

(2015) 08 OHC CK 0043
In the Orissa High Court
Case No : Writ Petition (C) No. 8942 of 2015

Ajitesh Singh

APPELLANT

Vs

Kendriya Vidyalaya Sangathan and Others

RESPONDENT

Date of Decision : 18-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(17)(h)
Criminal Procedure Code, 1973 (CrPC) — Section 24

Citation : (2015) 2 ILR Ori 785

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : U.C. Mohanty, S. Pattanayak and R.R. Satpathy, for the Appellant;
H.K. Tripathy, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Dr. B.R. Sarangi, J—Against the refusal of the opposite parties to admit the petitioner in Class-I in Kendriya Vidyalaya-2, Madhupatna, Cuttack during the academic session 2015-16, the petitioner has approached this Court through this Writ petition.

2. The short facts of the case, in hand, are that pursuant to notification issued by the Kendriya Vidyalaya Sangathan under the Ministry of HRD, Department of Education, New Delhi dated 16.01.2015 schedule for admission into Class-I in Kendriya Vidyalaya for the academic session 2015-16 has been intimated to the Principal, KVS/all the Regional Offices with request to circulate the same amongst the KVS under their jurisdiction. After such notification, the petitioner applied for his admission into Class-I in Kendriya Vidyalaya-2, Madhupatna, Cuttack. On consideration of his application, the Selection Committee of Kendriya Vidyalaya prepared a list of selected candidates in which the petitioner's name found place at Sl. No. 8 of the waiting list in Annexure-2. Subsequently, the provisional selection list was prepared wherein his name was found place at Sl. No. 7. Consequently, the petitioner's father was called upon by the School

authority on 02.05.2015 to remain present on 05.05.2015 between 9 AM and 11 AM along with all original documents accompanied by the child and his mother. On the date fixed, the petitioner's father appeared before the school authority along with required documents, but opposite party No. 4 informed that his son cannot be admitted into his school. The petitioner's father being an Addl. Central Govt. Standing Counsel appointed by Central Govt. for Central Administrative Tribunal, Cuttack Bench, Cuttack, the petitioner could not have been denied such admission. Hence, this Writ petition.

3. Mr. U.C. Mohanty, learned counsel appearing for the petitioner states that the petitioner's father being a practicing advocate and at present working as an Addl. Central Govt. Standing Counsel for Central Administrative Tribunal, Cuttack Bench, Cuttack is placed in the priority category-1 as per the admission guidelines of the opposite parties. Even though the petitioner was selected but subsequently, the said selection was rejected on the ground that the petitioner could not produce the document that the father of the petitioner is a regular Central Government employee under Ministry of Law and Justice Department, Government of India as per the service certificate filed along with the application form. Therefore, his case cannot be considered under the priority category-1 for admission into the Kendriya Vidyalaya-2, Cuttack. He submitted that the petitioner's father was discharging the public duty being a Public Officer as defined under Section 2(17)(h) of the Civil Procedure Code, 1908. He was holding an office of profit and as such as per the provisions contained under Section 24 of Cr.P.C., 1973, the petitioner's father being a Public Prosecutor, having a special status and getting statutory appointment, he can be considered under category-1 of the guidelines issued by the Central Government Authority and without considering the same, denial of admission of the petitioner on the plea that the petitioner's father is not a regular Central Govt. Employee, cannot be sustained in the eye of law. To substantiate his contention he has relied upon the judgment of the apex Court in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, AIR 1991 SC 537 : (1990) 4 JT 211 : (1991) 1 SCC 212 : (1990) 1 SCR 625 Supp : (1991) 1 UJ 645 , in Mahadeo Vs. Shantibhai and Others, (1969) 2 SCR 422 .

4. Per contra, Mr. H.K. Tripathy, learned counsel appearing for the opposite party Nos. 1 to 4 raised a preliminary objection that the writ petition is to be dismissed on the ground of suppression of material facts and non-disclosure of fact is more serious and further by adhering deliberate to falsehood by filing a false affidavit. As such any party not approaching the Court in clean hand is not entitled to get any relief. If the petitioner's name was included in the select list by mistake construing his father as a Central Govt. Employee, that mistake can be rectified by the authority. Therefore, no illegality or irregularity has been committed by the authority in rejecting the claim of the petitioner to get admission into the Class-I of Kendriya Vidyalaya-2, Madhupatna, Cuttack.

