

HIGH COURT OF MADHYA PRADESH : JABALPUR**Writ Appeal No. 1876/2018**

Smt. Sarita Bai Patel

Versus

Draupati Bai & Ors.

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

Shri Sanjay Kumar Jain, Advocate for the appellant.

Shri D.K. Dixit, Advocate for the respondent no.1 on caveat.

Shri Bhupesh Tiwari, Government Advocate for the respondents No. 2 to 5/State on advance copy.

Whether approved for reporting ? Yes/No

<i>Whether approved for reporting?</i>	<i>Yes</i>
<i>Law laid down</i>	<i>Appointment of a Panchayat Karmi (Sachiv) under the Panchayat Karmi Scheme has to be made on the basis of merit. The requirement of local resident is not mandatory requirement.</i>
<i>Significant paragraph Nos.</i>	19 & 20

JUDGMENT**(Jabalpur, dated: 26.02.2019)****Per: Vijay Kumar Shukla, J.-**

The present intra-court appeal is filed under Section 2(1) of the Madhya Pradesh *Uchcha Nyayalaya (Khand Nyay Peeth Ko Kapeal) Adhiniyam*, 2005, challenging the order dated 30.11.2018 passed by the learned Single Judge in ***W.P. No. 7765/2013 (Draupati Bai Vs. State of M.P. & Ors.)*** whereby the writ petition filed by respondent no.1, Draupati Bai has been allowed. The impugned order dated 03.04.2013 passed by the State Minister, Department of Panchayat and Rural Development, has been set-

aside and the respondents, especially the respondent no.3, has been directed to issue appropriate orders for appointing the writ petitioner as Panchayat Karmi (Sachiv) of Gram Panchayat Shikara, Janpad Panchayat Lakhnadaun, District Seoni. It has been further directed that such exercise be completed within a period of two months from the date of production of the certified copy of the order. It has been further held that the writ petitioner will be entitled to get salary and seniority from the date of appointment to the post of Panchayat Karmi. The learned Single Judge further directed that if the appointment is not made for any reason by the Collector, then the petitioner would be entitled to claim seniority and salary of the post from the date of expiry of the said period of two months.

2. The facts of the case, in short, are that the State Government vide Circulars dated 27.01.2006 and 13.08.2007 directed all the Collectors of the State of Madhya Pradesh to fill-up the post of Panchayat Karmies which are vacant in the Panchayats concerned. By circular dated 13.08.2007 it was made clear that while filling up the vacancies on the post of Panchayat Karmi the merit would be the prime consideration and that has to be followed at every level among the candidates applying for the post of Panchayat Karmi. In response to the said instructions, the respondent Gram Panchayat Shikara issued a notice on 05.08.2007 inviting applications for appointment on the post of Panchayat Karmi.

3. The writ petitioner, and others applied for the said post in pursuant to the said notice. Merit list was prepared by the Gram Panchayat

Shikara in which the writ petitioner Dropati Bai was placed at Sl. no.1 in the merit list as she secured 63.38% marks in the 10+2 Examination. There were 11 applications submitted for appointment on the post of Panchayat Karmi. The candidature of the writ petitioner Dropati Bai was cancelled on the ground that she was a resident of other village. For one or other reasons, the other applications were rejected, except the application of one Sheetal Lodhi who was at Sl. no. 10.

4. Being aggrieved by the resolution of The Gram Panchayat, the petitioner filed a revision under Section 91 of the Madhya Pradesh Panchayat Raj Evam Gram Swaraj Adhiniyam - 1993 (hereinafter referred to as the "Adhiniyam-1993"). The Upper Collector set-aside the resolution of the Gram Panchayat and directed the Janpad Panchayat, Lakhnadaun to prepare a fresh merit list on the basis of 11 application received by the Gram Panchayat.

5. Being aggrieved by the order dated 08.10.2007 passed by the Additional Collector, Sheetal Singh preferred a revision before the Additional Commissioner, who by order dated 31.10.2007 set-aside the order of Collector, dated 08.10.2007.

