



**IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU**  
**Present: (Dr. M.K. Bhandari) IAS**

File No.

*92/Revision*  
*2016-17*

Date of Institution

*27-2-2017*

Date of Decision.

*26-8-2017*

1. Saloni Devi, Age 34 years, W/o Dheeraj Kumar, R/o Village Ward No. 7, Devi Vani Adda-III, Tehsil Majalta, District Udhampur.

....(Petitioner)

**VERSUS**

1. Deputy Commissioner Udhampur.
2. District Social Welfare Officer, Udhampur, (Member Secretary of Selection Committee)
3. District Programme Officer , ICDS Projects, (Chairman Selection Committee) Udhampur
4. Child Development Project Officer, (Member Secretary Selection Committee) Udhampur.
5. Subash Dogra Assistant Commissioner Revenue Udhampur.
6. Neelam Kumari W/o Sh. Ram Pal, R/o Village Part -II Ward NO. 8, Devi Vani Adda, Tehsil Majalta, District Udhampur.

(Respondents)

Appearing Counsel:

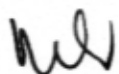
1. Adv. Gagandeep Sharma for petitioner.
2. Adv. Pawan Kumar Kotwal for respondent No. 6

**In the matter of:** Revision Petition under Government Order No. 07 SW of 2010 dated 18.01.2010, against judgement/ order No. 1159-60/ARA/DCU Dated 21.02.2017 passed by Ld. Deputy Commissioner Udhampur.

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## ORDER

1. The present revision petition has been filed against judgement / order No. 1159-60/ARA/DCU dated 21-02-2017 passed by Ld. Deputy Commissioner Udhampur. The brief facts of the case are that the office of Child Development Project Officer, ICDS Project, Majalta, District Udhampur inviting applications from eligible female candidates for engagement as Anganwadi workers on honorarium basis, vide an advertisement notice issued vide No. DIP/J-5697/12 in the year 2012, from inter-alia Panchyat Thalora for which the name of village and sanctioned Anganwadi Centre/ Hamlet was mentioned as Devi Bana Adda III. Smt. Saloni Devi W/o Dheeraj Kumar was selected by the Selection Committee. The selection was challenged by Smt. Neelam Devi before the Hon'ble High Court which disposed off the petition on 09-09-2016 directing Deputy Commissioner, Udhampur to dispose of the matter by treating the representation filed by the petitioner as an appeal. The issue relates to the fact that the selected candidate Smt. Saloni Devi belonged to Ward No. 7 and not Ward No. 8, which had been shown as the location of the Anganwadi Centre for which the selection was being made. The Deputy Commissioner vide Order No. 1159/60/ARA/DCU dated 21-02-2017 directed issuance of fresh orders of engagement in favour of Smt. Neelam Kumari W/o Shri Ram Pal, R/o Thalora, W. No. 8 Block Majalta for the advertised post against which Smt. Saloni Devi W/o Dheeraj Kumar R/o W. No. 7 had been engaged by extraneous considerations. The order of Deputy Commissioner, Udhampur has been challenged by Smt. Saloni Devi through the present revision petition.
2. The grounds for the petition are:
  - i) That the said action of respondents is in absolute derogation to the legal, statutory and fundamental rights of the petitioner. The issues settled against them are totally illegal and improper as such patently hostile and discriminatory.