5. The facts pleaded above reveals that the petitioner's father applied for

admission of the petitioner into Class-I, Kendriya Vidyalaya-2, Madhupatna, Cuttack by furnishing documents. Considering the same the petitioner's name has been included in the waiting selected list in Annexure-2 at serial No. 8 and subsequently in the provisional select list in Annexure-3 at serial No. 7. On 02.05.2015 the petitioner's father was intimated to produce the relevant documents for consideration for admission of the petitioner into Class-I of Kendriya Vidyalaya-2, Madhupatna, Cuttack. On 05.05.2015, when the documents were produced, the petitioner's father who was appointed as an Addl. Central Govt. Standing Counsel by the Central Govt. for Central Administrative Tribunal, Cuttack Bench, Cuttack, was called upon to produce the salary certificate. He could not produce the same. Consequently, the authority denied the admission to the petitioner as his father does not come under the priority category-1 on the guidelines issued by the Kendriya Vidyalayas Sangathan.

6. Kendriya Vidyalaya Sangathan has framed a guideline for admission into Kendriya Vidyalayas which has been annexed as Annexure-F series to the counter affidavit filed by the opposite parties. Part-A of the General Guidelines under Clause-3, deals with priorities in admission which read as follows:--

PRIORITIES IN ADMISSION

The following priorities shall be followed in granting admissions:--

(A) KENDRIYA VIDYALAYA UNDER CIVIL/DEFENCE SECTOR:

1. Children of transferable and non-transferable Central government employees and children of ex-servicemen. This will also include children of Foreign National officials, who come on deputation or transfer to India on invitation by Govt. of India.
2. Children of transferable and non-transferable employees of autonomous Bodies/Public sector Undertaking/institute of Higher Learning of the Government of India.
3. Children of transferable and non-transferable State Government employees.
4. Children of transferable and non-transferable employees of Autonomous Bodies/Public Sector Undertakings/Institute of Higher Learning of the State Governments.
5. Children Nationals who are located in the India due to their work or for any personal reasons. The children of Foreign Nationals would be considered only in case there are no children of Indian Nationals waitlisted for admission.?

Admission into Kendriya Vidyalayas is governed by the guidelines framed by the Kendriya Vidyalayas in its letter and spirit. Pursuant to notification issued, the petitioner's father applied for admission of his son- the petitioner into Class-I of Kendriya Vidyalaya-2, Madhupatna, Cuttack. The said application was registered as Regd. No. 469 for the session of 2015-16 and annexed as Annexure-A series to the counter-affidavit filed by opposite parties. Under the heading ?SERVICE

CERTIFICATE? The Senior Panel Counsel, Central Administrative Tribunal, Cuttack Bench, Cuttack certified that the petitioner's father is working as a regular employee in the Office/Ministry of Law and Justice. He is a regular employee and the certificate given by Senior Panel Counsel, Central Administrative Tribunal, Cuttack Bench, Cuttack is quoted below.

?Certified that Shri Chandra Madhan Singh is working as regular employee in the Office/Ministry of Law and Justice. He/She is a regular employee of Central Govt. and his/her services are non-transferable/transferable anywhere in India.?

On the basis of such certificate the petitioner's case was considered for admission into Class-I for Kendriya Vidyalaya-2, Cuttack and his name was empanelled at serial No. 8 in Annexure-2 and subsequently, at serial No. 7 in Annexure-3. On 05.05.2015 when the petitioner's father was called upon to produce the service certificate, he could not be able to produce the same, as he is not a salaried employee of the Central Government, rather he produced his engagement order issued by Ministry of Law and Justice Department indicating that he is working as Addl. Central Govt. Standing Counsel for the Central Administrative Tribunal, Cuttack Bench, Cuttack. Due to non production of salary certificate, admission has been refused.

7. The moot question that arises for consideration is whether the Addl. Central Government Standing Counsel appointed by Central Government is to be considered as a Central Government employee under Sub-Clause (A)(1) of Clause-(3) of the General Guidelines Part-A.

8. Admittedly, the petitioner's father was appointed as Addl. Central Government Standing Counsel by the Central Government for Central Administrative Tribunal, Cuttack Bench, Cuttack. Though he has not been receiving regular salary, he has been paid remuneration by way of fees for his performance/legal duties in the Court of law. Being a Central Government Counsel he defends the Government action in the Court of law and as such, he is discharging the public duty.

9. Section 2(17)(h) of Civil Procedure Code, 1908 states ?Public Officer? means a person falling under any of the following descriptions namely:

?Xx xx xx

(h) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty;?

10. Section 24 of the Criminal Procedure Code, 1973 deals with Public Prosecutors. Under the code the Public Prosecutor has a special status and it is a statutory appointment and he receives a special recognition for the said purpose. The Law Officers of the High Court (Recruitment, Remuneration and Duties) Rules? 1974 also provides as under:--

?The G.A. A.G.A., S.C. Addl. S.C. shall be subject to Rule-171 of the Odisha Service Code in the matter of leave.?