6. The Collector passed an order under Section 85(1) of the Adhiniyam-1993 on 10.12.2007 directing the Chief Executive Officer, Janpad Panchayat Lakhnadaun to proceed for appointment of Pannchayat Karmi as per Section 86(2) of Adhiniyam-1993 because the resolution of Gram Panchayat is not in accordance with the instructions of the State Government.

The Sub-Divisional Officer directed the Chief Executive Officer, Janpad Panchayat, Lakhnadaun to proceed for appointment of Panchyat Karmi in the Gram Panchayt Shikara under Section 86(2) of Adhiniyam 1993.

7. The Chief Executive Officer, Janpad Panchayat, Lakhnadaun issued an advertisement on 17.03.2008 inviting applications for appointment on the post of Panchayat Karmi in the Gram Panchayat Shikara. Pursuant to this advertisement, the writ petitioner- Dropati Bai and the appellant Sarita Patel alongwith other 13 applicants applied for appointment, but Sheetal Singh who had earlier challenged the order of Sub-Divisional Officer and Collector, did not apply.

8. As per the marks obtained in the qualifying examination, the writ petitioner Draupati Bai scored 63.38% whereas the appellant Smt. Sarita Patel had scored 50.60% and one Shailendra Singh Patel scored 70.80%. Again, on objection, the candidature of the writ petitioner, Dropati Bai was rejected on the ground of residence that she does not reside in the same Gram Panchayat area. In the merit list prepared by the Chief Executive Officer, Janpand Panchayat, Lakhnadaun Shailendra Singh Patel was placed at Sl. no.1, whereas the present appellant Sarita Patel was placed at Sl. no.2. Shri Shailendra Singh Patel who was at Sl. No.1 in the merit list had given in writing, expressing his inability to join the services. For the said reason, the appellant Sarita Patel who had 50.60% marks was appointed as Panchayat Karmi by order dated 17.02.2009 by Chief Executive Officer, Janpad Panchayat Lakhnadaun which was approved by the Collector.

9. The writ petitioner challenged the appointment of the present appellant before the Collector which was dismissed. She preferred a revision before the Additional Commissioner, Jabalpur. The said revision was allowed and the entire process of appointment was found to be vitiated, as the appellant was relative of Ex-Up Chapanch who had influenced the selection process. Against the said order the writ petitioner-Dropati Bai filed a writ petition 8440/2012. Since the revision filed by the present appellant was pending before the State Minister, therefore, the writ petition was disposed of with a direction to the revisional authority to decide the revision within a period of two months from the date of receipt of the certified copy of the order.

10. The State Minister by order dated 03.04.2013, set-aside the order of Sub-Divisional Officer dated 12.04.2012 and affirmed the order of appointment dated 17.02.2009 of the appellant by C.E.O., Janpad Panchayat. Thus the revision filed by the appellant Sarita Bai was allowed by the State Minister of Panchayat and Rural Development Department. The Said order was challenged in the writ petition which has been allowed by the learned Single Judge.

11. Learned Counsel for the appellant submitted that the State Minister, Panchayat and Rural Development Department, Bhopal by impugned order dated 03.04.2013 has rightly set-aside the order of Sub-Divisional Officer dated 12.04.2012 and affirmed the order of appointment of

the appellant. He further argued that the learned Single Judge has erred while issuing a direction to the respondent no.3 and the other respondents for issuance of appointment order in favour of the writ petitioner. He referred the judgment passed by this Court in the case of *Leelawati and another Vs. State of Madhya Pradesh; 2008(4) MPHT 470* which has been approved by the Full Bench in the case of *Pawan Rana Vs.State of M.P. & others 2009(4) MPHT 377*, wherein it has been held that in case the Grampanchayat fails to appoint the Panchayat Karmi despite the direction issued by the State Government or prescribed authority then the State Government or the Prescribed Authority can direct the Chief Executive Officer of the Janpad Panchayat to appoint the Panchayat Karmi.

