

(2016) 08 OHC CK 0004
In the Orissa High Court
Case No : W.P.(C) No.8750 of 2016

Baijayanati Naik

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 03-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 122 CutLT 878

Hon'ble Judges : S.N. Prasad, J.

Bench : Single Bench

Advocate : Mr. Amit Kumar Patnaik, AGA, for the Opposite Parties; M/s. Durgesh Narayan Rath and P.K. Rout, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

S.N. Prasad, J. - This writ petition is against the decision of the selection committee meeting dated 14.12.2015 (Annexure-6) and the order of disengagement dated 22.12.2015(Annexure-7).

2. Case of the petitioner in short is that in pursuance to the advertisement floated by the opposite party no.5 for filling up post of Anganwadi Worker in Tangianisha-II Anganwadi Centre in the year 2011, petitioner along with others had applied for the post by furnishing required documents. After due verification, the petitioner and the opposite party no.6 were found in the merit list at serial nos. 1 and 2 respectively. Since the petitioner was more meritorious than the opposite party no.6, she was selected by the selection committee and engagement order was issued.

Accordingly, petitioner joined as Anganwadi Worker for the in question, while the petitioner was working complaint was filed by the opposite party no.6 before the Additional District Magistrate, Angul, opposite party kno.3, by filing an appeal which was registered as Anganwadi Appeal Case No.28 of 2011. Notice was issued by the opposite party no.3 to the petitioner to appear before him in order

to adjudicate the appeal. Accordingly, the petitioner had appeared through her Advocate before the opposite party no.3. Appeal was disposed of vide order dated 3.3.2014 directing the Sub-Collector, Athamallik-cum-Chairman of the selection committee to convene selection committee meeting, place all relevant facts and findings before the committee and take final decision as per the government guideline without any delay.

As per the guideline dated 2.5.2007 power has been conferred upon the A.D.M. to adjudicate the appeal regarding the dispute arises out of selection and engagement of Anganwadi worker and as such it is incumbent upon the A.D.M. of the concerned district to adjudicate the appeal instead of referring the matter before the Chair-person of the selection committee, but the A.D.M. instead of deciding the appeal has referred the matter before the Sub-Collector vide order dated 3.3.2014 which is absolutely illegal and improper action on the part of the A.D.M. and by doing so he has not acted in terms of the power conferred upon him in the guideline dated 2.5.2007.

After the order having been passed by the A.D.M. dated 3.3.2014, opposite party no.6 has filed a writ petition before being W.P.(C) No.19722 of 2015 for issuance of direction upon the opposite party no.4 to comply with the order

3. After the order having been passed by the A.D.M. dated 3.3.2014 opposite party no.6 has filed writ petition before this Court being W.P.(C) No.19722 of 2015 for issuance of direction upon the opposite party no.4 to comply with the order passed by the opposite party no.3 dated 3.3.2014. This Court while disposing of the writ petition vide order dated 6.11.2015 has directed the Sub-Collector, Athamallik to comply with the order passed by the A.D.M. if at all the order is in operation.

Ground taken by the opposite party no.6 before the A.D.M. for quashing engagement of the petitioner that she is not residing within the centre area of the Anganwadi Centre in question, the opposite party no.3, A.D.M., Angul instead of conducting enquiry about correctness of allegations has referred the matter before the opposite party no.4 i.e. Sub-Collector to convene selection committee meeting, placed all relevant facts and finding who will take final decision as per the government guideline. It has been stated that once selection has been completed and engagement order has been issued, selection committee became functus officio to proceed with the selection when the same was not cancelled by the appellate authority.

Opposite party no.4 has convened meeting of selection committee behind back of the petitioner on 14.12.2015 and took decision that the petitioner is not eligible to continue as Anganwadi Centre in question. In view of the decision taken by the selection committee on 14.12.2015, opposite party no.5, C.D.P.O., has issued disengagement order against the petitioner vide letter No.612 dated 22.12.2015.

4. Petitioner being aggrieved with the order of disengagement and decision of the selection committee is before this Court by way of this writ petition on the

following grounds.

