

THE HIGH COURT OF MADHYA PRADESH

W.P.No.7765/2013

(Draupati Bai Vs. State of M.P. and others)

Jabalpur, Dated : 30.11.2018

Shri D.K. Dixit, learned counsel for the petitioner.

Shri Nikhil Tiwari, learned Panel Lawyer for respondent Nos.1 to 6/State.

None for respondent No.7.

Since pleadings are complete and the issue regarding selection for the post of Panchayat Karmi is in question and the petition pertains to year 2013, therefore, the same is heard finally.

2. By the instant petition, the petitioner is assailing the order dated 03.04.2013 (Annexure-P-21) passed by the State Minister, Department of Panchayat and Rural Development. It is also claimed by the petitioner that the respondents be directed to appoint the petitioner on the post of Panchayat Karmi (Secretary) of Gram Panchayat Shikara w.e.f. 25.08.2007.

3. As per the averments made in the petition, there are several rounds of litigation and, therefore, the facts in nutshell are required to take note of and are being mentioned hereinbelow:-

(3.1) That the instructions issued by the Department of Panchayat & Rural Development, instructing the Collectors of all the districts of the State for filling up the post of Panchayat Karmi which are found vacant in various panchayats. In response to the

said instructions, a notice was issued by the Gram Panchayat, Shikara, inviting applications for appointment on the post of Panchayat Karmi. The said notice was issued on 05.08.2007 (Annexure-P-5). On 13.08.2007, the instructions have also been issued to all the Collectors of the State providing guidelines as to in what manner the appointment of Panchayat Karmi has to be made. The said guidelines are available as Annexure-P-6 to the petition. It is made clear in the said guidelines that while filling up the vacancies on the post of Panchayat Karmi, the merit would be the prime consideration and that has to be followed at every level among the candidates applying for the post of Panchayat Karmi.

- (3.2) The petitioner has also applied in response to the said notice and merit list was prepared by the Gram Panchayat, Shikara, in which, the petitioner was placed at serial No.1, as she secured 63.38% marks in 10+2 examination. As per the resolution of the Gram Panchayat, there were 11 applications submitted for the post of Panchayat Karmi. The Gram Panchayat for the reason best known to them, rejected all applications for one reason or another, except one i.e. of Sheetal Singh, who secured 39.53% marks. The application submitted by the petitioner was rejected on the ground that she is not the

permanent resident of village Shikara because she resides in village Adegaon.

- (3.3) Against rejection of the application of the petitioner, a revision was submitted before respondent No.3/Collector, Seoni, who vide order dated 08.10.2007 (Annexure-P-8), quashed the resolution dated 25.08.2007.
- (3.4) The person, who has been recommended for appointment, challenged the order passed by the Collector by filing a revision before respondent No.2/Commissioner, Jabalpur and vide order dated 31.10.2007 (Annexure-P-9) the order of the Collector was set aside on the ground that the resolution of the Gram Panchayat is neither appellable nor revisable. Thereafter, the order of the Commissioner was assailed by the petitioner by filing a writ petition before this Court and the said petition was registered as Writ Petition No.17182/2007. However, during the pendency of the petition, a letter was written by respondent No.3 to respondent No.4 apprising him that in view of some documents made available to him, it is found that there were some irregularities committed for appointment to the post of Panchayat Karmi in the Gram Panchayat, Shikara and exercising powers provided under Section 85(1) of the Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993, the resolution of the Gram Panchayat was suspended.

(3.5) Thereafter, the Sub Divisional Officer invited fresh applications in pursuance to the order of the Collector dated 10.12.2007 (Annexure-P-9A) and also mentioned that the applications received earlier, shall also be the part of the process. In response to the notice issued by the Sub Divisional Officer, three more applications have been received by the Gram Panchayat that were of Mohan Singh, Smt. Sarita Patel and Shailendra Singh. Accordingly, there were total 14 applications and those were scrutinized again by respondent No.6 and the application of the petitioner was again rejected on the ground that she was not the resident of the village for which the appointment was being made. In the merit list prepared, Shailendra Singh placed at serial No.1 showing that he secured 70.80% marks and Smt. Sarita Patel placed at serial No.2 as she secured 50.60% marks. The other candidates who received higher marks than Smt. Sarita Patel, have been ousted as their applications have been rejected for one reason or another. Accordingly, the recommendation was made in favour of Shri Shailendra Singh, but he has refused to join, therefore, an order of appointment was issued in favour of respondent No.7 namely Smt. Sarita Patel, who was at serial No.2 in the merit list which was prepared at subsequent stage. Accordingly, the appointment order was issued in

favour of respondent No.7 on 17.02.2009 (Annexure-P-16).

