

(2018) 11 UK CK 0155

Uttarakhand High Court

Case No: Writ Petition (S/S) No. 1020 Of 2016

Smt. Khasti Devi

APPELLANT

Vs

State Of Uttarakhand
& Others

RESPONDENT

Date of Decision: Nov. 13, 2018

Hon'ble Judges: Sharad Kumar Sharma, J

Bench: Single Bench

Advocate: D.K. Joshi, Pradeep Hairiya, Yogesh Pacholia

Final Decision: Partly Allowed

Judgement

Sharad Sharma, J

1. The backdrop under which this Writ Petition is being argued is that respondent no. 3 had issued an advertisement on 16.10.2014, thereby inviting

applications from eligible candidates for being considered to be appointed on the post of Anganbari Worker/Anganbari Karyakatri for the vacancies

available in different villages/wards of different block of District Bageshwar. This Writ Petition relates to block Kapkot. Block Kapkot of District

Bageshwar, which is shown at Serial No. 3 in the advertisement dated 16.10.2014, there were three posts, which were to be filled in i.e. for Pethi-I,

Vaishali-II & Talladna. At present this Writ Petition is only concerned with the post of Anganbari Karyakatri to be filled in for Vaishali-II. According

to the eligibility and other terms and conditions provided in the advertisement dated 16.10.2014 it stipulated two major conditions that the applicant

ought to be a permanent resident of the same village/Majre/Tok/Ward. Under the proviso of Clause-3 it provided that if the eligible candidate is not

available in accordance with the aforesaid terms and conditions and in special circumstances then only the member from the Gram Sabha would be

considered to fill in the vacancy. For better elucidation Clause-3 of advertisement dated 16.10.2014 is quoted hereunder:

â€œ03- fuokl& vkosnd dks mlh xzke@etjs@rksd@okMZ dk LFkbbZ vFkok ewy fuoklh gksuk pkfg, ftl xzke@etjs@rksd@okMZ ds fy, vkaxuckM+h

dsUnz o feuh vkaxuckM+h dsUnz Lohd`r gS rFkk ftlds fy, foKfIr izdkfâ€kr dh xbZ gSA ijarq foâ€ksâ€™k ifjfLFkfr;ksa esa ;fn lacaf/kr xzkelHkk ds

mlh xzke@egjs@rksd@okMZ esa vH;FkhZ miyC/k ugha gksrs rks ml fLFkfr esa mlh xzkelHkk ds vU; rksd@etjs@okMZ ls fu;qfDr dh tk;sxh rkfd

fjfDr;ka u jgsAâ€

2. Similarly, the basic eligibility criteria for being considered for appointment as Anganbari Karyakatri was also that a candidate applying must be a

candidate lying below the poverty line in accordance with the stipulation contained in Clause-4 of the advertisement dated 16.10.2014, which is quoted

hereunder:

â€œ04- xjhch js[kk dks fu/kkZj.k& â€œekkluknsâ€k esa fufgr izkfo/kkuks ds vuqlkj vkaxuckM+h dk;Zd=h] lgkf;dk rFkk feuh dk;Zd=h ds p;u gsrq xjhch

js[kk fu/kkZj.k gsrq fuEu izek.ki= ekU; fd;s tkrs gSa%&

Â¼1Â½ lacaf/kr [kaM fodkl vf/kdkjh }kjk tkjh xjhch js[kk ls uhps thou&;kiu djus dk izek.ki=A

Â¼2Â½ xzkeh.k {ks= esa ifjokj dh okfâ€™kZd vk; vf/kdre :-15976-00 rFkk â€œekgjh {ks= esa ifjokj dh okfâ€™kZd vk; :- 21206-00 dh /kujkfâ€k dk

rglhynkj vFkok uk;c rglhynkj }kjk tkjh vk; izek.ki=A xjhch dh lhek fu/kkZfjr djus gsrq ifjokj dh vf/kdre okfâ€™kZd vk; dk fu/kkZj.k Hkkjr ljdkj ds

lkekftd U;k; ,oa vf/kdkfjrk ea=ky; ds i= la[k 11014@2@99@,llhMh&4 fnukad 22-3-99 esa ;kstuk vk;ksx Hkkjr ljdkj }kjk fd;s x;s izkfo/kku ds Ã~e esa

fd;k x;k gSA

Â¼3Â½ ,-ih-,y- Js.kh ds vkosndksa ds laca/k esa& funsâ€™kky; vkbZ-lh-Mh-,l- mRrjk[k.M nsgjknwu ds i= la[k lh&1493 fnukad 20 tqykbZ 2013 ds