(i) A.D.M., Angul has not acted as per the guideline dated 2.5.2007 in which power has been conferred upon him to adjudicate the dispute regarding selection of Anganwadi Worker.

(ii) Selection committee has exceeded its jurisdiction by reopening the matter.

5. Learned counsel representing the state functionaries has vehemently opposed the submitted of the learned senior counsel representing the petitioner on the ground that whatever action has been taken, that is in pursuance to the order passed by this Court in W.P.(C) No.19722 of 2015. This Court has passed order in that writ petition taking into consideration the order passed by the A.D.M. dated 3.3.2014. The petitioner who is now aggrieved with the order of the A.D.M. dated 3.3.2014 not chosen to assail the said order before filing this writ petition, which has been filed after lapse of about more than two and half years.

6. A.D.M. has been conferred with the power of appeal, according to his view since the matter pertains to dispute regarding nativity of the petitioner and as such he in exercise of power has referred the matter before the Chairperson of the selection committee to place the entire facts before it, who in turn has directed to take decision to enquire strictly in accordance with the government guideline, this action of the A.D.M. cannot be said to be without jurisdiction.

Selection committee after taking into consideration of the entire record placed before him has found candidature of the petitioner as not perfect and on the basis of that, order of disengagement has been passed on 22.12.2015.

7. Submission has been made on behalf of the opposite party-State that selection committee cannot be said to be functus officio in view of the fact that there is direction passed by the A.D.M. in its appellate jurisdiction and by virtue of that order, decision taken by the selection committee has been reconsidered, it is not that the selection committee has suo motu reopened the entire matter.

It has been submitted that the petitioner has filed this writ petition in the month of May, 2016 while order passed by the A.D.M., Angul was on 3.3.2014, but she has not chosen to assail the same. Opposite party no.6 after waiting for about one and half years when the order passed by the A.D.M. has not been questioned, filed writ petition and this Court after taking into consideration the fact has directed the Sub-Collector to ensure compliance of the order passed by the A.D.M., Angul if it is still in operation and accordingly it is by virtue of the order passed by this Court, exercise has been completed by concluding selection process, in course thereof, petitioner has been disengaged.

It has further been submitted that the order of disengagement has been passed on 22.12.2015 and after lapse of six months this writ petition has been filed.

It has been submitted that since the matter pertains to engagement of Anganwadi Worker and it is the instruction of the government that none of the

Anganwadi Centre remains without any worker so that work may not be suffered and that is the reason government guideline dated 2.5.2007 stipulates that immediately after issuance of notification, invite applications, selection is to be completed on 16th day i.e. accepting of applications and scrutiny of documents and within 48 hours from 16th day, engagement order is to be issued in favour of the successful candidate for engagement of Anganwadi Worker. Although the petitioner has been disengaged on 22.12.2015 but she remained silent for a period of six months and thereafter she has filed this writ petition. On the basis of this submission, it has been submitted that the petitioner has got no case.

8. Heard learned counsel for the parties and perused the documents on record. English translated version of the Annexures which are in vernacular language has been filed, office is directed to keep the same on record.

9. The fact which is not in dispute in this case is that in pursuance to the advertisement published in the year 2011 petitioner had been selected and engaged as Anganwadi Worker for the centre in question. While the petitioner was working, opposite party no.6 had made complaint against her engagement which led to institution of appeal case before the A.D.M., Angul. The A.D.M. has passed order on the basis of the report of the C.D.P.O., Athamallik that the petitioner is not residing in Tangianisha-II Anganwadi Centre, also on the basis of the fact that the petitioner had submitted to numbers of application forms, one on 10.3.2010 and another on 15.3.2010. In the application form dated 10.3.2010 it is mentioned rejected due to non-submission of valid RC, in the application form dated 15.3.2010 it is mentioned against column-5 that for Ambasahi-II Anganwadi Kendra.

After taking into consideration this aspect of the matter, A.D.M. has referred the matter before the selection committee so that the matter can be scrutinized by group of persons being members of the committee. Accordingly, the matter was disposed of directing the Sub-Collector, Athamallik-cum-Chairperson of the selection committee to convene selection committee meeting, place all relevant facts and finding before the committee and take final decision as per the government guideline without any delay.

