
(2012) 01 OHC CK 0032
In the Orissa High Court
Case No : Writ Petition (C) No. 17650 of 2010

Bijayeeni Mallik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 25-01-2012

Acts Referred:

Constitution of India, 1950 — Article 162

Citation : (2012) 113 CLT 943

Hon'ble Judges : Aruna Suresh, J

Bench : Single Bench

Advocate : S. N. Sharma, for the Appellant; S. Das, Addl. Govt. Advocates and Mr. B. Pujari, for the Respondent

Final Decision : Dismissed

Judgement

Aruna Suresh, J.—Child Development Project Officer, Dhamnagar issued an advertisement on 21.11.2009 inviting applications from eligible candidates for the post of Anganwadi Worker to be engaged at Talasitha Malika Sahi Anganwadi Centre. Petitioner submitted her application for consideration for engagement for the said post. However, Chhabirani Das, Respondent No. 3 was selected by giving her extra 5 marks for being visually handicapped person with 42% disability. Aggrieved by the selection of Respondent No. 3, Petitioner filed appeal being Anganwadi Misc. Appeal No. 14 of 2010 before the Sub-Collector, Bhadrak (Annexure-6) challenging selection of Respondent No. 3 on various grounds, one of such being that she was ineligible for the post of Anganwadi Worker as she fell in the physically handicapped category of blind & her approach is against the General Administration Department resolution dated 13.2.2006 wherein no reservation has been given to a visually handicapped" person in the category of Physically Handicapped. However, the said appeal has not been decided. Hence, Petitioner has approached this Court by way of this writ. Respondents have contested the petition contending, inter alia, that Respondent No. 3 was eligible to be considered & engaged as Anganwadi Worker in the category as she was not

totally blind & also that resolution of the General Administration Department, Government of Orissa is not applicable to selection & appointment of Anganwadi Worker & the selection of Anganwadi Worker has to be made in accordance with the Rules & guidelines prescribed by Women & Child Development Department. It is averred that as per the revised guidelines for selection of Anganwadi Worker dated 2.5.2007, complaint regarding selection of Anganwadi Worker dated 2.5.2007, complaint regarding selection of Anganwadi Worker for tribal rural projects has to be filed before the Sub-Collector as he is the designated Appellate authority & as regards complaints regarding selection of Anganwadi Workers for urban projects, Additional District Magistrate is the designated Appellate authority. Collector is the Appellate authority where the Sub-Collector/ Additional District Magistrate has approved the selection, but Chairman of the Selection Committee fails to finalize the list within the stipulated time or if Panchayat Samiti & Municipal elected Bodies have been dissolved. Petitioner has not filed an appeal in accordance with the revised guidelines. However, without awaiting the result of the appeal, she has approached this Court by way of this writ. Petitioner has not urged those grounds in appeal, which are now raised in this writ.

2. Ordinarily in such like situations, this Court disposes of Writ Petition with a direction to the Appellate authority to consider & dispose of the appeal. However, since no such direction was passed in this case & the matter has been heard on merits & the petition is pending for a period of more than one & half years, it is in the interest of justice that instead of disposing of the writ directing the Appellate authority to dispose of the representation/ appeal, this Court hereby disposes of the writ on merit since a question of law is involved.

3. Selection & appointment of Anganwadi Workers is governed by the Rules & guidelines framed & modified from time to time by the Workmen & Child Development Department, Government of Orissa Anganwadi Workers are engaged by the State in pursuance of a scheme framed by the Central Government. The State, therefore, while making recruitments in such projects in exercise of its jurisdiction under Article 162 of the Constitution of India, may issue guidelines or circulars as it may deem fit & proper. Such guidelines are ordinarily binding on the functionaries working in terms of the scheme including the Selection Committee constituted for recruitment of Anganwadi Workers. Anganwadi Workers are neither appointed nor governed by any statute. They are appointed under the child development scheme framed by the Central Government for appointment of Anganwadi Workers. Anganwadi Workers, therefore, are honorary workers & are not Government servants. They are not paid any salary, but are being paid honorarium for the honorary service they are providing to the society.

