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## **Mandodari Devi Vs State Of Jharkhand**

### **Writ Petition (S) No. 3858 of 2010**

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**Court:** Jharkhand High Court

**Date of Decision:** Aug. 8, 2018

**Acts Referred:**

Persons with Disabilities (Equal Protection of Rights and Full Participation) Act, 1995 &”  
Section 33

**Hon'ble Judges:** PRAMATH PATNAIK, J

**Bench:** Single Bench

**Advocate:** Manoj Tandon, Shiv Shankar Kumar, R.R. Mishra, Amit Kumar

**Final Decision:** Allowed

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### **Judgement**

Pramath Patnaik, J

1. In the captioned writ application, the petitioner has inter alia prayed for direction upon the respondents to issue appointment letter to the petitioner on

the post of lady supervisor in Santhal Pargana Division, Dumka and further to quash memo dated 19.07.2010 whereby the respondent no. 2 issued

direction for appointment on the post of Lady Supervisor without giving reservation to the extent of 3 % in the light of mandate of the provisions

enshrined in Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; and to declare that the respondents

have no power to deny the appointment of the petitioner on the ground that at the time of initial appointment on the post of Anganbari Sewika the

petitioner had not completed the age of 18 years.

2. The factual matrix, as delineated in the writ application, in brief is that the petitioner was appointed as Anganbari Sewika for Karanghati Centre

under Littipara Block on 02.03.1983. In the year 2007, an advertisement was published inviting application on the post of Lady Supervisor in Santhal

Pargana Division, in which, 25% quota was reserved to be filled-up amongst the Anganbari Sewikas. The petitioner, having the requisite

academic qualification of Graduation and having required work experience of Anganbari Sewika for at least 10 years, applied and appeared in the

examination conducted for the said post. It has further been averred that vide impugned memo dated 19.07.2010 several persons were directed to be

appointed except the petitioner. Aggrieved thereof, the petitioner enquired the matter wherefrom she could know that she has been denied

appointment on the ground that she was below 18 years of age on the date, when she was appointed as Anganbari Sewika on 02.03.1983.

3. Heard Mr. Manoj Tandon, learned counsel for the petitioner and Mr. Amit Kumar, A.C to learned G.P II for the respondents.

4. Learned counsel for the petitioner submitted that the last selected candidate in general category has acquired only 142 marks and the petitioner has

acquired 126 marks. But the petitioner, who belongs to handicapped quota ought to have been given 3 % reservation in that category and she was

coming under the zone of consideration. It has further been submitted that no other candidate falling in that category has secured more marks than the

petitioner, hence the respondents are bound to select the petitioner as Lady Supervisor. In this regard, learned counsel for the petitioner further

submitted that as per Section 33 of the Persons with Disabilities (Equal Protection of Rights and Full Participation) Act, 1995 every establishment has

to appoint such percentage of vacancies not less than 3 % for persons or class of persons with disability. So far the issue of appointment as

Anganbari Sewika below the age of 18 years and consequent appointment on the post of Lady Supervisor is concerned, the same has been considered

in several judgments delivered by this Hon'ble Court and one of the leading decision is in the case of Baby Kumari Vs. The State of Jharkhand &

Another passed in W.P (S) No. 3810 of 2010, wherein the Hon'ble Court in unequivocal terms has enunciated that the reasons for denial of

appointment of the petitioner on the post of Lady Supervisor on the ground of appointment of petitioner on Anganbari Sewika below 18 years is not

sustainable.

5. As against this, learned counsel for the respondents submitted that at the time of selection for the post of Sevika, the petitioner was below the age

of 18 years, therefore, as per the direction contained in letter dated 26.03.2008 of the Government of Jharkhand, Social Welfare, Women and Child

Development Department, the petitioner is not eligible to be appointed on the post of Lady Supervisor. So far fulfillment of provision of giving 3 %

reservation for specially challenged persons is concerned, as per Guidelines of notification dated 7.11.2007, in case of nonavailability of suitable

candidate relaxation may be given in the standard fixed for the selections. Since the petitioner or other candidate falling in that category was not found

fit for the post in the question, no person was appointed in that category.

6. Having heard learned counsel for the parties at length and perusal of documents and decision cited by learned counsel for the petitioner, I am of the

considered view that the petitioner has been able to make out a case for interference for the following facts, reasons and judicial pronouncements:

Ã, (i). Since appointment of the petitioner in the year 1983, she diligently served as Anganwari Sewika. Neither any objection was raised with regard to

her date of birth nor her appointment was ever held illegal by the State-authorities and she served with the department with full knowledge of the

authorities concerned regarding his date of birth and date of joining.

Ã, (ii). In the year 2007, an advertisement was published inviting application for appointment on the post of "Lady Supervisor", in which, 25 %

quota were reserved for Anganwari Sewika, who have served for at least 10 years and who possesses a degree of Graduation OR, who have

completed 15 years of Service and possesses matriculation degree. Besides that eligibility criteria, academic and experience, no other criteria was

there for selection on the post in question. Undoubtedly, the petitioner has fulfilled all these criteria but she was denied appointment on the ground that

she did not complete

18 years of age at the time of her appointment on the post of Anganbari Sewika, in support thereof, though in counter affidavit one letter dated

26.03.2008 has been annexed wherein it has been stated that if the sevika is found below 18 years of age at the time of appointment as Sevika, her

appointment shall be declared illegal. But, the question remains to be decided whether it is suffice to deny appointment of a candidate, who have

successfully served for more than two and half decades and no objection was raised ever before.

Ã, (iii). Undoubtedly, the post of Lady Supervisor is altogether a different post from that the post of Anganwari Sewika. Further, it is not a promotional

post rather a totally new post, published through Public Advertisement. It is well settled principle of law, no new criteria can be added or omitted when

the selection process is over.

Ã, (iv). Here, it would not be necessary to discuss more on the issue of reservation of 3 % for physically challenged persons, as in the advertisement

itself they have included the mandatory provision of law. Further, the respondents have denied appointment of the petitioner not on this ground rather

on a totally non est and untenable ground.

Ã, (v). The same and similar issue, arising out of the same vacancy, another candidate knocked the door of this Court by filing W.P. (S) No. 3810 of

2010, which has been decided in favour of the writ petitioner, and as per the statement made at bar, the State has not challenged the same in appeal.

Hence, the petitioner ought to have been given the benefit of parity.

7. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, the reason assigned by the respondents i.e since she was below

18 years of age at the time of appointment on the post of Anganwari Sewika, for not appointing the petitioner has no reason to sustain, accordingly the

same is quashed and the respondents<sup>^</sup>, are directed to take appropriate decision with regard to appointment of the petitioner on the post of Lady

Supervisor giving benefit of 3 % reservation, as enshrined in Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation)

Act, 1955 within a period of two months from the date of receipt/production of copy of this order, without disturbing the positions of persons who have

already been appointed.

8. With the aforesaid observations and directions, the writ petition stands allowed to the aforesaid extent.