- ii) That the orders impugned deserve to be quashed on the lead ground of the very ambit and scope of advertisement notice No. DIP/J-5697/12 on 19.01.2015 and Govt. Order No. 07-SW of 2010 dated 18.01.2010. The fourth Para in the eligibility conditions of the advertisement notice is reproduced as under:

***"4 The candidate should belong to the hamlet where the Anganwadi center is sanctioned/ located. If a suitable candidate is not available in that Hamlet, the candidate should be selected from the revenue village of which the said Hamlet is a part. Likewise if no suitable candidate from adjoining revenue village is selected on this basis of inter-se-merit".***

Similar is the criteria laid down in Government order NO. 07-SW of 2010 dated 18.01.2010 which is reproduced as below:

***"The candidate should belong to the Hamlet where the Anganwadi center is sanctioned/located. If a suitable candidate is not available in that Hamlet, the candidate should be selected from the revenue village of which the said Hamlet is a part. Likewise if no suitable candidate in that revenue village, a candidate from adjoining revenue village is selected on the basis of inter-se-merit".***

- iii) That the order dated 21.02.2017 passed by respondent no. 1 is passed without due application of mind because respondent no. 1 has simply confirmed the report of respondent No. 5. A bare perusal of the order impugned reveals that respondent No. 1 has acted more or less a rubber-stamp of the respondent No. 5. While respondent No. 1 has neither bothered to go on spot and ascertain the spot position nor applied his mind to the case in hand. Whereas exclusive criteria laid down in advertisement notice as well as prevalent government order.


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- iv) That even if it is presumed that the posts are ward wise, even then respondent No. 6 has no locus to file case for appointment as there are other candidates who have applied in ward no. 8 who are more meritorious in ward no. 8. But the posts are hamlet wise and the revision petitioner is resident of Hamlet Devi Bana Adda III.
- v) That the revision petitioner has been working from the last two years to the best satisfaction of the department and the intent of the scheme is the service of the centre at the earliest.
- vi) That the order impugned is further bad in law as it does not mention the objections of the revision petitioner when these were accepted by the Deputy Commissioner on 24-10-2016. Even the revision petition was not associated with the enquiry so that she could answer the material questions put to her. The order impugned runs in full-face of the settled legal position that a judgment-on-merits cannot be passed at the back of a party to the litigation. The petitioner fully contests the said judgment, findings recorded therein and the rationale, justification in delivering the said judgment.
- vii) That the order impugned further deserved to be trashed on the additional score that the department Social Welfare and grounds staff of Child Development Project was not associated with the enquiry. This is surprising that the order is passed without going through the norms of selection of the department. The order impugned seem to have been passed in a cursory and mechanical way, hence deserves to be quashed in limine. The order impugned seems to have been passed in a hush-hush manner with a motive of turning tables against the poor, innocent petitioner.
- viii) That the petitioner is invoking revisionary powers in terms of Government order No. 07 SW of 2010 dated 18-01-2010. The orders impugned do not

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stand the litmus test of law, logic and legal permissibility, as such, require to be quashed.

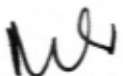
3. The counsel for respondents filed objections to the petitioner wherein it has been submitted that:
  - a) As per the advertisement notice no. DIP/J-5697/72, the post of AWW was for Devi Bani Adda-III in ward no. 8 of Village Thalora.
  - b) Petitioner is resident of ward No. 7 Devi Bani Adda-II and the same is quite clear from the copy of voter list of panchayat elections whereas petitioner by misrepresenting of facts obtained a certificate from Tehsildar that she belongs to ward no. 8.
  - c) Both the wards are divided by Dhar Road. Ward no. 7 falls on one side of the Dhar Road and Ward no. 8 falls on the other side.
  - d) A Commission constituted by Deputy Commissioner Udhampur vide order dated 26.09.2016 for spot verification enquiry has conducted the enquiry and has observed that then selection committee has violated the norms and engaged Saloni Devi Wife of Dheeraj Kumar resident of Ward. No. 7, Block Majalta as Anganwari Worker in Contrary to the existing norms and in violation of the laid down criteria of the advertisement, thus rendering whole the selection process void ab initio.
  - e) Tehsildar Majalta who issued certificate to the petitioner was one of the members of the commission, who recommended in enquiry report ouster of the revision petitioner and that certificate obtained by misrepresentation does not create any right in favour of the revision petitioner when the Tehsildar Majalta was not competent to issue any such order.
  - f) Both the parties were present on spot along with relatives when enquiry was made and statement of the witnesses were recorded and both the parties



were asked to submit their record to the enquiry commission, now the revision petitioner cannot take U-turn after participating in the enquiry committee.

g) The revision petition has no case in terms of the enquiry commissioner report and the revision petitioner has not challenged the enquiry report of the commission but only an official communication dated 21.02.2017, and therefore, the revision petition has no merit.

