
(2018) 03 OHC CK 0101
In the Orissa High Court
Case No : W.P.(C) No.20349 of 2017

Bijayeeni Rath

APPELLANT

Vs

State of Odisha and others

RESPONDENT

Date of Decision : 23-03-2018

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2018) 03 OHC CK 0101

Hon'ble Judges : SUJIT NARAYAN PRASAD

Bench : Single Bench

Advocate : A.K. Sarangi, A.C. Sarangi, S.K. Samal, Dr. J.K. Lenka, P.K. Behera

Final Decision : Dismissed

Judgement

S. N. Prasad, J.

1.This writ petition has been filed under Article 226 and 227 of the Constitution of India wherein a direction has been sought to quash the order dated

5.8.2016 passed by the opposite party no.2-Collector, Khurda under Annexure-6 with a further direction to allow the petitioner to continue in her

present post in which she has engaged. 2. The brief fact of the case of the petitioner is that while the petitioner was continuing as Warden on

temporary basis by the order of the Managing Committee of the Unit-6 Primary School, Bhubaneswar, one advertisement was issued by the opposite

parties in the month of September, 2014 for inviting applications to engage Warden on contractual basis in the residential hostels at Bhubaneswar

Municipal Corporation. Accordingly, she was selected and joined in the post on 1.7.2014 and has discharging her duty. But while continuing as such,

the opposite parties have issued another advertisement for contractual engagement of Warden in the residential hostels at Bhubaneswar Municipal

Corporation. Pursuant to the said advertisement dated 1.9.2014, she has applied for the said post annexing all the required documents. Thereafter, the opposite parties have published the final list, but the name of the petitioner does not find mentioned therein.

She objected the final list and made a representation before the Collector, Khurda, but no decision has been taken. She having no option, has filed a writ petition before this Court bearing No.25688 of 2014 which was disposed of vide order dated 4.5.2016 with a direction to the Collector, Khurda to verify from the record as to whether the petitioner in fact selected as Warden and in the event the petitioner is selected to the post of Warden, then necessary order be passed in her favour. The Collector when not passed an order, she has filed a contempt case before this Court being CONTC No.1236 of 2016 and it is only thereafter the Collector has passed an order on 5.8.2016 whereby and whereunder the claim of the petitioner has been rejected. Against it, the petitioner is before this Court challenging the said order on the ground that the Collector has not taken into consideration the fact that she happens to be a woman candidate and one post under the woman category has been reserved and as such, she ought to have been selected under the woman category.

3. Learned counsel for the State-opposite parties as well as the intervener have jointly submit that the petitioner has no case on merit in view of the fact that she has made an application in terms of an advertisement published on 1.9.2014 in which she has submitted incomplete application without any Employment Registration Card and as such, her name has not been included in the merit list, but subsequently she has approached to this Court and this Court has passed an order directing the Collector, Khurda to look into the matter as to whether she has been selected as a Warden and in the event she has been selected, necessary order be passed in her favour, but the Collector in terms of the said order has passed the order and accepting her application form has come to the conclusion that her name is at Serial No.19 of the merit list, but upto Serial No.14 the selection has been made and as such, she cannot be selected, since in the meanwhile the validity period of appointment has lost its life i.e. after completion of one year. They further submit that after the said advertisement, two subsequent advertisements have been issued and thereafter, the selection has been made. Hence,

at this stage, the petitioner cannot be engaged in terms of the advertisement published in the month of September, 2014.

4. Heard the learned counsel for the parties and on appreciation of the rival submissions, the fact which is not in dispute in this case is that the

petitioner was an applicant in pursuant to an advertisement published on 1.9.2014 for the post of Warden to be appointed on contract basis. She has

not been brought on the panel of the merit list and as such, she being aggrieved, has approached to this Court by filing a writ petition being W.P.(C)

No.25688 of 2014 wherein this Court by making an observation that merely on account of the fact that the Employment Registration Card has not

been submitted by the petitioner that cannot be a ground not to include the petitioner in the merit list, but declined to quash the appointment letters

issued to selectees for the post of Warden, but however, with a direction to the Collector, Khurda to verify from the records as to whether the

petitioner was in fact selected as a Warden and in the event the petitioner is selected to the post of Warden, then necessary order be passed in her

favour. The Collector, Khurda thereafter has passed an order on 5.8.2016 whereby and whereunder the claim of the petitioner has been rejected,

since according to him, in the provisional merit list, her name was placed at Serial No.19 and when it was rejected, the candidature of the petitioner

has been rejected and fresh final list was published on 5.12.2014 selecting 20 candidates. The report of the District Project Coordinator, SSA,