(3.6) The order passed by the Sub Divisional Officer, appointing Smt. Sarita Patel, was assailed by filing an appeal before the Collector and the Collector vide order dated 13.07.2009 rejected the appeal against which, a revision was preferred before the Commissioner who vide order dated 07.07.2010 allowed the revision by setting aside the order of the Additional Collector dated 13.07.2009. The Commissioner in its order dated 07.07.2010 has also granted liberty to the petitioner to file an appeal before the Sub Divisional Officer (Revenue) Lakhnadon, if she desires to do so and the Sub Division Officer was further directed to decide the same within a period of one month. The Commissioner in its order has also instructed that the Sub Divisional Officer would also decide the appeal if so preferred by the petitioner on certain issues. A copy of the order of the Additional Commissioner dated 07.07.2010 is available on record as Annexure-P-18.

(3.7) In response to the directions given by the Additional Commissioner, an appeal was preferred by the petitioner before the Sub Divisional Officer, which has been decided vide order dated 12.04.2012 (Annexure-P-19). The Sub Divisional Officer, in its order answered the issues directed to be considered by the

Commissioner and finally found that the Sub Divisional Officer on earlier occasion committed irregularity inviting fresh applications whereas there was no direction given by the Collector in its order dated 10.12.2007 and the Sub Divisional Officer re-scrutinized the applications received in response to the first notice of Gram Panchayat. Accordingly, it is observed by the Sub Divisional Officer that the applications of the petitioner were erroneously rejected on the ground that she was not the resident of village Shikara, whereas there were sufficient documents produced by the petitioner to substantiate that she was the resident of village Khere Shikara, which is also known as village Shikara. It is also observed by the Sub Divisional Officer that the appointment made in favour of Smt. Sarita Patel was also not proper as she was the daughter-in-law of Ex Upsarpanch and he has indirectly influenced the selection process. Thus, the procedure adopted by the Gram Panchayat for appointment of Panchayat Karmi was found to be illegal and accordingly set aside.

- (3.8) Against the order of the Sub Divisional Officer dated 12.04.2012, a revision was preferred before the State Minister by respondent No.7. The said revision was decided vide order dated 03.04.2013 (Annexure-P-21), which is impugned in this petition. In the order passed by the State Minister, it is observed that the Sub Divisional Officer has

not dealt with the issue regarding the maintainability of the appeal before him while passing the order dated 12.04.2012 and without deciding the said objection, appeal has been decided, therefore, the State Minister has found that the order passed by the Sub Divisional Officer was illegal and without jurisdiction. The State Minister, set aside the order of the Sub Divisional Officer dated 12.04.2012 and approved the order 17.02.2009 passed by the Chief Executive Officer, Janpad Panchayat, Lakhnadon, whereby the appointment had been made in favour of Smt. Sarita Patel.

4. The learned counsel for the petitioner has criticized the order of the State Minister mainly on the ground that the same has been passed without application of mind and without considering the material fact that the selection of Panchayat Karmi has to be made only on the basis of merit as the same was prime consideration for appointment to the post of Panchayat Karmi and as per the petitioner this aspect was ignored by the State Minister and appointment was made in favour respondent No.7, whereas the petitioner was meritorious candidate. The learned counsel for the petitioner further submitted that the order dated 12.04.2012 passed by the Sub Divisional Officer was reasoned one and the appeal preferred before him by the petitioner was in pursuance to the order of the Commissioner wherein he has granted liberty to the petitioner to file an appeal before the Sub Divisional Officer (Revenue), Lakhnadon. The learned counsel for the petitioner further submitted that the Sub

Divisional Officer had jurisdiction to entertain the appeal as the appeal was preferred before him as per the direction given by the Additional Commissioner and the order of the Additional Commissioner was never challenged by respondent No.7 and also by any other authority, but in the appeal, they participated and also raised objection regarding jurisdiction of the Sub Divisional Officer and the said issue was dealt with by the Sub Divisional Officer, whereas the State Minister has erroneously observed that the said issue has not been considered and decided by the Sub Divisional Officer and only on that ground the order of the Sub Divisional Officer was set aside.

5. On the other hand, the learned Panel Lawyer for respondent Nos.1 to 6/State has supported the order of the State Minister saying that the State Minister has not committed any illegality holding that the Sub Divisional Officer had no jurisdiction to entertain the appeal.

6. Perusal of the reply submitted by the State, there was no justification found as to how the order of the State Minister was free from any infirmity and the reply has also not answered any of the grounds raised by the petitioner in his petition.

7. Moreover, the reply is nothing but reproduction of the facts, therefore, the reply of respondent Nos.1 to 6/State does not have such substance which could enable this Court to give seal of approval to the order of the State Minister.

8. Arguments heard.

9. After perusal of the record and hearing the arguments raised by the learned counsel for the parties, I am

of the opinion that none of the parties at any level has considered the prime aspect of the matter that the basic law of appointment is that the selection has to be made giving weightage to the merit of the candidates. In this regard, the instructions has also been issued on 13.08.2007 (Annexure-P-6) by the Department of Panchayat and Rural Development, instructing the Collectors of all districts of the State clarifying that the merit should be the paramount consideration while making appointment to the post of Panchayat Karmi and merit should be given weightage at all level. This aspect has also been considered by this Court in ***W.P. No.4188 of 2015 (Bharat Vs. State of M.P.)***, observing as under:-

“In the opinion of this Court, in public employment, the merit should be the paramount consideration. A Division Bench of this Court in ***Harish Chandra Yadav Vs. State of M.P. and others***, 2012 (2) MPLJ 27 opined that picking up a less meritorious candidate when more meritorious candidates are available would amount to arbitrary, capricious and irrational exercise of power on the part of the Appointing Authority. In ***Ashish Singh Vs. State of M.P. and others***, 2011 (2) MPLJ 324, it was held that more qualified candidates should be given preference for appointment. In ***Mukesh Prasad Vs. State of M.P. and others***, 2011 (4) MPLJ 417, this Court disapproved cancellation of the appointment which was made on the basis of merit.”

