

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE**

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 11th OF JULY, 2023

WRIT PETITION No.25064 of 2018

BETWEEN:-

**PREETI CHATURVEDI D/O SHRI BAIKUNTH
PRASAD CHATURVEDI, R/O VILLAGE KAROULI,
TEHSIL SIHAWAL DISTT. SIDHI (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI JITENDRA KUMAR TIWARI - ADVOCATE)

AND

- 1. SMT. DEVANGNA PANDEY W/O SHRI
SATENDRA SHUKLA R/O VILLAGE -
KAROULI KHURD, TEHSIL - SIHAWAL,
DISTT. SIDHI (MADHYA PRADESH)**
- 2. PROJECT OFFICER, WOMEN AND CHILD
DEVELOPMENT PROJECT DISTT-SIDHI
(MADHYA PRADESH)**
- 3. DISTRICT PROGRAM OFFICER, WOMEN
AND CHILD DEVELOPMENT DEPARTMENT
DISTT-SIDHI (MADHYA PRADESH)**
- 4. UPPER COLLECTOR SIDHI DISTT-SIDHI
(MADHYA PRADESH)**
- 5. UPPER COMMISSIONER REWA DIVISION
DISTT-REWA (MADHYA PRADESH)**

.....RESPONDENTS

***(RESPONDENT NO.1 BY SHRI SHAKTI PRASAD PANDEY – ADVOCATE AND
RESPONDENT/STATE BY SHRI MOHAN SAUSARKAR – GOVERNMENT
ADVOCATE)***

*This petition coming on for admission this day, the court passed the
following:*

ORDER

This petition under Article 226 of the Constitution of India has been filed against the order dated 08/10/2018 passed by Additional Commissioner, Rewa Division Rewa Link court Satna/ Sidhi in case No.677/Appeal/17-18 and 678/Appeal/17-18, by which the appeals filed by respondent No.1 were allowed and it was directed that the respondent No.1 is entitled to be appointed on the post of Anganwadi Worker, Anganwadi Center Karoulikhurd, District Sidhi.

2. Since the controversy in question revolves in a narrow compass, therefore it is not necessary to mention the facts of the case in detail. An advertisement was issued for appointment of Anganwadi Worker in Anganwadi Centre Karoulikhurd. Apart from the petitioner as well as the respondent No.1, other candidates also submitted their application forms. A tentative list was prepared in which the respondent No.1 was placed at Sr.No.1 whereas the petitioner was placed at Sr.No.2. The petitioner as well as the respondent No.1 raised objections. The objection of the petitioner was that the respondent No.1 has been wrongly awarded 10 marks for BPL card whereas the objection by the respondent No.1 was that she has been wrongly denied 10 marks for graduation. Both the objections were sustained and 10 marks awarded to the respondent No.1 for holding BPL card were deducted, whereas 10 marks for graduation were awarded to the respondent No.1. Accordingly, it was held that the respondent No.1 has scored 54.40 marks whereas the petitioner has scored 52.60 marks and thus, the respondent No.1 was given appointment. Thereafter, the marksheet on which the respondent No.1 had placed reliance was found to be a forged document, therefore her services were terminated and she was removed from services.

3. Being aggrieved by said order, the respondent No.1 filed appeal before the Additional Collector, District Sidhi, which was registered as Appeal No.34/A-89-A(15)/2017-18, whereas the petitioner had filed an appeal against the order by which the respondent No.1 was given appointment. Both the appeals were decided by separate orders passed on the same day. The appeal filed by the respondent No.1 was dismissed and it was held that there is material difference in the original marksheet as well as the marksheet produced by the respondent No.1 and therefore, her services were rightly discontinued. Whereas the appeal filed by the petitioner was allowed and she was directed to be appointed in place of respondent No.1.

4. Being aggrieved by both the orders, the respondent No.1 preferred two appeals before the Court of Additional Commissioner, Rewa Division Rewa Link Court Satna / Sidhi which were registered as case No.677/Appeal/17-18 and case No.678/Appeal/17-18. By order dated 08/10/2018, both the appeals were decided by a common order and it was held that the marksheet which was produced by the respondent No.1 was a genuine marksheet, according to which, she had scored 403 marks in class 12th and accordingly, the termination of the services of the respondent No.1 was set aside and the appointment order of the respondent No.1 dated 22/05/2017 was restored.

5. Being aggrieved by the impugned order passed by the Additional Commissioner, Rewa Division Rewa Link Court Satna / Sidhi, petitioner has preferred the present petition.

6. It is submitted by the counsel for the petitioner that in fact the respondent No.1 had submitted a marksheet according to which she had scored 552 marks out of 700, whereas it was a forged document.

