that candidate should have completed 18 years of age as on 01/01/2017. It is his submission that admittedly the respondent no.5 had not completed 18 years of age as on 01.01.2017, therefore, her



candidature was rightly rejected by the District Programme Officer. He submitted that the Additional Collector as well as the Additional Commissioner erred in taking last date of submission of application i.e. 01/01/2018, to be relevant date for determining the age criteria and have erroneously allowed the appeal filed by respondent no.5. He, therefore, prays for setting-aside the impugned order and restoration of order of appointment of the petitioner.

5. On the other hand, learned Government Advocate for the State as well as counsel for respondent no.5 supported the impugned orders and prayed for dismissal of the petition. The learned counsel appearing for respondent no.5 submitted that the State Government has issued instructions for appointment of Aanganwadi Sahayika vide circular, dated 10/07/2007 (Annexure- R/5/1) which prescribes the age criteria in clause "अ(1)" which reads as under:-

"अ-1 : आंगनबाड़ी कार्यकर्ता की नियुक्ति हेतु अनिवार्य अर्हताएँ :-

आंगनबाड़ी कार्यकर्ता हेतु चयनित की जाने वाली महिला की निम्नानुसार अर्हताएँ होनी चाहिये :-

(1) आवेदिका की न्यूनतम उम्र 18 वर्ष एवं अधिकतम उम्र 45 वर्ष होना चाहिये ।

आंगनबाड़ी कार्यकर्ता के लिये जिस कलेण्डर वर्ष में चयन किया जाना हो उस कलेण्डर वर्ष में 1 जनवरी को आवेदिका की उम्र 18 वर्ष से कम एवं 45 वर्ष से अधिक नहीं होना चाहिये।"

6. The learned counsel, therefore, submitted that since the appointment on the post of Aanganwadi Sahayika was made in the year 2018, cut-off date for determining the age should be 01/01/2018 and the prescription of cut-off



date in this regard in advertisement was incorrect. It is his submission that instructions issued by the State Government will have to be given precedence over the criteria prescribed in the advertisement. He, therefore, submitted that the Additional Collector was perfectly justified in allowing the appeal of respondent no.5 and the Additional Commissioner was justified in dismissing the appeal filed by the petitioner.

7. Considered the arguments and perused the record.

8. It is not in dispute between the parties that the respondent no.5 had not completed 18 years of age as on 01/01/2017 but acquired the said age before 01.01.2018. She could, therefore, succeed only when she can demonstrate that the cut-off date for determining the age criteria is 01/01/2018 and not 01.01.2017. There is no difficulty in accepting the submission of respondent's counsel that the instruction issued by the State Government will have to be given precedence over the advertisement. Therefore, the real issue involved in this case is as to whether, as per instructions issued by State Government vide circular, dated 10.07.2007, the cut-off date for determination of age in this case would be 01.01.2017 or 01.01.2018 ?

9. The submission of the counsel for respondent no.5 is that since the ultimate appointment was made in the year 2018, therefore, as per clause 3(1) of circular, dated 10.07.2007, the cut-off date should be of that year i.e. 01/01/2018. In other words, since the clause 3(1) provides that the age of a candidate is to be determined as on first January of the year in which appointment is to be made, since the appointment was made in the year



2018, the cut off date for determining age would be 01.01.2018. However, the submission made by the counsel for respondent no.5 is not acceptable. The term "जिस कलेण्डर वर्ष में चयन किया जाना हो उस कलेण्डर वर्ष में 1 जनवरी" used in Clause 3(1) is to be given a meaningful interpretation. What the respondent's say is since the appointment is being made in the year 2018, the cut off date should be 01.01.2018. However, this submission suffers from an inherent fallacy for the reasons discussed hereinafter.