11. It urged by Mr. U.C. Mishra, learned counsel for the petitioner that though essentially the Addl. Central Government Standing Counsel can not be treated as employee of the Central Government but the nature of duty he is discharging be termed as public duty and as such, he is an Public Officer having special statutory engagement to discharge as Public Prosecutor within the meaning of Sec. 24 of the Cr.P.C.

12. In Kumari Shrilekha Vidyarthi (supra) the Apex Court held that Public Prosecutors hold public office and since the Government Counsel are paid remuneration out of public exchequer, there exists a clear public element attached to the office or post. It was further held that under the Code of Criminal Procedure, 1973 the Public Prosecutor has a special status and it is statutory appointment. Since he receives a special recognition the apex Court held that the office of the Public Prosecutor is a Public Office and he performs a public duty.

13. In Mahadeo v. Shantibhai and others (supra), the Apex Court considered the character of engagement of a Government Counsel, where it was held that the lawyer engaged by the Railway Administration during continuance of engagement hold an "OFFICE OF PROFIT". It is urged that since the engagement of Railway Counsel is similar to that of the Government Counsel in Central Administrative Tribunal and the petitioner's father having hold the office of profit, determination of the petitioner under category priority (A) (1) is justified. But such determination having been done on misinterpretation of the priority category, the mistake committed by the authority has been rectified. So far as the allegation made that the petitioner's father suppressed the material facts and nondisclosure of the fact is more serious, cannot sustain in the eye of law. On perusal of the application form it appears Clause-5 deals with details of mother and father. Sub-Clause-(ix) of Clause-5 deals with category of the parents, against which it has been mentioned as Addl. Central Govt. Standing Counsel(copy attached) and the petitioner's father has furnished his engagement order issued by Central Government as an Additional Central Government Standing Counsel. From that it cannot be construed that the petitioner's father has suppressed any fact before the authority. At best it can be said that the selection committee while considering the case of the petitioner has misconstrued as if the petitioner's father is an employee of the Central Government and enlisted the name of the petitioner in waiting list in Annexure-2 and subsequently in Annexure-3. The allegation with regard to deliberate falsehood of filing false certificate must be rectified effectively, is not applicable in the present context. With regard to the contention that the mistake can be rectified by the authority, it may be said that if the authority has erroneously included the petitioner's name in the merit list prepared by them, the same can be rectified in view of judgment referred by the Apex Court U.T. Chandigarh & others v. Gurucharan Singh & Another, 2014 (2) S.L.J. (S.C.) 301 . Maharashtra State Seeds Corpn. Ltd Vs. Haridas and Another, AIR 2006 SC 1480 : (2006) 109 FLR 291 : (2006) 3 JT 23 : (2006) 2 LLJ 107 : (2006) 2 SCALE 584 : (2006) 3 SCC 690 : (2006) 2 SLJ 433 : (2006) AIRSCW 1228 : (2006) 2 Supreme 385 and Dr. M.S. Patil Vs. Gulbarga University and

Others, AIR 2010 SC 3783 : (2010) 127 FLR 194 : (2010) 9 JT 132 : (2010) 10 SCC 63 : (2010) 10 SCR 232 : (2010) 6 SLR 782 : (2010) 8 UJ 3914 : (2010) AIRSCW 6459 .

14. Priorities in admission Clause-(A)(1) stated about the children of transferable and non-transferable Central Government employees and children of ex-servicemen. The question now comes for consideration is as to whether the Addl. Central Govt. Standing Counsel can be construed to be an employee under the Central Government so as to get the benefit of sub-Clause(A)(1) of Clause-3 of the guidelines. Certainly no master-servant relationship exists between the petitioner's father and the Central Government, rather being the petitioner's father has been appointed as a lawyer by the Ministry of Law and Justice Department to defend the Central Government in CAT. May it be, he is discharging the public duty as a public officer. More so, during the continuance of engagement he holds an office of profit, that ipso facto cannot be said that he is a Central Government Employee as there exists no master-servant relationship between the petitioner's father and the Central Government and as such he will not come within the parameters of sub-Clause-(A)(1) of Clause-3 of the Priorities in admission as per guidelines for admission into Kendriya Vidyalayas. Therefore, the petitioner is not entitled to get the benefit of admission as per Part-A of General Guidelines.

15. It appears that while entertaining this application, this Court passed an interim order on 07.05.2015 in misc. case No. 8724 of 2015 that as an interim, one seat in Standard-I in Kendriya Vidyalaya No. 2, Cuttack be kept reserved till final adjudication of the case. Mr. H.K. Tripathy, learned counsel for opposite party Nos. 1 to 4 states that in compliance to the order passed by this Court, one seat has been kept reserved in Standard-I, therefore, this Court is of the considered view that since the seat is lying vacant, if there is no other impediment, the opposite party may do well to accommodate the petitioner to prosecute his studies in the Standard-1 as special case.

16. With the above observation and direction, the writ petition stands disposed of.