4. The revised guidelines dated 2.5.2007 which were in force during the relevant time, make it clear that since Anganwadi Worker, who gets an honorarium for the service rendered by her to the less privileged persons of her own community, is

not a Government servant with fixed or graduated pay scale. Therefore, the provisions of O.R.V. Act (for S.C. & ST.) 1975 & Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 do not apply for selection of Anganwadi Workers. Similarly, Anganwadi Workers cannot claim any regular appointment on the basis of selection as Anganwadi Workers. The Department, therefore, is within its right to appoint physically handicapped persons whether blind, deaf or orthopedically handicapped as Anganwadi Workers as per its own Rules & regulations.

5. Resolution dated 13.2.2006 was issued by the General Administration Department, Government of Orissa. The "subject" to the resolution reads:

Reservation of vacancies for rehabilitation of Persons with Disabilities in Group-A, Group-B, Group-C & Group-D posts/services under the State Government & Public Sector Undertakings.

6. From bare perusal of the "subject" contained in the resolution itself, it is clear that reservation of physical handicapped persons as defined in para-2 of the resolution were made in Group-C & Group-D posts/services under the State Government & Public Sector Undertakings for rehabilitation of Physically Handicapped persons at the initial stage of recruitment. As stated above, Anganwadi Workers are not Government employees & do not fall in Group-A, B, C or D post/services under the State Government & Public Sector Undertakings. However while publishing this resolution, the General Administration Department defined the categories of persons with disability for the purpose of reservation in employment. Under the heading "Jobs in Group-D posts & services under the Government", it is stated that Physically Handicapped person can be appointed as Anganwadi Worker if she suffers from disability of one leg affected (R &/or L), both legs affected but not arms (mobility not be restricted) or partially deaf with suitable aid.

7. Learned Counsel for the Petitioner has submitted that as per the annexure to this resolution, a person suffering from visual impairment cannot be considered for appointment as Anganwadi Worker in the category of Physically Handicapped. Therefore, according to him, since the appointment of Respondent No. 3 is dehors the resolution of the General Administration Department dated 13.6.2006, the same is illegal & invalid & in her place the Petitioner should have been given appointed in the aforesaid Anganwadi Centre.

8. I find no merits in the submission made by Learned Counsel for the Petitioner for the simple reason that resolution dated 13.6.2006 passed by General Administration Department, cannot be enforced for selection & appointment of Anganwadi Worker for the simple reason that Anganwadi Worker is not a Government servant within the meaning of the resolution. In fact General Administration Department has neither any role, nor control in any manner on the working of Women & Child Development Department & in the selection & appointment of Anganwadi Workers. A letter was issued by the Director, Social

Welfare on 24.4.2010 to the Additional Secretary to Government, General Administration Department informing him that as per the instructions of the Government dated 4.10.2004 the Anganwadi Workers are honorary workers & not Government servants. They are only paid honorarium for the honorary service they are providing to the Society, which fact was also reflected in the guidelines issued by the Women & Child Development Department for selection of Anganwadi Workers. The Director, Social Welfare & Ex-officio Addl. Secretary to Government had further called upon the General Administration Department to make necessary modification to the resolution dated 13.2.2006 accordingly. It is not known if the General Administration Department has carried out necessary modification in pursuance of the said letter. Be that as it may, since Anganwadi Workers are not Government employees, resolution dated 13.2.2006 cannot be enforced for selection & appointment of Anganwadi Workers.

9. In para 3 of the guidelines dated 2.5.2007, Respondent-Department made a provision for giving preferential additional percentage to physically handicapped women candidates beside other categories. Since Respondent No. 3 suffered from visual impairment of 42%, she was given five preferential additional percentage of marks for assessing her merit vis-a-vis other candidates including the Petitioner. After awarding of the additional preferential marks, Respondent No. 3 got 62.06% marks whereas Petitioner got 58.66% of marks. Therefore, Respondent No. 3 being more meritorious than Petitioner, was selected & engaged as Anganwadi Worker at Talasitha Malika Sahi Anganwadi Centre.

10. The engagement of Respondent No. 3, therefore, being in accordance with rules & guidelines, is legal & valid. The grouse of the Petitioner that she was more meritorious than Respondent No. 3 & that she should not have been given 5 preferential marks as Physically Handicapped person, is baseless & against the guidelines as discussed above. Hence, I find no merits in this petition & the same is accordingly dismissed.