10. Whenever a recruitment process is initiated, the date of initiation of process is certain however, its conclusion is uncertain and is invariable. The process of recruitment commences with the issuance of advertisement which in this case is 06/12/2017. Clause 3(1) of circular, dated 10.07.2007, is required to be interpreted in a meaningful way. It is be seen that the date of initiation of recruitment process is fixed while date of its conclusion is variable and uncertain which may depend upon various uncertainties. There may be a case where the process may go on for more than one year or two year and in that case, as per contention of respondent's counsel, the date for determination of age would be either a year or two after commencement of process. This would lead to absurdity.

11. The Apex Court in the case of *State of Karnataka v. Bheemesh* reported in (2021)20 SCC 707, was considering the issue with regard to relevant date of which the policy is to be applied in the case of compassionate appointment. No doubt, in the case in hand, we are not dealing with a case of compassionate appointment, but the observations relating to interpretation of statutes made by Apex Court are relevant in the



facts of the present case also. The observations of Apex Court made in para 20 are, therefore, reproduced hereunder for ready reference:

"20. The important aspect about the conflict of opinion is that it revolves around two dates, namely, (i) date of death of the employee; and (ii) date of consideration of the application of the dependant. **Out of these two dates, only one, namely, the date of death alone is a fixed factor that does not change. The next date, namely, the date of consideration of the claim, is something that depends upon many variables such as the date of filing of application, the date of attaining of majority of the claimant and the date on which the file is put up to the competent authority. *There is no principle of statutory interpretation which permits a decision on the applicability of a rule, to be based upon an indeterminate or variable factor.*** Let us take for instance a hypothetical case where 2 government servants die in harness on 1-1-2020. Let us assume that the dependants of these 2 deceased government servants make applications for appointment on 2 different dates say 29-5-2020 and 2-6-2020 and a modified Scheme comes into force on 1-6-2020. If the date of consideration of the claim is taken to be the criteria for determining whether the modified Scheme applies or not, it will lead to two different results, one in respect of the person who made the application before 1-6-2020 and another in respect of the person who applied after 1-6-2020. In other words, if two employees die on the same date and the dependants of those employees apply on two different dates, one before the modified Scheme comes into force and another thereafter, they will come in for differential treatment if the date of application and the date of consideration of the same are taken to be the deciding factor. ***A rule of interpretation which produces different results, depending upon what the individuals do or do not do, is inconceivable.*** This is why, the managements of a few banks, in the cases tabulated above, have introduced a rule in the modified scheme itself, which provides for all pending applications to be decided under the new/modified scheme. **Therefore, we are of the considered view that the interpretation as to**



the applicability of a modified Scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor."

12. The submission made by the counsel for respondent no.5, when considered keeping in view the aforesaid observations of Apex Court, the logical conclusion to be arrived at would be that the date of commencement of recruitment process is fixed while the date for conclusion of the said process is variable and uncertain and taking the date of conclusion of recruitment process as the relevant criteria for determining age would not only be unjustified but would also result in arbitrariness.

13. Moreso, the advertisement prescribed a cut off date for determining the age of candidate. The respondent no.5 participated in the process without any protest or objection knowing well that she is not eligible as per the cut off date prescribed in advertisement. Thus, having participated in the process, she cannot be allowed to challenge the criteria when she was declared unsuccessful and the other person is appointed.

14. In view of the discussion made above, this Court is of the considered opinion that advertisement rightly prescribed the cut-off date as 01/01/2017 for age determination and the same is in consonance with the instructions issued by State Government vide circular, dated 10.07.2007. Since, the respondent no.5 had not completed 18 years of age as on 01.01.2007, her candidature was rightly rejected by District Programme Officer and the Additional Collector as also the Additional Commissioner erred in passing the impugned orders. Accordingly, order dated 21/06/2019 (Annexure- P/2) and order dated 08/03/2021 (Annexure- P/1) are set-aside.



The respondents are directed to re-instate the petitioner on the post of Aanganwadi Sahayika pursuant to order of appointment dated 05/04/2018.

15. With the aforesaid, this writ petition is allowed and disposed off.

(ASHISH SHROTI)
JUDGE

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