10. As per Annexure-P-6, it is clear shown that as far as possible it is seen that the candidate should be local so that he should be in a position to perform the duties smoothly but it does not mean that ignoring the merit, the weightage should be given to the local resident. However, if the order of the Sub Divisional Officer is seen then it can be easily gathered that the Sub Divisional Officer has given specific finding that the documents produced by the petitioner have not been examined and perused by the

authorities in an appropriate manner otherwise, the situation would have been different. As per the observations made by the Sub Divisional Officer, the petitioner was a resident of village Khere Shikara. The Sub Divisional Officer has also observed that inviting more applications by the authority giving reference of the directions of the Collector was also erroneous as there was no such direction has ever issued by the Collector, therefore, the selection had to be made only on the basis of the applications received on first occasion in pursuance to the original notice of the Gram Panchayat inviting applications for appointment of Panchayat Karmi.

11. As far as the appointment of respondent No.7 is concerned, the Sub Divisional Officer has also observed that her appointment was not proper as she was the daughter-in-law of Ex Upsarpanch of Gram Panchayat and to favour her, the selection process was influenced and fresh applications were also called for just to make the appointment in favour of respondent No.7. Thus, I do not find any infirmity and illegality in the observations made by the Sub Divisional Officer in its order dated 12.04.2012.

12. So far as the order impugned passed by the State Minister is concerned, it is something surprising that the State Minister has set aside the order of the Sub Divisional Officer mainly on the ground that the said authority had no jurisdiction to entertain the appeal whereas from the order of the Additional Commissioner dated 07.07.2010, it is clear that the petitioner had been granted liberty to file an appeal before the Sub Divisional Officer and in the said order, not only respondent No.7 but other authorities were also parties to the proceedings but nobody challenged the order of the

Additional Commissioner, accordingly, the said order has attained finality and observations made therein remained unchallenged. Thus, the Sub Divisional Officer has acquired jurisdiction in pursuance to the directions of the Higher Authority i.e. the Additional Commissioner. The Sub Divisional Officer, on an objection raised by the parties regarding jurisdiction has also referred the order of the Commissioner and also referred that he has entertained and deciding the same as the Additional Commissioner has directed to him to decide the same. Therefore, in my opinion, the finding of the State Minister, that the Sub Divisional Officer had to decide the question of jurisdiction first, but he did not do so, is absolutely perverse finding.

13. As far as the appointment of respondent No.7 is concerned, she was inserted in the list only in view of the applications invited at later stage, whereas originally only 11 applications were got received by the Gram Panchayat in pursuance to their advertisement. Thus, any subsequent application submitted in pursuance to the notice of the Sub Divisional Officer taking shelter of letter dated 10.12.2007 (Annexure-P-9A) of the Collector is apparently clear that the Collector has never instructed the Sub Divisional Officer for inviting fresh applications. It is also clear that the selection process was under challenge before the authority and on the basis of the orders passed by one and other authorities, the said selection process was being scrutinized at different level but at no point of time it was set aside and on the basis of the same, fresh selection was initiated. Accordingly, the directions issued by the Sub Divisional Officer for inviting fresh applications and preparing consolidated merit list, by

adding fresh applications which were 3 in numbers, is illegal and arbitrary exercise. Thus, in my opinion, the selection of respondent No.7 on the post of Panchyat Karmi was bad and illegal because the authorities had ignored the basic and primary object of appointment that the merit should be the prime consideration and accordingly I find the order of the State Minister is erroneous and deserves to be set aside. Accordingly, the respondents are directed especially respondent No.3 to issue appropriate instructions for appointing the petitioner as Panchayat Karmi (Secretary) of Gram Panchayat, Shikara (Khere Shikara), Janpad Panchayat Lakhnadon, District Seoni. Such exercise be completed within a period of two months from the date of submitting the certified copy of this order by the petitioner. It is made clear that the petitioner will be entitled to get salary and seniority from the date of appointment to the post of Panchayat Karmi (Secretary) of the Gram Panchayat which is to be made in any case within a period of two months from the date of submitting the certified copy of this order before the Collector and if appointment is not made for any reason by the Collector, then the petitioner would be entitled to claim seniority and salary of the post from expiry of the said period.

14. Accordingly, the petition filed by the petitioner stands **allowed** in the above terms.

15. The parties shall bear their own costs.

(Sanjay Dwivedi)
Judge