

HIGH COURT OF MADHYA PRADESH : JABALPUR
(Division Bench)

W.A. No.1158/2018

Renu Vishwakarma

-Versus-

Tulsi Vishwakarma and others

Shri P.S. Gaharwar, Advocate for the appellant.
Shri Rajesh Prasad Dubey, Advocate for the respondent No.1.
Shri Ishan Mehta, Govt. Advocate for the State on advance copy.

CORAM :

Hon'ble Shri Justice S.K. Seth, Chief Justice.
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

<i>Whether approved for reporting ?</i>	Yes.
<i>Law laid down</i>	It is well settled that suitability and eligibility of a candidate have to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date.
<i>Significant paragraph Nos.</i>	15.

ORDER
(Jabalpur, dtd.08.04.2019)

Per : Vijay Kumar Shukla, J.-

The present intra-court appeal is filed under Section 2(1) of the M.P. Uchcha Nyayalaya (Khand Nyaypeeth ko Appeal) Adhiniyam, 2005 challenging the order dated 9-8-2018 passed by

the learned Single Judge whereby the writ petition filed by the respondent No.1 – Tulsi Vishwakarma [hereinafter referred to as ‘the writ petitioner’] has been allowed.

2. Shorn of unnecessary details : The relevant facts lie in a narrow compass. An advertisement was issued on 31-3-2016 by the Collector (Women and Child Development), District Singrauli inviting applications for the post of Anganwadi Karyakarta/Anganwadi Sahayika. The controversy in the present case pertains to appointment of Anganwadi Sahayika in the Anganwadi Centre, Kasada, Gram Panchayat Naikahwa, District Singrauli. Pursuant to the advertisement the writ petitioner as well as Renu Vishwakarma, the appellant herein, along with other applied for the said post. On the basis of the applications received a tentative select list was prepared. The appellant was placed at Sr. No.1 having obtained 66.10 marks whereas the name of the writ petitioner featured at Sr. No.2 having scored 57.20 marks, as evident from Annexure-P/2.

3. As per Anganwadi Scheme objections were invited against the said tentative select list. Objection of the writ petitioner was that the appellant is not entitled for 10 marks towards BPL card as per Anganwadi Scheme and thus her marks were reduced from

66.10 to 56.10. In the final select list the writ petitioner was placed at Sr.No.1 and appointment order was issued in her favour on 12-8-2016.

4. Being aggrieved with the aforesaid order of appointment the appellant filed an appeal before the Collector, Singrauli on the ground that on the dates of submission of the application and last date of submission of application forms the appellant was having all eligible qualifications including BPL certificate etc. and, therefore, she was rightly given 10 marks for BPL category. The Collector by order dated 9-01-2017 allowed the appeal filed by the present appellant and held that on the date of submission of the application, the appellant was within the BPL category and, therefore, if the BPL certificate was subsequently cancelled, the same would not affect the selection already made. As on the last date of submission of the application forms, the appellant was having all requisite qualifications qua BPL certificate.

5. Feeling aggrieved with the order passed by the Collector, Singrauli the writ petitioner preferred an appeal before the Commissioner, Rewa Division, Rewa which was dismissed on 19-01-2017. The writ petition was filed challenging the order of the Collector, Singrauli dated 9-01-2017 as well as the order dated 19-

01-2017 passed by the Additional Commissioner, Rewa Division Rewa. The writ petition has been allowed by the learned Single Judge which is subject-matter of challenge in the instant appeal.

6. The following dates are not disputed by the parties. The date of advertisement was 31-3-2016 and the date for submission of the applications commenced from 4-4-2016 to 21-4-2016. Thus, the last date for submission of the application forms was 21-4-2016. It is pertinent to mention here that the writ petitioner filed incomplete copy of the advertisement on record. None of the parties have filed the Scheme of appointment of Anganwadi Sahayika on record.

7. At the time of admission of the appeal on 5-9-2018 counsel appearing for the appellant submitted that the Sub-Divisional Officer, Chitrangi, District Singrauli by order dated 10-8-2018 has set aside the order of cancellation of BPL certificate issued in favour of the writ petitioner and, therefore, the status of the present appellant in BPL category stands restored. Learned counsel for the writ petitioner prayed for time to find out as to whether the order passed by the Sub-Divisional Officer, Chitrangi in respect of the BPL category of the appellant, has been challenged in further appeal or not. On 24-10-2018 counsel for the writ petitioner stated that the appeal filed against the order of cancellation of BPL

certificate in favour of the appellant has been withdrawn. On 25-01-2019 this Court directed the learned counsel for the State to produce original record of the Case No.0012/निगरानी/2017-18 pending in the Court of Collector, Singrauli against the order dated 10-8-2018 passed by the Sub-Divisional Officer, Chitrangi for perusal, but the said record has not been produced despite grant of sufficient time.

8. Learned counsel for the appellant filed an **I.A. No.933/2019** for taking additional documents on record. He has placed a copy of the order-sheet of the Office of the Upper Collector, Singrauli and he has drawn our attention to the order-sheet dated 17-01-2019, whereby the appeal filed by the writ petitioner against the order of the Sub-Divisional Officer in respect of BPL certificate has been withdrawn.