4. The case came up for hearing. Counsels for both the parties present. Counsel for petitioner reiterated the grounds taken in the memo of petition and further pleaded that selection of AWC is to be made as per 1(b) and 3(c) of Government Order No. 7-SW of 2010 dated 18-01-2010. He stated that there is no mention of word "Ward" and moreover in the Award Sheet Remarks column, it has been mentioned that all the applicants are residents of Devi Bani Add-III. So there is no question of Ward being a criterion for selection. Moreover, the petitioner is more meritorious than the respondent. He pleaded that even if presumed that the posts are ward wise, though not admitted, even then the respondent No. 6 has no locus to file case as there are other candidates who have applied in ward 8 and are meritorious.
5. On the other hand the counsel for respondent, in addition to his objections filed to the revision petition, contended that only the candidates of Ward no. 8 are eligible as per advertisement and no candidate other than the one belonging to Ward No. 8 can apply for the said post. He further contended that voter list of panchayat elections shows that there is a separate Devi Bani Adda-III, which also contradicts the report of Tehsildar Majalta wherein it has been concluded that there is only one Devi Bani Adda. He prayed upholding the order of DC Udhampur dated 21-02-2017.



6. I have heard the arguments of both the parties and examined the record. The basic dispute revolves around whether Ward is a criteria for selection of the Anganwadi worker for a particular centre.
7. I have gone through the advertisement notice No. DIP/J-5697/72 and the eligibility criteria mentioned therein which reads as below:

1. Age as on 01-01-2012 (18-44 Years)
2. The applicant must be permanent resident of J&K State.
3. Minimum qualification for Anganwardi worker shall be Matriculate and in case no Matriculate candidate is available, Middle Class candidate shall be considered. Middle pass certificate must be countersigned by the concerned Zonal Education Officer.
4. The candidate should belong to the Hamlet where Anganwadi centre is sanctioned/ located. If a suitable candidate is not available in that Hamlet, the candidate should be selected from the Revenue Village of which the said Hamlet is a part. Likewise, if no suitable candidate in that revenue village, a candidate from adjoining revenue village is selected on the basis of inter-se merit.

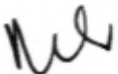
The advertisement notice in its opening states as below:

Applications are invited on the prescribed performa from the eligible female candidates for engagement as Anganwadi worker on honorarium basis for Anganwadi centres in the village/ Hamlet of Block Majalta District Udhampur as per the detail given below:

S. No.	Name of Panchayat	Name of Village where AWC	Name of sanctioned AWC/ Hamlet	Ward No.
1.	Cheani	Nagrota Tajoer	Nagrota Tajoer	05
2.	Thalora	Devi Bana Adda III	Devi Bana Adda III	08



