

THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

Writ Petition No. 6095/ 2020

Smt. Meena Devi

Versus

State of Madhya Pradesh & Others

Date of Order	08.05.2020
Bench Constituted	Single Bench
Order delivered by	Hon'ble Shri Justice Sanjay Dwivedi
Whether approved for reporting	Yes
Name of counsels for parties	For Petitioners: Shri Manish Kumar Soni, Advocate. For Respondents No.1 to 4/State: Shri Vikalp Soni, Government Advocate. For Respondent No.5: Shri Himanshu Shukla, Advocate.
Law laid down	The Circular issued in clarificatory manner, would have retrospective effect.
Significant Para Nos.	

Reserved on : 18.03.2020

Delivered on : 08.05.2020

Since the parties are ready to argue the matter finally on the basis of record available, therefore, it is heard finally.

2. By the instant petition filed under Article 226 of the Constitution of India, the petitioner is challenging the order dated 28.02.2020 (Annexure-P/1) passed by

the Commissioner setting-aside the order of the Collector dated 22.01.2018 (Annexure-P/10) and also set-aside the order of the Selection Committee whereby the petitioner has been appointed on the post of Anganwadi Sahayika as she was found meritorious and was granted 10 marks of BPL card.

3. Learned counsel appearing for respondent No.5 submits that against the selection of the petitioner, respondent No.5 preferred an appeal before the Collector challenging the same on the ground that the petitioner was not eligible to get the marks of BPL card as on the date of issuance of advertisement i.e. 07.07.2015, her name was not in the BPL list, but was included in it on 20.07.2015. However, on a complaint made against the said inclusion, an order has been passed on 03.08.2015 whereby her name was directed to be deleted from the list of BPL card holder and against which an appeal was preferred before the Commissioner, which was decided in the year 2016 and the inclusion of the name of the petitioner in the BPL list was found valid and accordingly, said inclusion was allowed. He further submits that as per the circular issued on 16.03.2018 clarifying the

earlier position, the petitioner was not entitled to get the marks of BPL card because that circular which is at page No.44 of the petition, clarifies that if the name of the candidate is recorded in the list of BPL card holder before the issuance of the advertisement and her name continues to be in the list till final selection-list is published, then only the candidate is entitled to get the marks of BPL card. He also submits that in view of the aforesaid, admittedly, on the date of advertisement, the name of the petitioner was not in the BPL list, therefore, in view of the said circular, she was not entitled to get marks of BPL and accordingly the order passed by the Commissioner is proper. The selection of the petitioner made on the post of Anganwadi Sahayika is invalid and accordingly, the same may be cancelled.

4. Learned counsel for respondent No.5 further submits that if the object of the scheme of Anganwadi Worker is seen, then it can be easily gathered that the basic object to provide appointment on the post of Anganwadi Worker and Anganwadi Sahayika was to provide the same to the BPL card holder, but if a candidate get the said qualification at the verge of

advertisement, then the said benefit should not be granted to her because that would frustrate the very object of the policy dated 10.07.2007.

5. After hearing the contentions of both the parties and perusal of record, the question which emerges for adjudication is that, as to whether clarificatory circular issued at a later point of time, will have retrospective effect or not and if so, then what would be its effect in the present case.

6. To answer the question emerged, brief facts of the case which are required to be taken note of, are that the applications were invited for the post of Anganwadi Sahayika for the Anganwadi Centre-Chamradol No.4 through an advertisement dated 07.07.2015. Seven applications were submitted in July, 2015. As per the facts that came on record, the last date of submitting the applications was 20.07.2015 and final list was to be published on 31.07.2015. After deciding the objections raised by the parties, a final list was published, in which the present petitioner was placed at Sr.No.1 and appointment order was issued in her favour on 20.02.2017 (Annexure-P/7).

7. The said appointment was challenged by respondent No.5 by filing an appeal before the Additional Collector mainly on the ground that the petitioner is not entitled to get the marks of BPL as she has included her name in the list only on the last date of submitting the applications i.e. 20.07.2015 whereas the name of the candidate should have been included in the BPL list before the date of issuance of the advertisement and the same should be continued till the publication of final select-list.

