
(2011) 05 OHC CK 0022
In the Orissa High Court
Case No : W.A. No. 435 of 2010

Alekha Sa

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-05-2011

Acts Referred:

Orissa Grama Panchayat Rules, 1968 — Rule 216, 242

Citation : (2011) 2 ILR (Ori) 578

Hon'ble Judges : V. Gopala Gowda, C.J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—This Writ Appeal has been filed with a prayer to review/modify the order dated 02.12.2010 passed in W.P.(C) No. 3653 of 2010 and to direct the Sarapanch, Chahagaon Gram Panchayat, district Kalahandi to allow the Petitioner to join in his work with all past service benefits. Learned Single Judge vide impugned order dated 02.12.2010 while disposing of the Writ Petition No. 3653 of 2010 ordered that if the Chahagaon Gram Panchayat is required to appoint a Panchayat Secretary, it shall invite applications from eligible candidates and if the Petitioner offers his candidature for the same, due weightage shall be given to his past experience.

2. The facts and circumstances giving rise to the present Writ Appeal in a nutshell are that the writ Petitioner was appointed as Secretary of Chahagaon Gram Panchayat on 19.10.1996. His appointment was duly approved by the District Panchayat Officer, Kalahandi. While he was continuing as such, he was asked to handover charge to one Chitrasen Sabar pursuant to direction of Respondent No. 4-B.D.O., Bhawanipatna vide letter No. 338 dated 27.02.1997 and accordingly, the Appellant handed over the charge to said Chitrasen Sabar on 05.03.1997, who was earlier appointed as the Secretary of the said Gram Panchayat and was dismissed from service because of his unauthorized absence. Being aggrieved of his dismissal from service Sri Chitrasen Sabar made a

representation to Respondent No. 1-Principal Secretary to Government, Panchayatraj Department, Orissa who, after considering his case, directed the Chahagaon Gram Panchayat to allow him to join as Secretary of the said Gram Panchayat and accordingly, Sri Sabar took charge from the Appellant on 05.03.1997. Considering the submissions of the Appellant-Petitioner that said Sri Sabar was promoted to the post of V.L.W. and the post of Secretary was lying vacant and this Court in an earlier order dated 27.11.2009 passed in OJC 6979 of 1997 directed that if the Petitioner makes a representation to the Collector, Kalahandi within a period of ten days from the date of that order, the Collector shall do well to hear and dispose of the same within three weeks from the date of receipt of the representation, the learned Single Judge passed the above order. Hence, the present appeal.

3. Learned Counsel Mr. S.K.Dalai appearing on behalf of the Appellant submits that the impugned order passed by learned Single Judge is contrary to the provisions contained in the Orissa Gram Panchayats Act, 1964. According to Mr. Dalai, there was No. order of removal of the Petitioner either by the Gram Panchayat or by the State Government. Therefore, the learned Single Judge should not have directed the Gram Panchayat for such fresh advertisement. Since the Petitioner was appointed as Secretary by the Gram Panchayat and his appointment was approved by the District Panchayat Officer under Rule 242 of the Orissa Gram Panchayat Rules, 1968, the cancellation of such appointment is illegal. The Appellant was removed illegally from the said post of Secretary of the Chahagaon Gram Panchayat without following the procedure prescribed under Rule 216 of the OGP Rules, 1968. Direction of the State Government to Sri Chitrasen Sabar to join as Secretary of the Gram Panchayat in question is illegal. The appointment of the Petitioner in the post of Secretary of the said Gram Panchayat was made after following the due procedure and his appointment is not temporary in nature. Removal of the writ Appellant from the post of Secretary of the Gram Panchayat in question on the ground that his appointment was temporary is not at all correct since the post of Secretary in a Gram Panchayat is not a civil post. The Government has No. role to play in the appointment and removal from the said post. Moreover, No. reasonable opportunity of hearing was afforded to the Appellant as provided under Rule 216(a) of the Rules, 1968 before removing him from the said post. Concluding his argument, Mr. Dalai submits that since in the meantime, Sri Sabar has been promoted to the post of V.L.W. and the post of Secretary of the said Gram Panchayat is lying vacant, the Appellant may be given appointment in that post.

4. Learned Addl. Government Advocate supporting the impugned order submits that there is No. infirmity or illegality in the impugned order passed by the learned Single Judge. Therefore, he prays for dismissal of the Writ Appeal.

5. In the instant case, the writ Appellant was appointed in the post of Secretary of the Gram Panchayat in question after participating in the interview conducted for the said post for which an advertisement had been floated in the public. After

due approval, the Appellant has joined as Secretary of the said Gram Panchayat where Sri Chitrasen Sabar was previously working and removed subsequently. On the direction of the State Government, the Gram Panchayat reappointed Sri Chitrasen Sabar and removed the writ Appellant. Admittedly, in the meantime, Sri Chitrasen Sabar has been promoted to the post of V.L.W. and the said post of Secretary has been lying vacant.

6. In that view of the matter, justice would be better served if the Appellant is allowed to join in the post of Secretary of Chahagaon Gram Panchayat without going for fresh selection. We direct accordingly. Needless to say that the Appellant is entitled to all pecuniary and service benefits for the period he has worked as Secretary of the said Gram Panchayat.

7. The writ appeal is allowed to the extent indicated above.

8. No order as to costs.