12. Per contra, learned counsel for the respondent no.1/writ petitioner supported the order of the learned Single Judge and submitted that since the petitioner stood on merit in the select list prepared by the Gram Panchayat in pursuant to the first selection and later select list prepared by the Janpad Panchayat in subsequent selection, but her appointment was denied only on the ground of local residence, therefore, learned Single Judge has rightly directed to issue appointment order in favour of the writ petitioner.

13. After having heard learned counsel for the parties we do not find any merit in the contention of the appellant that she is entitled for appointment. However, the order passed by the learned Single Judge, while allowing the writ petition directing the respondents to issue the appointment

order in favour of the writ petitioner with salary and seniority from the date of appointment is not sustainable for the following reasons and discussions hereinafter.

14. Upon perusal of the records, it is evident that Gram Panchayat, Shikara invited the applications in pursuant to the order of the State Government dated 27.01.2006 and 13.08.2007. Admittedly the present appellant had not applied in the said process of selection. The petitioner secured 63.38% marks in the 10+2 Examination and was at Sl. No.1 in the merit list. However, her candidature was rejected on the ground that she is not resident of the said Gram Panchayat. The other applications were also rejected for one or other reasons except the application of Sheetal Singh. He was appointed though he had secured only 39.53% marks. The said proceedings of Gram Panchayat was challenged before the Collector. The Collector set-aside the resolution and directed the Janpad Panchayat, Lakhnadaun to prepare the fresh select list on the basis of the applications already received as per the circulars/orders of the State Government. The said order was challenged by Sheetal Singh before the Additional Collector, who set-aside the same on the ground that against the resolution of a Panchayat neither appeal nor revision is maintainable.

15. Thereafter, the Collector directed the Sub-Divisional Officer to take proceedings under Sections 85(1) of the Adhiniyam, 1993 by order dated 10.12.2007. The Sub-Divisional Officer (Revenue) registered the case under

Section 85(1) of the Adhiniyam-1993 and the Chief Executive Officer, Janapad Panchayat was directed to undertake fresh process of selection as per Section 86(2) of the Adhiniyam-1993. An advertisement was issued by Janpad Panchayat on 17.03.2008. In response to the said advertisement the writ petitioner as well as the appellant applied. The writ petitioner Dropati Bai was at Sl. no. 2 as per the merit position, but her candidature was rejected again on the ground that she was not resident of the same Gram Panchayat. In the merit list one Shailendra Singh Patel who was placed at Sl. No. 1 had given in writing expressing his inability to join the post, then the appellant who had only 50.60 % marks was appointed by the Janpad Panchayat by an order dated 17.02.2009.

16. The appointment of the appellant was challenged before the Collector but the same was dismissed. The writ petitioner preferred a revision before the Commissioner, who partly allowed the revision and remanded the matter to the Sub-Divisional Officer. The Sub-Divisional Officer by order dated 12.04.2012 set-aside the selection on the ground that the appellant was daughter-in-law of Ex-Sarpanch who had influenced the selection process.

17. Being aggrieved by the said order the writ petitioner filed a W.P. No. 8440/2012, the same was disposed of as the appellant has already filed a Revision before the State Government against the order of Sub-Divisional officer for canceling the selection. By order dated 03.04.2013 the State Minister for Panchayat and Rural Development Department set-aside the

order of Sub-Divisional officer canceling the selection and approved the order appointment of the appellant passed by the Chief Executive Officer, Janpad Panchayat, Lakhnadaun.

18. The appointment of the appellant is not on merit. The appellant had secured only 50.60% marks as against 63.38% marks of the petitioner and the writ petitioner was denied the appointment merely on the ground of the residence which is not permissible as per the law laid down by this Court and the Apex Court.

19. In the case of *Kumari Poonam Verma Vs. The Principal Secretary, State of Madhya Pradesh (WP No. 9074/2010)* held that requirement of local resident is not a mandatory condition which was affirmed by the Division Bench of this Court in W.A. No. 873/2011, thereafter, a Review Petition bearing R.P. No. 212/2014 was filed. A co-ordinate Bench of this Court after referring the Section 69(1) and Section 70(1) of Adhiniyam 1993 and also the qualification prescribed for appointment of a Panchayat Karmi under Panchayat Karmi Scheme held that a candidate should be a local resident is not a mandatory requirement. The requirement is directory in nature.