8. From the plain reading of the eligibility criteria at Serial No. 4, it is clearly evident that the candidate should belong to the Hamlet where the Anganwadi Centre is sanctioned/ located. The advertisement notice brings out the name of the sanctioned Anganwadi Centre under reference as Devi Bana Adda III. There is no other locational criteria mentioned in the advertisement notice. There is no reference to Ward No. being a criteria for preferential selection.
- The only reference to Ward No. is in the last column, which goes by indicating the exact location of the Anganwadi Centre. However, this cannot be presumed to be the basis for selection of Anganwadi workers, for which that the advertisement notice clearly lays out that Hamlet is the unit for selection and that the candidate should belong to the Hamlet where Anganwadi Centre is sanctioned/ located. The advertisement notice nowhere mentions that Ward would be a criteria for selection.
9. The entire exercise and arguments have revolved around determining the Ward to which the selected candidate Smt. Saloni Devi belongs. It would have been useful to stick to the advertisement notice criteria while addressing the issue. The candidates who have applied for the post based on the advertisement notice are presumed to have accepted and to be abiding by the criteria laid out therein. They cannot, after going through the selection process, question the advertisement criteria. The advertisement issuing authority is well within its rights to determine the criteria and publish the same for prospective candidates. In the instant case there is no ambiguity as to what is the eligibility criteria vis-à-vis the place of residence of a candidate. The advertisement notice clearly brings out "Hamlet" as the criteria for a candidate to be residing in, rather than a "Ward".
10. The genesis of the advertisement can also be traced back to the Government Order No. 07-SW of 2010 dated 18-01-2010 issued by the Social Welfare Department. In para 3 (e) pertaining to the criteria for selection of Anganwadi worker, the Government Order reads as below:



**"The candidate should belong to the Hamlet where Anganwadi centre is located. If a suitable candidate is not available in that Hamlet, the candidate should be selected from the Revenue Village of which the said Hamlet is a part. Likewise, if no suitable candidate in that revenue village, a candidate from adjoining revenue village is selected on the basis of inter-se merit".**

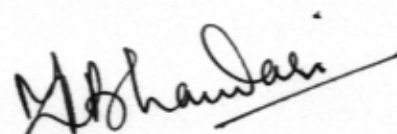
11. Thus there is no ambiguity on the part of the Government while issuing the criteria for selection of Anganwadi workers and it has frozen "Hamlet" as the basis as far as the place of residence of a candidate is concerned.
12. The entire exercise undertaken by DC Udhampur by constituting a Commission headed by Assistant Commissioner Revenue, Udhampur was based on the presumption of "Ward" being the criteria for selection of Anganwadi worker. The report of the Commission has again discussed Ward as the basis of selection. That is where the entire genesis of this confusion lay. The advertisement notice and the Government Order which list out the criteria was in a way ignored, and the investigative approach was focused in a direction alien to the requirements of the advertisement notice. There was an emphasis on over interpretation of the criteria, which otherwise was straight and simple.
13. There has also been an argument that Tehsildar is not competent to issue the resident certificate. However, at this stage, there is again a need to revert to the advertisement notice, which at Serial No. 13 (e) provides that proof of residence (Hamlet) as the case may be is to be obtained from the Tehsildar concerned from Revenue Department. Therefore, the certificate issued by Tehsildar in this regard is the one which needs to be relied upon by the advertising department i.e. ICDS Project. It may be seen that Tehsildar, based on his field report and assessment, after re-verification, informed the Programme Officer, ICDS that the

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candidate in question Smt. Saloni Devi, inter-alia others belongs to Devi Bana Adda III Hamlet.

14. Though the respondent has based her claim on "ward" as the selection criteria and the report of Commission constituted by DC Udhampur, this court finds no merit in the claim.
15. In light of the above discussions, when the selection criteria was itself defined by the advertisement notice, there was no scope for further interpretation and extrapolation. This court is of the view that the selection made by CDPO was strictly as per the advertisement Notice No. DIP/J-5697/12. But the court below, has taken "ward" as the unit for selection which is not tenable and deserves to be set aside. The selection of the candidate Smt. Saloni Devi W/o Dheeraj Kumar done by the CDPO was rightfully made.
16. In view of the above facts and circumstances the petition having merit is allowed and the order No. 1159- 60/ARA/DCU dated 21.02.2017 passed by Deputy Commissioner, Udhampur is set aside. A Copy of this order along with record file be sent to DC Udhampur for information. A copy be also forwarded to CDPO Udhampur.
17. Stay issued, if any, shall stand vacated the case file be consigned to records after due completion.

**Announced**

  
(Dr. M. K. Bhandari) IAS  
Divisional Commissioner  
Jammu