7. *Per contra*, it is submitted by the counsel for the respondent No.1 that in fact the respondent No.1 had filed a marksheet according to which she had scored 403 marks out of 700. However, after the application form was submitted, the same was deliberately misplaced by the Authorities and when a complaint was made by the respondent No.1, only after the intervention of the Collector, her application form was traced out. However, the respondent No.1 noticed that her marksheet has been changed and in place of original marksheet in which respondent No.1 had scored 403 marks, a fake and forged marksheet was placed in which it was shown that the respondent No.1 had scored 552 marks. Accordingly, she immediately made a complaint to the Authorities in this regard also. It is further submitted that the respondent No.1 had also filed a copy of BPL card but the same was also taken out of the application form. However, it is submitted by the counsel for the respondent No.1 that undisputedly, the respondent No.1 had scored 403 marks out of 700, therefore as per the formula which was applicable she was entitled for 34.4 marks for passing Class 12th examination. It is further submitted that undisputedly the petitioner had scored 52.6 marks, therefore even otherwise if the total marks obtained by the parties are recalculated, still the respondent No.1 would score 54.4 marks, and therefore her appointment order is rightly restored.

8. It is submitted by the counsel for the petitioner that initially this Court by order dated 30/10/2018 had directed the parties to maintain the *status quo*. Later on, by order dated 20/11/2019, the petition was dismissed for want of prosecution and taking advantage of the same, the respondent No.1 was successful in getting the appointment order on the strength of the order passed by the Additional Commissioner.

Therefore, today the petitioner is out of job whereas the respondent No.1 is working as Anganwadi Worker.

9. Considered the submissions made by the counsel for the parties.

10. So far as the dismissal of petition in default is concerned, the moot question for consideration is as to whether the interim order dated 30/10/2018 would automatically get revived upon restoration of Writ Petition or not?

11. Order dated 20/11/2019 reads as under:-

“None for the petitioner even in the pass over round.

Shri J.K. Pillai, learned Government Advocate for the State.

Shri S.P. Pandey, learned counsel for the respondent No.1.

Petition is dismissed for want of prosecution.

Ad interim order is vacated.”

12. Thus, it is clear that while dismissing the petition for want of prosecution, this Court had specifically vacated the interim order. Whenever the case is dismissed for want of prosecution without any specific order about the interim order, then upon restoration of such case, the interim order would automatically stand revived but where specific order was passed in respect of interim order, then unless and until a specific order is passed thereby restoring the interim order, it would not automatically stand revived upon restoration of the case.

13. The Supreme Court in the case of **Vareed Jacob Vs. Sosamma Geevarghese and Others** reported in (2004) 6 SCC 378 has held as under:-

“17. In the case of *Shivaraya v. Sharnappa* [AIR 1968 Mys 283 : (1967) 1 Mys LJ 414] it has been held that the question whether the restoration of the suit revives ancillary orders passed before the dismissal of the suit depends upon the terms in which the order of dismissal is passed and the terms in which the suit is restored. If the court dismisses the suit for default, without any reference to the ancillary orders passed earlier, then the interim orders shall revive as and when the suit is restored. However, if the court dismisses the suit specifically vacating the ancillary orders, then restoration will not revive such ancillary orders. This was a case under Order 39.

* * *

20. In the case of *Nandipati Rami Reddi v. Nandipati Padma Reddy* [AIR 1978 AP 30 : (1977) 2 APLJ 64] it has been held by the Division Bench of the Andhra Pradesh High Court that when the suit is restored, all interlocutory orders and their operation during the period between dismissal of the suit for default and restoration shall stand revived. That once the dismissal is set aside, the plaintiff must be restored to the position in which he was situated, when the court dismissed the suit for default. Therefore, it follows that interlocutory orders which have been passed before the dismissal would stand revived along with the suit when the dismissal is set aside and the suit is restored unless the court expressly or by implication excludes the operation of interlocutory orders passed during the period between dismissal of the suit and the restoration.”

14. The counsel for the petitioner could not point out that even the interim order was restored by this Court while restoring the Writ Petition.

15. Now the only question for consideration is as to whether the respondent No.1 had scored more marks than the petitioner or not?

16. Undisputedly, the petitioner had got 42.6 marks for Class 12th examination and 10 marks for graduation. Thus she got 52.6 marks.

17. As already pointed out, while preparing the tentative list, 10 marks were granted to the respondent No.1 for holding BPL card and 44.4 marks were awarded for Class 12th examination which was based on so called fake marksheet in which the respondent No.1 was shown to have scored 552 marks out of 700. Against this tentative list, the respondent No.1 as well as petitioner raised objections. The objection raised by the petitioner was that the respondent No.1 is not entitled for 10 marks for BPL card whereas the objection raised by the respondent No.1 was that 10 marks have not been awarded for having graduation degree. The objections raised by both the parties were upheld and 10 marks awarded to the respondent No.1 for holding BPL card were deducted whereas she was awarded 10 marks for graduation.