Khurdha reveals that the said selection was made by the District Selection Committee through an interview and as per their recommendation, the

candidates upto Sl. No.14 have been engaged within a period of one year i.e. till the merit list was valid. It has been said therein that the claim of the

petitioner is taken into consideration and her candidature will be placed at Sl. No.19 of the merit list, she was/is not eligible for engagement as Warden

because the merit list has become invalid. The said order is under challenge on the ground that none of the candidature under the woman category has

been selected in terms of the advertisement dated 1.9.2014 and so far as the reason given by the Collector in the order impugned that the validity

period of the merit list has expired after completion for a period of one year that according to the petitioner, is absolutely incorrect in view of the fact

that even after expiry of the validity period of panel, the selection has been made in favour of one Satyabhama Badajena and as such, the ground

taken by the Collector regarding lapse of the validity of merit list is not proper.

5. This Court, after going through the pleadings made in the writ petition, needs necessary to refer herein that merely on account of the name having

been mentioned in the merit list does not confer any legal vested right upon the person whose name is in the merit list.

6. Reference in this regard may be made to the judgments rendered by the Supreme Court in the cases of All India SC & ST Employeesâ??

Association and another v. A. Arthur Jeen and others, reported in (2001) 6 SCC 380; State of Orissa and another v. Rajkishore Nanda and others,

reported in (2010) 6 SCC 777; Manoj Manu and others v. Union of India and others, reported in (2013) 12 SCC 171; and Kulwinder Pal Singh and

another v. State of Punjab and others, reported in (2016) 6 SCC 532.

7. The petitioner has made an application in terms of the advertisement dated 1.9.2014 but without furnishing Employment Registration Card which is

mandatory requirement and as such, her name was in the provisional list at Sl. No.19 and thereafter her name has been excluded from the final list on

the ground that the Employment Registration Card was not submitted by her. However, in pursuant to the order passed by this Court wherein

observation has been made that merely on account of non-furnishing of Employment Registration Card, the candidature of an employee cannot be

ignored. Hence, the Collector, Khurda in pursuant to the direction passed by this Court to find out as to whether she has been selected or not in terms

thereof, it has been found that she was in the merit list at Sl. No.19 and from the said merit list only upto the Sl.No.14 selection have been made which

was within the period of one year and as such, her claim has been rejected.

8. Learned counsel for the petitioner submits that even after expiry of period of one year, the candidate, namely Satyabhama Badajena has been

appointed. But to substantiate his argument, he has neither pleaded in the writ petition nor any document has been brought on record by him, but he

has insisted upon these facts by making oral argument.

9. This Court is of the view that the oral argument has got no value in the eye of law unless pleaded and substantiated by the relevant documents and

as such, this Court is declined to accept the oral submission with respect to the appointment of Satyabhama Badajena. Moreover, this is the fourth

round litigation and upto third round litigation, this point has never been raised

even before the Collector also. Hence, on this ground also this Court declines to accept this argument.

10. The case of the petitioner is also not fit to be considered in the light of the fact that after the advertisement dated 1.9.2014, two subsequent

advertisements have been issued and even accepting the plea of the petitioner that there is vacancy and as such, the appropriate order be passed for

her engagement, that cannot be allowed to be extended in view of the fact that the subsequent advertisement has been issued, implied meaning of

fresh advertisement is that entire selection process initiated in terms of the first advertisement, will be said to be concluded and the vacancy if not

fulfilled and if the authorities are desirous in fulfilling the post, the same will be filled up by notifying it by way of fresh advertisement so that the other

eligible candidates may participate in the selection process and following this fresh advertisements have been issued.

11. It has been brought on record that in view of two subsequent selections, the woman candidate has also been appointed and as such, it cannot be

said that there is no representation of the woman candidate under the Warden cadre which is to be filled up by way of contractual engagement.

12. In view of settled position of law as narrated hereinabove and according to the considered view of this Court, the petitioner has failed to make out

a case for showing interference in the impugned order dated 5.8.2016 passed by the Collector, Khurda. Accordingly, the writ petition fails and it is

dismissed.