8. The Additional Collector although dismissed the appeal holding therein that indisputably, the last date of submitting the applications was 20.07.2015 and the name of husband of the petitioner was included in the BPL list on 20.07.2015, therefore, the marks of BPL has rightly been awarded to the petitioner and the appeal was dismissed.

9. Moreover, another selection took place during the pendency of the appeal before the Collector and the Collector also took note of the inclusion of name of the petitioner's husband in the BPL list, a complaint was made and the Tehsildar vide order dated 03.08.2015,

deleted his name from the said list, but that order was assailed before the Commissioner, who set-aside the said order and finally held that the name of husband of the petitioner has rightly been included in the BPL list.

10. The order of the Collector was again assailed before the Additional Commissioner, Rewa Division, Rewa, by respondent No.5 and the said appeal was decided vide order dated 28.02.2020. The Additional Commissioner took note of the Circular dated 15.05.2017, in which, it was clarified that Clause-2 of the Policy dated 10.07.2007 provides guidelines for selection of Anganwadi Worker and Anganwadi Sahayika. Clause-2 of the said Policy deals with the allotment of marks and also provides for ten marks to the candidate whose name finds place in the BPL list.

11. The Circular dated 15.05.2017 is clarificatory in nature and has clarified that the benefit of ten marks of BPL can be granted to a candidate whose name finds place in the said list before issuance of an advertisement for appointment on the post and remains in the list. The Circular dated 15.05.2017 (Annexure-P/14) has direct significance in the issue involved herein, therefore, it is

quoted hereinbelow:-

“ मध्यप्रदेश शासन,
महिला एवं बाल विकास विभाग,
मंत्रालय, वल्लभ भवन,
क्रमांक 1114/1489/2017/50-2 भोपाल, दिनांक 15/05/2017
प्रति,

1. आयुक्त, एकीकृत बाल विकास सेवा, मध्यप्रदेश, भोपाल
2. संभागायुक्त, समस्त संभाग, मध्यप्रदेश,
3. कलेक्टर, जिला समस्त मध्यप्रदेश,
4. संयुक्त संचालक, एकीकृत बाल विकास सेवा, जिला समस्त, म.प्र.
5. जिला कार्यक्रम अधिकारी, एकीकृत बाल विकास सेवा, जिला समस्त, म.प्र.
6. मुख्य कार्यपालन अधिकारी, जिला पंचायत जिला समस्त, मध्यप्रदेश,
7. परियोजना अधिकारी, एकीकृत बाल विकास परियोजना समस्त मध्यप्रदेश,
8. समस्त मुख्य कार्यपालन अधिकारी, जनपद पंचायत, मध्यप्रदेश,
9. समस्त सचिव, ग्राम पंचायत, मध्यप्रदेश,

विषय:- आंगनवाडी कार्यकर्ता/सहायिका के चयन एवं नियुक्ति हेतु बी.पी.एल. के अंक प्रदान/पात्रता के संबंध में।

वर्तमान में प्रचलित आंगनवाडी कार्यकर्ता एवं सहायिका के चयन एवं नियुक्ति निर्देश दिनांक 10/07/2007 में कंडिका अ-2 की उपकंडिका 2 एवं कंडिका ब-2 की उपकंडिका 2 के अनुसार “गरीबी रेखा के नीचे रहने वाले परिवार की महिला के लिए 10 अंक” दिये जाने का प्रावधान किया गया है।

समय-समय पर जिलों से प्राप्त विभिन्न शिकायतों में उल्लेख किया जाता है कि आवेदकों द्वारा गरीबी रेखा के अंकों का लाभ लेने हेतु विज्ञप्ति जारी होने के उपरांत गलत तरीके से बी.पी.एल. सूची में नाम जोड़ा गया है।

उक्त स्थिति को दृष्टिगत रखते हुए गरीबी रेखा के नीचे रहने वाले परिवार की महिला आवेदिका को बी.पी.एल. के 10 अंकों का लाभ उसी स्थिति में दिया जावे जबकि उसका/परिवार का नाम विज्ञप्ति जारी होने की तिथि के पूर्व से निरन्तर सूची में विद्यमान हो।

उक्त निर्देश तत्काल प्रभाव से लागू होगा।

मध्यप्रदेश के राज्यपाल के नाम से
तथा आदेशानुसार
(पंकज शर्मा)
अवर सचिव,
मध्यप्रदेश शासन,
महिला एवं बाल विकास विभाग”