10. The petitioner kept mum having not challenged the order passed by the A.D.M. on 3.3.2014. Authorities have also not taken any initiative in order to comply with the direction passed by the A.D.M., as such opposite party no.6 has approached this Court by filing writ petition being W.P.(C) No.19722 of 2015 and this Court vide order dated 6.11.2015 has passed the following order.

"Heard learned counsel for the petitioner and Mr. Amit Pattnaik, learned counsel for the opposite party-State.

The only grievance raised by the petitioner in this case is for conclusion of the selection process as has been directed by Addl. District Magistrate, Angul in Misc. Appeal Case No.28 of 2011 on 3.3.2014.

Learned counsel for the opposite party-State has submitted that the authorities will take all endeavors for early conclusion of the entire selection process as directed by Addl. District Magistrate, Angul vide order dated 3.3.2014 if it has not been reversed by any of the higher authority or court of law.

Upon such submission, the writ petition is disposed of directing the opposite party no.4, Sub-Collector, Athamallik to comply the order passed by Addl. District Magistrate on 3.3.2014 if at all the order is in operation the said order must be given effect within four weeks from the date of receipt of this order. Accordingly, the writ petition is disposed of."

11. In pursuance to the order passed by this Court, the selection committee has convened its meeting on 14.12.2015 under the Chairmanship of the Sub-Collector, Athamallik, Block Health Officer, Athamallik, Social Education Organiser, Athamallik and Child Development Project Officer, Athamallik. After having discussion the matter fully, the following final decisions were taken.

"(i) The Smt.Baijayanti Naik has submitted her application on dated 10.3.2010 and again on dated 15.3.2010. Although both applications form was rejected by the C.D.P.O., but again it has been received which is embracing doubt in transparency of selection procedure.

(ii) The concerned villagers under Tangianisha-2 according to the recommendation list by the Collector, Angul are Tangianisha Uparasahi, Adibasi Sahi, Sadaka Sahi, College Road and Saleidhipa but it is mentioned that the applicant has applied for the A.W. Centre, Ambasahi-2. Despite of these things instead of rejecting the application of the applicant, it has been declared valid.

(iii) There is no experience certificate of the candidate Baijayanti Naik working as an Anganwadi Assistant but at the time of hearing by the Additional Collector, She has given illusive data it would have been better to reject the application form of Smt. Baijayanti Naik at the time of enquiry. So the selection committee decided to select Smt. Sukanti Behera as A.W.W. for Tangianisha-2 Centre, who has the second position in the merit list and under the shelter of Appellate Court disengaging the concerned A.W.W. Smt. Baijayanti Naik to communicate to both the candidates through letter, charges handed over to Child Development Project Officer."

After the decision having been taken on 14.12.2015 the C.D.P.O., Athamallik has passed order on 22.12.2015 in presence of the petitioner, whereby and where under petitioner has been disengaged from Anganwadi Worker for Tangianisha-II Anganwadi Centre w.e.f. 23.12.2015.

12. Petitioner, being aggrieved with the decision of the selection committee and disengagement order dated 14.12.2015 and 22.12.2015 respectively, is before this Court.

The first ground taken by the learned senior counsel representing the petitioner that the petitioner the A.D.M. should not have remitted the matter before the