9. Learned counsel for the writ petitioner disputed the said fact. However, upon perusal of the order-sheet we observe that the writ-petitioner Tulsi Vishwakarma was herself present along with her Advocate before the Upper Collector on the said date and had withdrawn the appeal. The order-sheet also bears her signature.

10. In view of the obtaining factual matrix, this Court considered it apt for hearing of the appeal in absence of the records

which have not been produced by the counsel for the State in pursuance to the order dated 25-01-2019. Counsel for the appellant assiduously urged that the learned Single Judge has erred while allowing the writ petition setting aside the order passed by the Collector and Commissioner holding that after cancellation of the BPL certificate, the eligibility and entitlement of 10 marks for BPL certificate would relate back to the date of submission of the application forms and, therefore, the appellant would become ineligible after cancellation of the BPL certificate and would not be entitled for award of 10 marks towards BPL category. He strenuously urged that from the date of filing of application forms till the last date of submission, the appellant was having the BPL certificate in her favour. After the said date, on some anonymous complaint without affording any opportunity of being heard to the persons concerned, Tehsildar – Chitrangi, District Singrauli, directed to delete the name of the husband of the appellant, Pramod Kumar Vishwakarma from the BPL list. This order was passed on 4-6-2016 much after the preparation of the tentative select list after the cut off date, i.e., 21-4-2016. It is further submitted by him eligibility condition of a candidate has to be considered and examined on the date of submission of the application.

11. Learned counsel for the writ petitioner supported the order passed by the learned Single Judge and submitted that the appellant was not entitled for 10 marks as regards BPL category after subsequent cancellation of the BPL certificate by the Tehsildar.

12. Learned counsel for the State supported the orders passed by the Collector and the Upper Commissioner and put forth that eligibility of a candidate has to be considered on the date of submission of the application form and any order passed subsequent to the submission of the application forms or after the last date was over, would not be a relevant consideration. Therefore, the appellant was rightly awarded 10 marks for BPL category.

13. We have bestowed our anxious consideration on the arguments advanced on behalf of the parties. The sole issue that has cropped up for consideration, as to whether the subsequent cancellation of BPL certificate of the present appellant after filing of her application for appointment on the post of Anganwadi Sahayika, would be relevant for consideration of her case in the selection. Undisputedly, on the date of filing of the application form the appellant was in possession of a valid BPL certificate and, therefore, she was awarded 10 extra marks towards BPL category by the selection committee. However, on the objection of the writ

petitioner, her 10 marks were deducted on the basis of the order passed by the Tehsildar on the report of the Patwari without giving any notice or affording an opportunity of hearing to the husband of the petitioner. The said order dated 4-4-2018 passed by Tehsildar, Chitrangi, District Singrauli has been set aside by the Sub-Divisional Officer, Chitrangi by order dated 10-8-2018, which has been brought on record as Annexure-A/2. The said order has attained finality, as the revision filed against the said order has also been withdrawn by the writ petitioner, vide order dated 17-01-2019 which is evident from Annexure-A/5 filed along with I.A. No.933/2019.

14. Irrefragably, as per advertisement the date of submission of the application forms commenced from 4-4-2016 till 21-4-2016. Along with her application the appellant had filed a valid BPL certificate. A provisional list was prepared on 2-6-2016 wherein the the present appellant was placed at Sr. No.1 having scored 66.10 marks, whereas the name of the writ petitioner featured at Sr. No.2 having obtained 57.20 marks. Thereafter on the basis of objection of the writ petitioner, the 10 marks awarded to the appellant for BPL category were deducted and her total marks came to 56.10. The order of cancellation of the BPL certificate was passed on 4-6-2016 by the Tehsildar, Chitrangi, after almost more

than two months of the cut off date, i.e., 21-4-2016. Further, the said order has already been set aside by the Sub-Divisional Officer, Chitrangi District Singrauli by order dated 10-8-2018 which has attained finality.

15. A candidate must possess requisite qualifications on the last date fixed for the purpose of submitting application forms. At this juncture, it is useful to refer the judgment of the Apex Court rendered in the case of **Dr. M.V. Nair vs. Union of India and other, (1993) 2 SCC 429** ruled thus:

“9.It is well settled that suitability and eligibility of a candidate have to be considered *with reference to the last date for receiving the applications*, unless, of course, the notification calling for applications itself specifies such a date.”

[Emphasis supplied]

16. In the case of **Rakesh Kumar Sharma vs. State (NCT of Delhi) and others, (2013) 11 SCC 58** it is held that the settled legal proposition is that the selection process commences on the date when the applications are invited and any person eligible on the last date of submission of the application secures the right to be considered against the said vacancy, provided that he/she fulfils the requisite qualifications.

17. Thus analysed, we do not concur with the view taken by the learned Single Judge that the subsequent cancellation of the BPL certificate would dis-entitle the appellant from enuring the benefit of 10 marks meant for BPL category, especially when the said order has already been set aside.

18. *Ex-consequenti*, the **writ appeal is allowed** and the impugned order passed by the learned Single Bench is set aside. There shall be no order as to costs.

(S.K. Seth)
Chief Justice

(Vijay Kumar Shukla)
Judge

ac.