

IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU
Present Dr. Pawan Kotwal, IAS.

File No.	Date of Institution	Date of Decision
87/Revision Petition 2013-2014	07.02.2014	08-04-2017

Anju Bala (deceased) W/o Sanjeev Singh R/o Mohra Kharkanna of Village Sewa Jhagir Tehsil and District Rajouri.

.....Petitioner.

V/S

1. Deputy Commissioner Rajouri
2. Assistant Commissioner (Revenue) Rajouri
3. Programme Officer ICDS Rajouri
4. Tehsildar Rajouri
5. CDPO Budhal

..... Respondents.

6. Babli Devi, W/o Anil Kumar, R/o Mandhian, Tehsil and Distt. Rajouri.

Pvt. Respondent.

In the matter of:

Revision against the Order No. SQ/1145-56 dated 30.01.2014 passed by Ld. Deputy Commissioner Rajouri where by Mohra certificate issued by Tehsildar Rajouri in favour of petitioner bearing No. STG/RC/373 dated 27-07-2010 has been cancelled ex-parte without notice to the petitioner; for setting aside impugned order dated 30-01-2014 and consequently restoring/reviving Mohra certificate bearing No. STG/RC/373 dated 27-07-2010.

Prayer for setting aside the same.

ORDER

This revision petition has been filed on 07-02-2014 against the order dated 30-01-2014 passed by the Deputy Commissioner Rajouri before this court and prayed for setting aside the same.

1. The brief facts of the case are that the petitioner hails from village/ W. No. 4 namely Sewa Jhagir of Panchayat Sagote of ICDS Block Kotranka Budhal. The petitioner has applied for the post of Angarwari worker in Angarwari Centre Kharkanna and being eligible she was selected by the selection committee. Thereafter, she was dully appointed/ engaged as Angarwari worker by the CDPO Kotranka (Budhal). A mode of certificate was issued in favour of the petitioner by the Tehsildar Rajouri on 27-07-2010. However, vide communication dated 23-02-2013 Tehsildar Rajouri verified the set certificate as genuine. Later on Assistant Commissioner Revenue Rajouri vide he is order dated 30-01-2014 cancelled Mohra certificate issued in favour of the petitioner. This is alleged to have been done by Assistant Commissioner Revenue Rajouri by exercising the power of Deputy Commissioner Rajouri without providing opportunity of being heard to the petitioner. The petitioner has challenged the order dated: 30-01-2014 on the following grounds:-
 - a) That impugned order dated 30-01-2014 is against law and facts hence being vitiated are liable to be quashed.
 - b) That impugned order bearing No. SQ/1154-56 dated 30-01-2014 is on the face of it is without jurisdiction. It is submitted the Assistant Commissioner (Revenue) Rajouri has exercised powers of D.C Rajouri under political influence and as such the impugned order is a nullity in the eye of Law hence merits to be set aside. That the impugned order has been passed in total violation of principles of natural justice. The respondent Deputy Commissioner/ Assistant Commissioner (Revenue) Rajouri has not issued any notice to the petitioner before canceling Mohra certificate nor granted her an opportunity of being heard. So the impugned order being in breach of principles of natural justice is liable to be quashed.
 - c) That petitioner is eligible and meritorious petitioner resides in Sewa Jhagir in which Anganwari centre Kharkanna is located. A copy of election Card which in itself is a valid document and authentic document

in proof of residence of petitioner makes it crystal clear that petitioner fulfills eligibility of residence in concerned ward. The Pvt. Respondent has filed a base less application in the name of Lamberdar and Chowkidar concerned making a wrong assertion there in that petitioner is resident of Mohra Kote instead of Mohra Sewa Jhagir and the application of Pvt. Respondent is totally baseless hence deserved rejection. Yet the court below under political influence and for extraneous considerations has passed impugned order in mechanical manner in total violation and utter disregard of principles of natural justice. The impugned order is per se illegal, violative of principles of natural justice and perverse hence merits to be set aside and consequently the Mohra certificate of petitioner deserve to be revived. That a legal right has accrued to the petitioner which cannot be taken away in a perfunctory manner as has been wrongly and illegally done by the court below. Since petitioner has been working as Anganwari worker consequent upon selection and appointment by the competent authority as such it would be in the interest of justice to stay the operation of impugned order and so also operation of notice dated 06-02-2014 issued by CDPO Budhal and in the meanwhile restrain respondents from dis engaging the petitioner till disposal of the revision petition which relief if not granted petitioner shall be petitioner to an irreplaceable loss.

- d) That petitioner has under gone job training course of Anganwari worker for one month at Jammu. The Pvt. Respondent is less meritorious than the Petitioner. Pvt. Respondent is in eligible and stands married another village Mandhian but on the basis of political influence has by fraud and manipulation illegally got certificate of petitioner cancelled. In the peculiar facts and circumstances of the case the impugned cancellation order dated 30-01-2014 is not sustainable in Law. In the peculiar facts and circumstances petitioner prays for summoning of record from the court below.

