

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

CWP No. 416 of 2009.

Date of Decision: 30.09.2009.

Smt. Banti Devi

...Petitioner.

Versus.

State of H.P and others.

...Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for Reporting? No.

For the petitioner:

Mr. P.C. Sharma, Advocate.

For respondents No. 1 to 3:

**Mr. R.K. Bawa, Advocate General with Mr.
Ram Murti Bisht and Mr. Rajesh
Mandhotra, Deputy Advocate Generals.**

None for respondent No. 4.

Respondent No. 5, ex parte.

Deepak Gupta, J. (Oral):

By means of this Writ Petition, the petitioner has challenged the order dated 28th September, 2008, passed by the Divisional Commissioner, Mandi in Review Appeal No. 684 of 2008.

Briefly stated, the facts of the case are that the petitioner as well as respondents No. 4 and 5 alongwith some other candidates applied for the post of Anganwari Worker in Anganwari Centre, Panyali, under ICDS Block Rewalsar, District Mandi. Santosh Kumari, respondent No. 4 was

selected for the said post. The petitioner and one Lajja Vanti filed appeals under Clause 12 of the Anganwari Workers Scheme before the Deputy Commissioner, Mandi challenging the appointment of Santosh Kumari. The said appeals were decided by the Deputy Commissioner on 4.7.2008 setting aside the appointment of Santosh Kumari on the ground that her family income exceeded the prescribed limit and he ordered that the fresh selection be made.

Against the order of the Deputy Commissioner, an appeal was filed by Santosh Kumari before the Divisional Commissioner, Mandi. This appeal was dismissed on 11.11.2008 and the order of the Deputy Commissioner, Mandi was upheld. Surprisingly, a Review Appeal No. 684 /2008 was instituted on 15.11.2008 and the same was decided on 28.11.2008, without even giving notice to the petitioner or Lajja Vanti. Against this order, the petitioner has filed the present Writ Petition. Notice of this Petition was sent to respondents No. 4 and 5. Even on the last date of hearing, none had appeared on behalf of respondent No. 4 and today also none is present.

The Divisional Commissioner has no right to review his orders. There is no power of review conferred upon him under the Anganwari Workers Scheme. He had,

therefore, no jurisdiction whatsoever to review his order. Even otherwise, review can only be made on the basis of an error apparent on the face record and not on any other grounds. Another infirmity in the order of the Divisional Commissioner, Mandi is that he passed the order in Review Appeal without even issuing notice to the affected parties. For the aforesaid reasons, the said order is not within the jurisdiction of Divisional Commissioner and is totally illegal, unjustified and is liable to be set aside.

Accordingly, the Writ Petition is allowed and the order dated 28.11.2008, passed in Review Appeal No. 684 of 2008 is set aside. Consequently, the post of Anganwari Worker in Anganwari Centre, Panyali, under ICDS Block Rewalsar, District Mandi must be re-advertised and filled up in accordance with the Scheme. We direct that the needful be done within three months from today.

(Deepak Gupta)
Judge.

30th September, 2009.
bhupender

(Surinder Singh)