}kjk funsZfâ€kr fd;k x;k gS fd ,-ih-,y- Js.kh ds vH;fFkZ;ksa ds vkosnu djus dk dksbZ fuâ€™ks/k ugha gSA fofâ€™kâ€™V Js.kh dh ojh;rk Js.kh ds

vUrxZr ;fn dksbZ vH;FkhZ miyC/k ugha gS rks â€œeksâ€™k miyC/k vkosnuksa ls fu;ekUrxZr fu/kkZfjr izfÃ~k ds vuqlkj p;u dh dk;Zokgh dh

tk;sxhAâ€

3. On the culmination of the process of selection in which the petitioner and respondent no. 6 was also applicant one Kaushalya Devi was selected for

the post of Anganbari Karyakatri for Ward-2 Vaishali-II a complaint was submitted against the selection of Kaushalya Devi by the petitioner on

29.04.2015, questioning income certificate of Kaushalya Devi and after due process the candidature of Kaushalya Devi was cancelled.

4. On complaint of petitioner dated 29.04.2015 respondent no. 5 on 26.02.2015 directed Tehsildar, Kapkot to investigate and submit a report. Similarly,

District Magistrate, Bageshwar too on 22.08.2015 directed the Sub-Divisional Magistrate to conduct enquiry against appointment of Kaushalya Devi,

the same was cancelled and petitioner was intimated about the same, by letter dated 31.12.2015.

5. A statement has been made at the Bar by the learned counsel for the petitioner that so far as the cancellation of appointment of Kaushalya Devi as

Anganbari Karyakatri at Baisani-II Ward-2 has attained finality and has not been challenged, as the expectation of the petitioner goes was that since

she being the resident of Ward-3, which happens to be an adjoining ward to Baisani-II Ward-2 and since she being the holder of a BPL (Below

Poverty Line) certificate, she ought to have been considered for appointment, rather instead of that the respondent no. 6 has been appointed, who

according to the petitioner was a resident of Ward-5 and was a candidate, who belong to a APL (Above Poverty Line) category and thus was

ineligible in accordance with Clause-IV of the advertisement dated 16.10.2014. Since there being a denial of being awarded with the appointment

based on the eligibility, which the petitioner possessed, she preferred the present Writ Petition for the following reliefs:

â€œ(i) Issue a writ, order or direction in the nature of certiorari quashing the appointment of respondent no. 6 on the post of Anganbari Worker in

pursuant to advertisement dated 16.10.2014.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to appoint the petitioner on the post of Anganbadi Worker

(Karyakatri) at Anganbadi Kendra Baisani-II, Block Kapkot, District Bageshwar with all consequential benefits.

(iii) Issue any other writ, order or direction which this Honâ€™ble Court may deem just and proper in the circumstances of the case.

(iv) Award the costs of the writ petition in favour of the petitioner.â€™

6. The petitioner in paragraph 21, 22 and 23 of the Writ Petition had specifically pleaded that respondent no. 6 since is a resident of Ward No. 5, and

also since she is a candidate belonging to a APL category and thus, as per clause 3 & 4 of the advertisement dated 16.10.2014 was ineligible even to

be considered for appointment pursuant to the advertisement dated 16.10.2014. In continuation thereto, the pleadings with regards to the ineligibility

suffered respondent no. 6 has been raised in paragraph 21 to 23 of the Writ Petition, which are quoted hereunder:

â€™21. That it is also pertinent to point out here that the respondent no. 6 is permanent resident of ward no. 5 of village Baisani and also she is living

in Above Poverty Line (APL).

