

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MARCH, 2021

PRESENT

THE HON'BLE MR.JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

W.A.No.223/2021 (S-RES)

BETWEEN:

Kum. Sharavathi,
D/o Sri Iraiah,
Age: 24 years,
R/at Mavinakatte village,
Huligere Post,
Chikkamagalur Taluk,
Chikkamagaluru District – 577 160. **... APPELLANT**

(By Sri Ravindra Prasad.B., Adv.)

AND:

1. The State of Karnataka,
By its Secretary to
Department of Women and
Child Development,
M.S.Building,
Bangalore – 1.
2. The Dy. Commissioner/Chairman,
The Selection Committee of
Anganavadi Worker and Assistants,
Chikkamagalur District – 577 160.

3. The Dy. Director,
Department of Women and
Child Development,
Chikkamagalur District – 577 160.
4. The Member Secretary/
Child Development Planning Officer,
The Selection Committee of
Anganvadi Workers and Assistants,
Chikkamagalur District,
Chikkamagalur – 577 160.
5. Kum. Indira.H.M.,
D/o late Manjaiah,
Age: 24 years,
R/at Mavinakatte village,
Huigere Post,
Chikkamagalur Taluk,
Chikkamagalur District – 577 160. ... **RESPONDENTS**

**(By Sri S.S.Mahendra, AGA for R-1 to R-4;
Sri Lohitashwa Banakar, Adv. for C/R-5)**

This Writ Appeal is filed under Section 4 of the Karnataka High Court Act, praying to set aside the order dated 27.11.2020 passed in W.P.No.33108/2018 and dismiss the writ petition.

This appeal coming on for Orders, this day, **Satish Chandra Sharma J.**, delivered the following:

JUDGMENT

1. The present writ appeal is arising out of the order dated 20.11.2020 passed by the learned Single Judge in W.P.No.33108/2018 (Kum Indira.H.M. Vs State of Karnataka & others).

2. The facts of the case reveal that for appointment to the post of Anganawadi Karyakatha, an advertisement was issued on 25.10.2017 and the present appellant as well as respondent no.5 submitted their candidature. The documents were required to be uploaded on the website, however, respondent no.5 was not able to upload her caste certificate. Later on, a provisional list was issued on 29.12.2017 and final list was issued on 24.07.2018 appointing the present appellant as Anganawadi Karyakatha. The respondent no.5 came up before this Court by filing the writ petition and the learned Single Judge in paragraphs 8 to 9 has held as under:

"8. The only ground of rejection as seen from the order of rejection is, the petitioner did not upload the Caste Certificate that was mandatory to be uploaded for appointment to the post of Anganavadi Karyakathe at Mavinakatte Anganavadi Center. The said post was reserved for Scheduled Cast/Scheduled Tribe category, but the fact remains that, the petitioner is more meritorious than the 5th respondent as she has secured more marks in qualifying examination for appointment to the said post. Since the only ground of rejection is non-uploading of the Caste Certificate of the

petitioner, the issue of non-selection on such act of the candidate is considered by the Hon'ble Apex Court in the case of **RAM KUMAR GIJROYA Vs. DELHI SUBORDINATE SERVICES SELECTION BOARD & ANR** reported in **2016(4) SCC 754** in Paragraphs-14 & 18 has to be taken note of, which reads as under:-

"14. The Division Bench of the High Court erred in not considering the decision rendered in the case of Pushpa Vs. Govt. (NCT of Delhi) [2009 SCC On Line Del 281 (In that case, the learned single Judge of the High Court had rightly held that the petitioners therein were entitled to submit the O.B.C. certificate before the provisional selection list was published to claim the benefit of the reservation of O.B.C. category. The learned single judge correctly examined the entire situation not in a pedantic manner but in the backdrop of the object of reservations made to the reserved categories and keeping in view the law laid down by a Constitution Bench of this Court in the case of Indra Sawhney v. Union of India[4] as well as Valsamma Paul v. Cochin University & Ors.[5]. The learned single Judge in the case of Pushpa (supra) also considered another judgment of Delhi High Court, in the case of Tej Pal Singh (supra), wherein the Delhi High Court had already taken the view that the candidature of those candidates who belonged to the S.C. and S.T. categories could not be rejected simply on account

of the late submission of caste certificate.”

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"18. In our considered view, the decision rendered in the case of Pushpa (supra) is in conformity with the position of law laid down by this Court, which has been referred to supra. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in the cases of Indra Sawhney and Valsamma Paul (supra) wherein this Court after interpretation of Articles 14,15,16 and 39A of the Directive Principles of State Policy held that the object of providing reservation to the SC/ST and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39A of the Directive Principles of State Policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench, thus, erred in reversing the judgment and order passed by the learned single Judge. Hence, the impugned judgment and order passed by the Division Bench in the Letters Patent Appeal No. 562 of 2011 is not only erroneous but also suffers from error in law

as it has failed to follow the binding precedent of the judgments of this Court in the cases of Indra Sawhney and Valsamma Paul (supra). Therefore, the impugned judgment and order passed by the Division Bench of the High Court is liable to be set aside and accordingly set aside. The judgment and order dated 24.11.2010 passed by the learned single Judge in W.P. (C) No. 382 of 2009 is hereby restored."

9. In the light of the law laid-down by the Hon'ble Apex Court in the aforesaid Judgment, the writ petition deserves to be allowed and the selection and appointment of the 5th respondent as a consequence is required to be set aside. Hence, the following order:-

1. The writ petition is allowed.
2. The selection and appointment of the 5th respondent to the post of Anganavadi Karyakatha to Mavinakatte Anganavadi Center, is set aside.
3. Respondents No. 2, 3 & 4 are directed to consider the case of the petitioner for appointment, if she is otherwise eligible apart from ineligibility that is now set aside by this Court within three months from the date of receipt of a copy of this order.

4. In the event the petitioner suffers from any other ineligibility for appointment to the post in terms of guidelines, the appointment of the 5th respondent shall not be disturbed.”

3. Undisputedly, respondent no.5 has subsequently uploaded the caste certificate before the final order was issued appointing the present appellant and earlier she was not able to upload the caste certificate out of inadvertence and it is not a case where she was not having a caste certificate at the time the documents were uploaded. The form submitted by respondent no.5 is also on record and in the form, she has categorically stated that she belongs to Scheduled Caste, meaning thereby right from day one while submitting her application form she has disclosed that she belongs to scheduled caste only. It was not a case where she has not mentioned her caste in the form. She was not able to upload her caste certificate on account of technical glitches/inadvertence. In those circumstances, the learned Single Judge has allowed the writ petition.

4. In the considered opinion of this Court, as respondent no.5 has disclosed right from day one that she belongs to scheduled caste and on account of technical glitches she was not able to upload the caste certificate, this Court does not find reason to interfere with the order passed by the learned Single Judge.

5. Undisputedly, respondent no.5 is more meritorious than the present appellant keeping in view the finding of facts arrived at by the learned Single Judge and as also reflected from the record. The State Government has later on issued the appointment order keeping in view the merits as well as the caste certificate in favour of respondent no.5, and therefore, this Court does not find any reason to interfere with the order passed by the learned Single Judge. The writ appeal is accordingly dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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