selection committee and by doing so he has not followed direction passed by the competent authority as contained in the guideline dated 2.5.2007. The guideline dated 2.5.2007 has been annexed in this writ petition as Annexure-5. According to the provision made therein under clause(i) under heading "Procedure", the A.D.M. has been assigned power of appeal for hearing complaints regarding selection of Anganwadi Workers. There is no dispute about the fact that the guideline has no statutory force rather it is executive instruction issued under the signature of Commissioner-cum-Secretary to Government, Women & Child Development Department for governing the procedure for engagement or disengagement of Anganwadi Worker. There is no dispute that under Clause(i) under heading "Procedure", A.D.M. has been conferred power to deal with complaints regarding selection of Anganwadi Worker, when selection of the petitioner had been questioned by the opposite party no.6 before the A.D.M. under the provision of Clause(i), the A.D.M. has initiated proceeding, issued notification to participate in which petitioner has appeared and contested her case. C.D.P.O. has submitted enquiry report before the A.D.M. dated 14.11.2012 in which she had mentioned that the petitioner was residing in village Tangianisha Ambasahi. Tangianisha-II Anganwadi Centre consists of Saleidhip, Adibasis Sahi, Sadaka Sahi, Upar Sahi, College Road as per the approved list of Collector, Angul. Name of Ambasahi is not in the approved list. The C.D.P.O. has further informed that the petitioner has submitted two numbers of application forms, one on 10.3.2010 and another on 15.3.2010 and in both the application contrary stand has been taken. A.D.M. in order to get the matter adjudicated thought it proper to send the matter before the selection committee which consists of five members under the Chairmanship of the Sub-Collector. The A.D.M. in exercise of power conferred under the guideline is supposed to pass order on its merit or he can also refer the matter before the selection committee to get the matter verified by going through the records regarding exact position, by doing this he has referred the matter before the selection committee and the selection committee in terms of the order passed by the A.D.M. has reopened the matter, perused the documents and being satisfied has found that the candidature of the petitioner was not fit to be considered at the time of selection and thereafter decision was taken against her.

In view thereof, in my considered view, there is no illegality having been committed by the A.D.M., Angul. Moreover, petitioner has not challenged the order passed by the A.D.M. which was passed on 3.3.2014 rather it can be said that she has accepted the same before filing of the writ petition.

13. Second ground that the selection committee should not have reopened the matter and by reopening the matter the selection committee has exceeded its jurisdiction but this argument is not fit to be accepted by this Court for the reason that the selection committee has not reopened the matter suo motu rather it is direction of the appellate authority i.e. the A.D.M., Angul which has not been assailed by the petitioner. The selection committee has reopened the matter not only on the basis of the order passed by the A.D.M. rather this Court

has directed the Sub-Collector to ensure compliance of the order passed by the A.D.M., Angul taking into consideration the fact that if any order has been passed by any administrative authority, it has to be followed and if there is any inaction on the part of the authority in not following direction of the said authority and as such this Court has directed in W.P.(C) No.19722 of 2015. Hence, it cannot be said that the selection committee exceeded its jurisdiction.

Further, if any illegality has been committed and it has been pointed out to the competent authority, it is the incumbent upon the authority to come to the real fact otherwise if illegality will not be brought in to surface and if there is real illegality due to inaction on the part of the authority, it will be said that the illegality has been allowed to be continued which would be absolutely illegal and improper and contrary to the principles that illegality cannot be allowed to be perpetuated.

In this case, since nativity of the petitioner has been questioned by the opposite party no.6 which is the main criteria for being eligible for consideration for engagement of Anganwadi Worker and as such the A.D.M. in order to come to truth has directed the Sub-Collector to convene meeting of the selection committee in order come to the truth and accordingly it has been done. In view thereof, in my considered view, reopening of the matter by the selection committee cannot be said to be illegal.

14. The petitioner has been disengaged w.e.f. 22.12.2015 while she was engaged as Anganwadi Worker vide order dated 25.3.2011 and even though she was not eligible she had been continued till 22.12.2015.

15. It is settled that if appointment is contrary to the eligibility condition, appointment will be said to be illegal. It is also settled that if appointment is found to be illegal, it has to be cured the moment it will be brought into notice of the concerned authority. Reference may be made to the decision of the Apex Court in the case of Union of India and others v. Rakesh Kumar, reported in 2001 AIR SCW 1458 in which their Lordship at para-21 held as follows :