2. The counsel for respondent filed written arguments wherein it has been submitted that:-

- a. That vide advertisement notice No. ICDS/BK/Adv/012/111-13 dated 05.06.2012, the Child Development Project Officer ICDS Project Budhal invited applications on prescribed Performa from the eligible female candidates for Anganwadi workers on honorarium basis for Anganwadi Centers in respect of ICDS Project Budhal on the basis of Hamlets/ Mohras including 01 post for Hamlet Kharkana, Panchayat Sagote.
- b. That the private respondent who was eligible for being engaged as Anganwadi worker applied for the said post for Mohra Kharkana, Panchayat Sagote in response to the advertisement notice & the Programme officer ICDS, Rajouri published list of candidates for the post of Anganwadi worker interviewed on 15.10.2012 of Project Budhal Head Quarter Koteranka advertised vide advertisement notice.
- c. That select list was declared by the board comprising of child Development Project Officer ICDS Projects, Budhal (member Secretary of selection Committee), District Social Welfare Officer Rajouri (member selection committee), and District Programme officer ICDS Projects, Rajouri (Chairman Selection committee). A perusal of the select list enclosed as Annexure-R3 reveals that neither the petitioner nor the private respondent were selected for the post of Anganwadi worker advertised for Mohra Kharkana, Panchayat Sagote and one Kavita Rani D/o Ashok Kumar was selected for the post and her name figured at serial No10 of the select list. It is submitted here that said Kavita Rani did not join and the said post was given to the petitioner without any notification to this effect despite fact that pursuance to the advertisement notice the petitioner was not eligible for the engagement of Anganwadi worker as she did not belong to Mohra Kharkana, Panchayat Rajouri vide No. STG/RC/373 dated 27.07.2010.
- d. That the village body of Mohra Kharkana Panchayat Sagote when came to know that a candidate from another Mohra i.e Kote of Village Sagote has been engaged for the said post, they filed a complaint on 09.12.2013 in the office of Deputy Commissioner Rajouri which was forwarded to Tehsildar Rajouri who made a report on 16.12.2013 to the effect that on enquiry and after taking the report from Patwari it has been established that petitioner Anju Bala is not residing in Mohra Kharkana of Panchayat Sagote and he further reported that the concerned Chowkidar and Lambardar also confirm that petitioner Anju Bala is not the resident of Mohra Kharkana Panchayat Sagote.
- e. That the Deputy Commissioner, Rajouri vide his letter No. SQ/1013 dated 18.12.2013 again wrote to Tehsildar Rajouri that in case the petitioner was not the resident of Mohra Kharkana Panchayat Sagote then to which Mohra she belonged.

- f. That in pursuant to order of Deputy Commissioner, the Tehsildar vide his letter NO. OQ/685 dated 28.12.2013 after holding detailed enquiry into the matter and seeking report from Patwari concerned and confirming from Lambardar, Chowkidar and other respectable of the village came to the conclusion that petitioner Anju Bala was not the resident of Mohra Kharkana of Village Sewajagir.
 - g. That the resolution of Panchayat Sagote also confirmed vide resolution that the resolution that the petitioner Anju Bala was not the resident of Mohra Kharkana.
 - h. That the Deputy Commissioner Rajouri in the matter submitted above did not hold the enquiry once but got the matter enquired twice and after thorough enquiry abundance evidence has been collected against the petitioner Anju Bala and her Mohra certificate was cancelled. The petitioner has not brought on record any documentary evidence to contradict the oral and documentary evidence to contradict the oral and documentary evidence produced by the private respondent and corroborated by the official reports.
 - i. That it is well settled law that question of fact cannot be raised in revision petition where only question of law and public importance can be raised. The perusal of the memo of revision petition clearly shows that neither any question of law much less a substantial question of law or of public importance has been pleaded in the revision petition. As a matter of fact the petitioner by filing the present revision petition and obtaining interim directions has blocked the engagement of private respondent.
 - j. That the engagement of the petitioner is otherwise not in accordance with law as she could not produce the permanent residence certificate upto the date of her engagement. It is settled residence certificate upon the date of her engagement. It is settled law that in case the under process certificate is attached at the time of the filing of the application, the certificate duly signed by the competent authority has to be produced by the candidate before the selection. This has not been done in the present case which vitiates her engagement order.
 - k. That the petitioner even could not produce her ration card of Village Sewa Jagir as is verified by Tehsil Supply Officer Consumer Affairs and public Distribution Rajouri vide his certificate dated 25.03.2014 after verifying the list of ration holders of the village according to census of 2001-2002.
3. The case came up for hearing. Counsel for the Parties present. I have heard both the parties & record placed on file is examined which shows that the contention between the parties is with regard to Mohra/Hamlet Certificate issued by Tehsildar concerned in favour of petitioner and thereafter on the application of inhabitants of Village Sewa Jagir, & on the reports of Tehsildar Rajouri, the same has been cancelled by D.C. Rajouri without providing opportunity of being heard to the petitioner herein which is against the principle of Natural Justice & any order passed at the back of affected party is nonest and deserves to be set aside.
 4. It has been observed from the copy of voter list of Panchayat Election produced by the counsel for petitioner that names of petitioner, her husband Sanjay Singh and father in law Babu Ram exists in the Voter list of Panchayat Halqa Sagote with Polling Station / Ward Kharkana which substantiates her claim for the post of Anganwari Worker.
 5. It has also been found from the copy of certificate issued by *SK Secular Educational Trust (REGD.) Sainik Colony Jammu* that the petitioner has under gone job training course of Anganwari worker with effect from 23-12-2013 to 18-01-2014 & has successfully completed it.
 6. In view of what has been discussed above, this court has come to the conclusion that the order passed by the court below is not based on facts and thus not tenable in the eyes of law.

Hence the revision petition in hand having merit is allowed & order impugned dated 30-01-2014 is set aside. A copy of this order along with record file be sent to court below for information and further necessary action.

Stay issued, if any, shall stand vacated. The case file be consigned to records after due completion.



(Dr. Pawan Kotwal) IAS
Divisional Commissioner,
Jammu

Announced

08-04-2017