12. The Commissioner, vide order dated 28.02.2020, has finally decided the appeal and set-aside the order of the Collector holding that the petitioner is not entitled to get the ten marks of BPL because admittedly, the name of her husband was not there in the BPL list before the date of issuance of the advertisement, but it was added only on the last date of submitting the applications i.e. 20.07.2015, whereas the advertisement was issued on 07.07.2015. The Commissioner, therefore, observed that if the ten marks of BPL card are deleted from the total marks awarded to the petitioner, then her total marks adds up-to 61, whereas respondent No.5 secured 64.50 marks and as such, she secured first position in the list and the Commissioner directed the Project Officer, Integrated Child Development, Sidhi, to issue order of appointment in favour of respondent No.5 cancelling the appointment order of the present petitioner.

13. Learned counsel for the petitioner submits that in view of the law laid-down by Division Bench of this Court in the case of **Renu Vishwakarma Vs. Tulsi Vishwakarma & Others** in W.A. No.1158/2018, in which

it is held by the Division Bench that a candidate must possess requisite qualification on the last date fixed for the purpose of submitting the application forms.

14. However, that analogy is not applicable in the present case for the reason that here in this case, the Policy very categorically provides that the BPL marks would be granted to the candidate whose name finds place in the BPL list before the date of issuance of the advertisement and that particular object and Circular has not been considered by any of the authorities even the Division Bench of this Court while deciding the case of **Renu Vishwakarma (supra)**.

15. The petitioner has also not assailed the provisions of the Policy saying that the same is contrary to law because if the candidate acquires the requisite qualification on the last date of submitting the application, he should be given the benefit of the same and as such, selection of Anganwadi Sahayika had to be made strictly in accordance with the guidelines contained in the Policy dated 10.07.2007. The Circular dated 15.05.2017 which is also available on record as Annexure-P/14, is otherwise and reads in different

manner as has been quoted hereinabove.

16. Learned counsel for the petitioner although submits that this Circular is dated 15.05.2017 and it would not be applicable in the process of selection for the reason that the same concluded in the year 2015, but I am not convinced with the said contention for the reason that the law is very specific in this regard and from perusal of the Circular dated 15.05.2017, it is clear that the same is clarificatory in nature clarifying Clause-2 of the Policy dated 10.07.2007 and therefore, the same would have retrospective effect and would be operative from the date of very inception of the Policy dated 10.07.2007.

17. The Supreme Court in the case of **Stonecraft Enterprises Vs. Commissioner of Income Tax** reported in **AIR 1999 SC 1638**, has laid-down a law in respect of the Circular which is in the nature of explanatory circular and has held that-

“...if the Circular is explanatory and can, therefore, relate back to the year in question, the assessee cannot derive any assistance therefrom.”

18. The Karnataka High Court in the case of **Commissioner of Income Tax Vs. God Granites**

reported in **(1999) 156 CTR (Kar) 327** relying upon the decision of the Supreme Court in the case of **Stonecraft Enterprises (supra)**, has held as under:-

“...Clarificatory amendments in law are always retrospective unless the statute provides otherwise. In view of the subsequent circular the earlier circulars ceases to exist and it cannot be said that the earlier circular shall apply to the assessment years till the issuance of the subsequent circular and that the subsequent circular would apply to the assessment years after it was issued...”

19. Thus, in view of the aforesaid enunciation of law, I have no hesitation to say that the Circular dated 15.05.2017 has retrospective effect and would be operative from the date of Policy i.e. 10.07.2007 and the same has rightly been considered by the Commissioner while deciding the appeal vide order impugned dated 28.02.2020 (Annexure-P/1). Therefore, in my opinion, the petitioner was not entitled to get the benefit of marks of BPL as admittedly, the name of petitioner’s husband was included in the BPL list on the last date of submission of the applications i.e. 20.07.2015. The order passed by the Commissioner, therefore, is a reasoned one and does not suffer from any illegality and infirmity and does not warrant interference by this Court.

20. The direction issued by the Commissioner in

respect of giving order of appointment in favour of respondent No.5 is hereby held to be proper and the same should be given effect to, if the same has not been implemented so far.

21. In view of the above, this petition being without any substance, is hereby **dismissed**.

(SANJAY DWIVEDI)
JUDGE

Prachi