"Learned counsel for the respondents submitted that on the basis of G.O., number of persons are granted pensionary benefits even though they have not completed 20 years of service, and, therefore, at this stage, Court should not interfere and see that the pensionary benefits granted to the respondents are not disturbed and are released as early as possible. In our view, for grant of pension the members of BSF are governed by CCS (Pension) Rules. CCS (Pension) Rules nowhere provide that a person who has resigned before completing 20 years of service as provided in Rule 48-A is entitled to pensionary benefits. Rule 19 of the BSF Rules also does not make any provision for grant of pensionary benefits. It only provides that if a member of the force who resigns and to whom permission in writing is granted to resign then the authority granting such permission may reduce the pensionary benefits if he is eligible to get the pension. Therefore, by erroneous interpretation of the rules if pensionary benefits are granted to

someone it would not mean that the said mistake should be perpetuated by direction of the Court. It would be unjustifiable to submit that by appropriate writ, the Court should direct something which is contrary to the statutory rules. In such cases, there is no question of application of Article 14 of the Constitution. No person can claim any right on the basis of decision which is de hors the statutory rules nor there can be any estoppel. Further, in such cases there cannot be any consideration on the ground of hardship. If rules are not providing for grant of pensionary benefits it is for the authority to decide and frame appropriate rules but Court cannot direct payment of pension on the ground of so-called hardship likely to be caused to a person who has resigned without completing qualifying service for getting pensionary benefits. As a normal rule, pensionary benefits are granted to a government servant who is required to retire on his attaining the age of compulsory retirement except in those cases where there are special provisions."

In the case of *State of Orissa and another v. Mamata Mohanty*, reported in (2011) 3 SCC 436 Hon.ble Apex at paragraphs 56 and 57 held as follows :

"It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide *Chandigarh Administration & Anr v. Jagjit Singh & Anr.*, AIR 1995 SC 705; *Yogesh Kumar & Ors. v. Government of NCT Delhi & Ors.*, AIR 2003 SC 1241; *M/s. Anand Buttons Ltd. etc. v. State of Haryana & Ors.*, AIR 2005 SC 565; *K.K. Bhalla v. State of M.P. & Ors.*, AIR 2006 SC 898; *Maharaj Krishan Bhatt & Anr. v. State of Jammu & Kashmir & Ors.*, (2008) 9 SCC 24; *Upendra Narayan Singh (supra)* ; and *Union of India & Anr. v. Kartick Chandra Mondal & Anr.*, AIR 2010 SC 3455)."

"This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same. While dealing with a similar issue, this Court in *Hotel Balaji & Ors. v. State of A.P. & Ors.*, AIR 1993 SC 1048 observed as under :

"12?. 2?...To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in *Pierce v. Delameter* at page 18 :

"a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors".

16. On the basis of these legal proposition the matter regarding engagement of the petitioner has been reopened and ultimately the same has been found to be true and the authorities have taken decision to disengage her and accordingly

she has been disengaged by order dated 22.12.2015. Admitted fact in this case is that the petitioner has filed this writ petition in the month of May, 2016 and first order of the A.D.M. dated 3.3.2014 has not been challenged by her, opposite party no.6 in order to ensure compliance of the order passed by the A.D.M. had approached this Court and this Court has directed the Sub-Collector to ensure compliance of the order and in pursuance to the order passed by this Court, selection has been concluded, in course thereof, engagement of the petitioner is found to be illegal, accordingly she has been disengaged vide order dated 22.12.2015.

The fact which emerges after going through the facts of this case that the petitioner has not chosen to challenge the order dated 3.3.2014 of the A.D.M. since she was in service and she was not being disengaged fairly for a long period and she was allowed to continue till 22.12.2015 and the Chairperson of the selection committee i.e. the Sub-Collector and the competent authority i.e. C.D.P.O. concerned after knowing about the order passed by the A.D.M. have not bothered to take any steps in pursuance to the order passed by the A.D.M. which compelled the opposite party no.6 to approach this Court for issuance of direction upon them against the inaction and accordingly this Court had directed the authorities to ensure compliance of the order, in pursuance to the same, exercise has been done and the petitioner has been disengaged.

17. Taking into consideration of all aspects of the matter as discussed herein above, I am of the considered view, there is no infirmity in the decision of the selection committee dated 14.12.2015 and the order of disengagement dated 22.12.2015.

18. Accordingly, the writ petition fails and dismissed.