18. It is the contention of the counsel for the respondent No.1 that since the respondent No.1 had scored 403 marks out of 700 in Class 12th examination, therefore she is entitled for 34.4 marks for Class 12th examination.

19. Since the respondent No.1 was awarded 10 marks for graduation only and no marks were awarded for BPL card, therefore even after adding 10 marks to 34.4 marks, the respondent No.1 would score only 44.4 marks whereas the petitioner had scored 52.6 marks.

20. At this stage, it is submitted by the counsel for the respondent No.1 that the respondent No.1 was wrongly denied 10 marks for her BPL card. It is submitted that on the last date of submission of application form, the respondent No.1 was holding live BPL card,

therefore 10 marks which was initially awarded to her at the time of preparation of tentative list should not have been deducted. It is submitted by the counsel for the respondent No.1 that the Division Bench of this Court in the case of **Renu Vishwakarma Vs. Tulsi vishwakarma and others** reported in **2019 (3) M.P.L.J. 51** has held that the documents which were live on the last date for submission of application form are to be considered and subsequent cancellation of any document shall not have any adverse effect.

21. Since the respondent No.1 was having live BPL card on the last date of submission of her application form, therefore 10 marks have been wrongly deducted.

22. Considered the submissions made by the counsel for the respondent No.1.

23. The counsel for the respondent No.1 has fairly conceded that the respondent No.1 never challenged the deduction of 10 marks for BPL card but she had challenged the cancellation of her BPL card before SDO and her appeal was dismissed.

24. The counsel for the respondent No.1 is trying to rely on the legal proposition of law which has no application under the facts and circumstances of the present case. Accordingly, the counsel for the respondent No.1 was requested to argue that in absence of challenge to non-grant of 10 marks to the respondent No.1 for BPL card, whether his submission for grant of 10 marks for having BPL card can be considered in this Writ Petition?

25. All the time, the counsel for respondent No.1 went on insisting that this Court can do anything.

26. So far as the contention of the counsel for the respondent No.1 that this Court in exercise of power under Article 227 of the

Constitution of India can award 10 marks to the respondent No.1 for holding the BPL card is concerned, the same is misconceived. Once the non-grant of 10 marks for BPL card has already attained finality, then without any further challenge to the same, this Court cannot reopen the issue in a Writ Petition filed by the petitioner.

27. Therefore, considering the totality of the facts and circumstances of the case, the respondent No.1 would get only 44.4 marks whereas the petitioner had scored 52.6 marks. Undisputedly, the petitioner was more meritorious than the respondent No.1. Deduction of 10 marks for BPL card was never challenged by the respondent No.1. Therefore, in a Writ Petition filed by the petitioner, this Court cannot award 10 marks to the respondent No.1.

28. Accordingly, this Court is of the considered opinion that the Additional Collector, Sidhi District Sidhi did not commit any mistake by directing for appointment of the petitioner on the post of Anganwadi Worker, Anganwadi Center Karaulikhurd and accordingly, the order dated 08/10/2018 passed by Additional Commissioner, Rewa Division Rewa Link Court Satna / Sidhi in case No.677/Appeal/17-18 and 678/Appeal/17-18, is hereby **set aside**.

29. As already pointed out, after dismissal of the Writ Petition in default, the respondent No.1 was appointed in compliance of order dated 08/10/2018 passed by Additional Commissioner, Rewa Division Rewa Link Court Satna / Sidhi. Since the order passed by the Additional Commissioner has been set aside, therefore the order of appointment which was issued in favour of the respondent No.1 on account of dismissal of petition in default will also lose its effect and accordingly, it is directed that the order of appointment of respondent No.1 issued during the pendency of this petition would also go along

with the order passed by the Additional Commissioner.

30. Accordingly, the order passed by the Additional Collector, Sidhi by which the petitioner was directed to be appointed is hereby **restored** and the respondent No.1 shall stop functioning as Anganwadi Worker in Anganwadi Center Karaulikhurd with immediate effect and the respondent shall allow the petitioner to work on the said post.

31. With aforesaid direction, the petition succeeds and is hereby **allowed** with cost of **Rs.5,000/- (Rupees Five Thousand Only)** to be deposited by the respondent No.1 in the Registry of this Court within a period of **one month** from today, failing which the Registrar General shall not only initiate proceedings for recovery of cost but shall also register a case for contempt of Court.

(G.S. AHLUWALIA)
JUDGE

Shubhankar