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**(2019) 02 CHH CK 0486**

**Chhattisgarh High Court**

**Case No:** WA No. 146 Of 2019

Mohan Mati

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

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**Date of Decision:** Feb. 27, 2019

**Hon'ble Judges:** Ajay Kumar Tripathi, CJ; Parth Prateem Sahu, J

**Bench:** Division Bench

**Advocate:** Mateen Siddiqui, Faiz Kazi

**Final Decision:** Dismissed

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### **Judgement**

Ajay Kumar Tripathi, CJ

1. I.A. No. 01 of 2019 is an application for condonation of delay of 81 days in filing the appeal. For the reasons indicated in the said I.A., the same is allowed. Delay is condoned.

2. Respondent No.5, Smt. Achala Panda, had approached the High Court by filing a writ application challenging the order of the Director Panchayat

dated 27.02.2008 because he set aside the order of Additional Collector, Raigarh dated 11.05.2007 without providing any cogent and valid reason for

interfering with the finding and the decision of the Additional Collector, Raigarh that the appointment of the present appellant as a Anganbadi Worker was illegal.

3. An exercise for selection of Anganbadi Worker was held for the Village Mohapali, Gram Panchayat, Amapali, District - Raigarh. The present

Appellant along with Respondents No.4 & 5 applied. The Gram Panchayat took a decision in relation to the three candidates, made recommendations

seriatimwise placing Respondent No.5 at S.No.1, Respondent No.4 at S.No.2 and the present Appellant at S.No.3.

4. For some unexplained reason not visible even now, the present Appellant came to be appointed as Anganbadi Worker on 19.09.2006. The private

Respondent No.5, therefore, raised objections before the Collector. Parties were heard and then a decision came that there is no reason why the claim

of the person at S.No.1 ought to have been ignored and appointment made of the person at S.No.3 i.e. the Appellant. The Additional Collector taking

the entirety of the evidence and material on record including the decision and recommendation of the Gram Panchayat held that the appointment of the

present Appellant was bad in law.

5. Aggrieved by the said decision of the Additional Collector dated 11.05.2007, appeal was preferred before the Director Panchayat who set aside the

order of the Additional Collector on 27.02.2008. That became the cause of action for Respondent No.5 to come to the High Court and assail the

order.

6. The learned Single Judge after hearing the parties took note of the guidelines which govern such selections and appointments and took note of the

issue in the impugned order, in following manner :-

6. Having heard the contentions put forth on the either side and on perusal of the record what is not in dispute from the factual matrix of the case as

narrated above is that a recruitment process was initiated for filling up of various post of Anganbadi worker under Janpad Panchayat, Pusaur. The

dispute in the present writ petition pertains to the appointment of Anganbadi worker for village Mohapali under Gram Panchayat Aamapali. The

petitioner as well as respondents 1 & 2 had applied for the said village. Gram Panchayat scrutinized the case of all the three candidates and passed a

resolution on 15.06.2006. In the resolution, the petitioner was recommended as the first candidate in the order of preference. Respondent no.2 was

placed at serial no.2 and respondent no.1 was placed at serial no.3. It is also revealed from the said resolution that Gram Panchayat had shown its

reluctance in appointing respondent no.1 for the said post. Annexure P-2 attached to the writ petition is an instruction given by the Project Officer,

Integrated Child Development Project, Pusaur dated 24.01.2006 wherein certain guidelines have been issued to be kept in mind while appointments of

Anganbadi workers are made. Clause 6 & 7 of that guidelines spell out the manner in which appointment order has to be issued which for ready

reference is reproduced hereinunder:

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7. Admittedly, none of the candidates were either widow or deserted lady, neither was any of the candidates belonging to SC and ST category. In the

said circumstance, if all the candidates were similarly placed, the recommendation or the order of preference made by the Gram Panchayat has to be

given more weightage.

8. So far as the resolution of Janpad Panchayat, Pusaur is concerned, it is resolution dated 26.08.2006 so also in the order of appointment dated

19.09.2006 and at the same time even in the impugned order dated 27.02.2008, no justification, no reason whatsoever has been given to establish the

fact that respondent no.1 was more suitable and more eligible than the petitioner. Likewise, in all the aforesaid three orders/resolutions, the authorities

or the Janpad Panchayat have failed to disclose any reason why the order of recommendation made by Gram Panchayat is not to be honoured with or

why the order of recommendation made by the Gram Panchayat should be ignored or bypassed. If at all if it had to be done, there has to be cogent,

strong and genuine reasons. In the absence of any cogent or genuine reason, the action of Janpad Panchayat in passing a resolution in favour of

respondent no.1 and the respondent no.3 issuing an order of appointment ignoring the recommendation of the Gram Panchayat would be arbitrary and

therefore bad in law.

7. It is not that the appointing authority has unbridled power to select and appoint anybody at his whims and fancies since such selection is made under

a set of guidelines and directions issued by the State. There has to be strict compliance thereof and any diversion or aberration must have justification thereof, duly recorded in the decision so taken.

8. The learned Single Judge, besides observing and stating what has, taken note in earlier part of the order, further held that for strange reason, the

Director Panchayat, while deciding the appeal and setting aside the order of the Additional Collector does not provide any reason for doing so. Nobody

has unbridled power to exercise in matters or decision making in public domain.

9. The learned Single Judge, therefore, set aside the order of the Director Panchayat, restored the order of the Additional Collector and allowed the

writ application vide order dated 10.09.2018 which is now subject matter of challenge in appeal.

10. Counsel for the Appellant submits that the guidelines are not mandatory.

There is discretion provided in the guidelines before appointment is required to be made especially when all are placed equally. Further since the

Appellant has worked in the capacity of a Angandadi Worker since 2006, it is too harsh in the day now to remove her and appoint private Respondent

No.5 by the said decision.

11. If the finding all along, both by the Additional Collector and the learned Single Judge is that the selection and appointment of the present Appellant

was not done in terms of the guidelines and no explanation is emerging at any stage, the reason for appointment of the present Appellant emerges by

ignoring the claim of Respondent No.5 at S.No.1 and Respondent No.4 at S.No.2 is erroneous. Therefore, obviously the decision so taken in favour of

the Appellant was for extraneous reasons for which no justification has been offered or can be offered even now.

12. Since such decision smacks of arbitrariness, therefore the continuance of the Appellant becomes tenuous. The learned Single Judge, therefore,

rightly restored the order of the Additional Collector and set aside the order of the Director Panchayat since he had failed to give any justification as to

why the order of Additional Collector suffers from any kind of bias or deficiency.

13. Appeal has no merit. It is dismissed.