22. That the selection of respondent no. 6 is against the condition of advertisement dated 16.10.2014 whereby it has clearly been indicated that the

candidate who is resident of the same ward would be given preference. Admittedly petitioner is the nearest resident being the resident of ward no. 3

in comparison to respondent no. 6 who is resident of ward no. 5 though both belong to same village Baisani, District Bageshwar.

23. That the selection of respondent no. 6 is bad in view of the fact that petitioner is living Below Poverty Line (BPL) whereas as per the application

submitted by respondent no. 6 is living Above Poverty Line (APL). Because as per the government order dated 24.02.2009 and the condition of

advertisement dated 16.10.2014 the candidate living Below Poverty Line (BPL) is to be considered first, here in this case respondents ignored this

crucial fact and respondents gave appointment to respondent no. 6 on the post of Anganbadi worker.â€™

7. Notices were issued and on the basis of service of notice the private respondent had filed her counter affidavit. In paragraph-13 of the counter

affidavit respondent no. 6 has dealt with the pleadings raised in paragraph- 21 to 23 of the Writ Petition. Apart from the pleadings raised in paragraph-

13 of the counter affidavit, as a matter of fact, if the entire counter affidavit is read in precision, rather nowhere respondent has come up with the case

denying the pleading raised by the petitioner to the effect that she belongs to the category of APL and was non-suited for appointment as was not satisfying condition of residence provided in clause-3. The respondent to the said pleading and faced with the aforesaid difficulty of there being inappropriate pleading in the counter affidavit with regards to the said fact, which goes to the route of the matter, the learned counsel for the respondent endeavoured to pass over a certificate, which has been issued by the competent authority allegedly showing that she was a candidate below poverty line. This Court is afraid that in a proceeding, in a writ jurisdiction, when the sole bone of contention was the place of residence and eligibility based on the certificate of BPL and APL and, more particularly, when there was a specific pleading raised against the respondent no. 6, it was expected that a certificate, which has been issued in her favour at the time of selection or even prior to it, if any, ought to have been pleaded and brought on record at the initial stage itself when the counter affidavit was filed. Having not done so, it cannot be accepted by this Court merely when the same is just passed over to the Bench during the course of argument and, hence, it is declined to be taken on record.

8. Owing to the aforesaid observations as made above, there is no material brought on record by respondent no. 6, herself to show that she belongs to the BPL category, rather, in addition thereto, the learned counsel for the petitioner submits that the arguments as extended by the learned counsel for respondent no. 6, to the effect that respondent no. 6 was a BPL holder is not tenable for the reason that in the format of application submitted by her in response to advertisement dated 16.10.2014 before the competent authority and a declaration as made by her on 17.11.2014 in column-10, which deals with the BPL I.d. No. the same remains unfilled (blank), hence, he supports his argument that if at all there was any genuineness in the arguments extended by the learned counsel for the respondent that respondent no.6 is a holder of BPL card, the said fact ought to have been placed on record at the time when the application itself was submitted by respondent no. 6. The other issue as to whether at all the respondent no. 6, who was a resident of Ward No. 5, could not have been considered due to the embargo imposed by Clause-3.

9. The argument of learned counsel for the petitioner is that in view of the stipulation, particularly as contained in proviso to Clause-3, the occasion to consider the candidature of other person, who is not a resident of the ward arises, only when the eligible candidate is not available in that ward.

Admittedly, the respondent no.6 is a resident of Ward No. 5, so does the petitioner, who is a resident of Ward No. 3. Admittedly, both the petitioner

and respondent no. 6 are not the resident of Ward No. 2 for which the ensuing process of selection is under consideration, but, since challenge is given

to the selection of respondent no. 6, who is otherwise according to the petitioner was not eligible to be appointed, the Writ Petition partially succeeds

and the appointment of respondent no. 6 as Anganbari Karyakatri in pursuance of the advertisement dated 16.10.2014 is quashed. However, the relief

no. 2 as claimed by the petitioner by way of a writ of mandamus directing to be considered for appointment as a Anganbari Karyakatri for Baisani of

Block Kapkot stands declined since she not being the resident of Ward No. 2 and it is not the case of the petitioner that there is no other eligible

candidate available in Ward-2.

10. Writ Petition partly succeeds. Appointment of respondent no. 6 is quashed.

11. However, there would be no order as to cost.