20. In the case of *Kailash Chandra Sharma Vs. State of Rajasthan AIR 2002 SC 2877*, the Apex Court held that in the public employment waitage on the ground of resident is impermissible. The relevant paragraph of

the aforesaid judgment is as under:

“Residence within a District or rural areas of the District could not be a valid basis for classification for the purpose of public employment. The argument in favour of such reservation which has the overtones of parochialism is liable to be rejected on the plain terms of Art. 16(2) and in the light of Art. 16(3). An argument of this nature flies in the face of the peremptory language of Art. 16(2) and runs counter to our constitutional ethos founded on unity and integrity of the nation. Residence by itself – be it within a State, region, District or lesser area within a District – cannot be a ground to accord preferential treatment or reservation save as provided in Art. 16(3). It is not possible to compartmentalize the State into Districts with a view to offer employment to the residents of that District on a preferential basis.

21. In the present case, the petitioner is admittedly more meritorious than the appellant. In the Circular/order dated 27.01.2006 issued by the State Government, it has been made clear to the appointing authority that the appointment on the post of Panchayat Karmi is to be made on the basis of merit. In the case of *Suresh S/o Laxman Rathod Vs. Chief Executive Officer, Zila Panchayat, Barwani and others [2011(4) MPLJ717]*, it is held that appointment on the post of Panchayat Karmi has to be made strictly on merit. The same view has been reiterated by a Co-ordinate Bench of this Court in *Writ Appeal No. 194/2016 (Dharmendra Singh Vs. State of M.P.)* decided on 26.07.2017. Thus, the appointment on the post of Panchayat Karmi (Sachiv) has to be made on the basis of merit and a preference can only be given to a local resident if two candidates are equal on merit.

22. It has been borne out from the facts that the petitioner is much higher on merit than the appellant as she had secured 63.38% marks whereas the appellant had secured only 50.60% marks, therefore, the appellant has no legal right to seek appointment on the said post and the writ petitioner was wrongly denied the appointment only on the ground of residence which is not a mandatory requirement.

23. The next question arises for consideration that who has to make the appointment on the post of Panchayat Karmi (Sachiv) if Panchayat fails to make appointment within the period prescribed by the State Government. In the case of *Leelawati (Supra)* which was approved by the Full Bench in the case of *Pawan Rana (Supra)* wherein it has been held that in case the Gram Panchayat fails to appoint the Panchayat Karmi despite the directions issued by the State Government or the Prescribed Authority, the State Government or the Prescribed Authority can direct the Chief Executive Officer of the Janpad Panchayat to appoint the Panchayat Karmi.

24. We find that the learned Single Judge has erred while usurping the power of the appointing authority while issuing a direction to appoint the writ petitioner on the post of Panchayat Karmi. In view of the law laid down by the Full Bench in the case of *Leelawati (supra)*, we direct that Chief Executive Officer, Janpad Panchayat, Lakhnadon shall take necessary steps for appointment on the post of Panchayat Karmi of Gram Panchayat Shikara,

District Seoni on the basis of the applications received by him in pursuant to the advertisement dated 17.03.2008 and will issue the appointment order considering the merit of the candidates. It is made clear that the requirement of local residence would not come in the way of consideration of a candidature of the writ petitioner Draupati Bai, if she is found otherwise eligible. The Chief Executive Officer, Janpad Panchayat, Lakhnadon, District Seoni shall complete the entire exercise for appointment as directed by this Court within a period of one month from the date of filing of certified copy of the order.

25. In view of the aforesaid conspectus of the facts and discussion of law, the **Writ Appeal is partly allowed and disposed of.**

(S.K. Seth)
Chief Justice

(Vijay Kumar Shukla)
Judge