

(2025) 04 OHC CK 1336
In the Orissa High Court
Case No : Writ Petition (C) No. 39358 Of 2023

Chhabirani Pramanik

APPELLANT

Vs

State Of Odisha & Others Vs

RESPONDENT

Date of Decision : 25-04-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2025) 04 OHC CK 1336

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : J.Gupta, S.N.Pattnaik, S.K.Mallick

Final Decision : Dismissed

Judgement

Sashikanta Mishra, J

1. The petitioner in the present writ application seeks quashment of notice dated 23.11.2023 issued by the Medical Officer (In-charge), Jaleswarpur and letter dated 29.02.2024 issued by the Block Programme Manager, CHC Jaleswarpur, Balasore.

2. Originally, by notification dated 10.11.2021, the Medical Officer of Jaleswarpur CHC in district of Balasore invited applications from eligible candidates for engagement as 'ASHA Karmee' in respect of Sankhamedi and Champabatipatna. The petitioner was one of the applicants and her name found place in the select list prepared by the Medical Officer. She was placed at Sl. No. 2 in the select list. It is alleged that the present Opposite Party No.5 Manjulata Tola, not being a candidate from the resident village, was illegally selected. Said Manjulata Tola had obtained two resident certificates showing her a resident of two different villages. The petitioner, therefore, challenged such selection before this Court in W.P.(C). No. 13984 of 2022 seeking direction to the CDMO, Balasore to give her appointment claiming to be the most eligible candidate. Considering the submission made on behalf of the petitioner that the selection process had not

concluded, a Coordinate Bench of this Court, by order dated 06.10.2023, directed the Opposite Party to complete the selection process within a period of two months. According to the petitioner, despite such direction of this Court, the authorities issued the impugned notification. The petitioner claims to have been prejudiced since, as per the age requirement, she has become ineligible to apply having become overaged.

3. The Opposite Party authorities contend that the writ petition is based on misrepresentation of facts inasmuch as the selection process initiated pursuant to the notification dated 10.11.2021 had been cancelled on 29.03.2022 as per the instructions of CDM & PHO, Balasore on 24.02.2022, which is much prior to the order passed by this Court in the earlier writ application. Such fact was not brought to the knowledge of this Court and wrong submission was made that the selection process had not been concluded for which this Court directed the same to be concluded. The petitioner stood second in the selection list and as per complaint submitted by her an inquiry was conducted as per the letter dated 10.02.2022 by the CDMO, Balasore. It was found in the inquiry that Manjulata Tola for Opposite Party No.5 had produced multiple resident certificates. It was also noticed that the existing ASHA Karmee covering the areas of Analia, Champabani, Patana and Sankhameda was required to be divided in view of the population being more than two thousand. Under such circumstances, it was held that the selection procedure had not been properly done for which the original notification dated 10.11.2021 was cancelled and fresh notice was issued on 23.11.2023. Such selection was concluded on 23.12.2023, whereby Rashmilata Pramanik was engaged as ASHA. The petitioner had never applied pursuant to the fresh selection.

4. Heard Mr. J.Gupta, learned counsel for the petitioner and Mr. S.N.Pattnaik, learned AGA for the State.

5. Mr. Gupta, referring to the order passed by this Court in the earlier writ application, would argue that a specific direction to the authorities being to conclude the selection process, it was not open to them to go for fresh selection. Accordingly, the Superintendent, Jaleswarpur CHC, Bhograi block had requested the Medical Officer, Jaleswarpur CHC vide letter dated 17.11.2023 to complete the selection process Opposite Party No.4 however, illegally convened a meeting on 21.11.2023 and issued the impugned advertisement on 23.11.2023 and thereafter, most illegally selected the present Opposite Party No.6 as ASHA. Mr. Gupta concludes his arguments by submitting that the entire action of the authorities is bad in law.

6. Mr. S.N.Pattnaik, learned AGA would argue that basing on the submissions made by the counsel for the petitioner in the earlier writ application that the selection process had not been concluded, this Court in the earlier writ application directed completion of the same. However, the petitioner suppressed the fact that the selection process had already been cancelled on 29.03.2022. This, according to Mr. Pattnaik, amounts to playing fraud. Mr. Pattnaik, further

argues that even otherwise, a fresh selection process was conducted as per the guidelines wherein Opposite Party No.6 was validly selected. The Petitioner was not even an applicant and therefore, cannot challenge the selection after its completion.

7. Perusal of the order passed by the Coordinate Bench in the earlier writ application on 06.10.2023 reveals that submission was made by the counsel appearing for the petitioner that the selection process had not been completed and the posts are lying vacant for which direction was issued to complete the selection process.

The relevant portion of the order passed by this Court is reproduced below;

"4. Today during course of hearing, learned counsel for the Petitioner on instruction submits that since the selection process for the post of "Asha Karmee" in respect of the village/

Sankhamedi and Champabatipatna has not been completed as yet, the posts are still lying vacant.

5. Considering the submission made by the learned counsel for the Petitioner and looking to the factual scenario, this Court directs the Principal Secretary, Health and Family Welfare Department, Government of Odisha/Opposite Party No.1 as well as the Chief District Medical Officer, Balasore/Opposite Party No.3 to complete the selection process for the post of "Asha Karmee" in respect of the village/ Sankhamedi and Champabatipatna within a period of two months from the date of presentation of a copy of this order."

Thus, the order was passed entirely basing on the submission made by the counsel for the petitioner. In the counter affidavit filed by the State Opposite Parties, a grievance submitted by the petitioner on 24.12.2021 addressed to the Hon'ble Chief Minister of Odisha is enclosed wherein she made several allegations against the selected candidate Manjulata Tola. Basing on such petition, the Government in Department of Health and Family & Welfare, vide letter dated 10.02.2022 directed the MD, NHM (O) and the CDM and PHO, Balasore to inquire into the matter. Accordingly, inquiry was conducted by the CDMO and PHO-cum-DMD, Balasore and report was submitted to the Government on 24.02.2022. It was found in the inquiry that Manjulata Tola had not submitted the 10th pass mark sheet along with her application but submitted later. As per the guidelines, the applications were to be submitted within ten days but in the advertisement, the same was mentioned as one month. Further, Manjulata Tola was also found to have produced multiple resident certificates. That apart, in view of the expansion of the area, it was felt necessary to select an additional ASHA. On such basis, it was held that the selection procedure had not been properly followed and was recommended to be cancelled. Basing on such inquiry, the Superintendent, CHC, Jaleswarpur vide letter dated 29.03.2022, cancelled the selection of Champabatipatna and directed issuance of fresh notice. The petitioner filed the earlier writ application that is, W.P.(C). No. 13984 of 2022 on

01.06.2022. It is needless to mention that even as on the date of filing of the writ application, the selection had been cancelled. The above fact was never brought to the knowledge of this Court. Whether the fact of cancellation of the selection process pursuant to the earlier advertisement was within the specific knowledge of the petitioner or not at the relevant time is not material. What is material is the fact that by such time, there was no selection process to be challenged. The petitioner has not specifically questioned the cancellation of the selection process on any other ground, save and except that the same is contrary to the directions of this Court in the earlier writ application. Even otherwise, having regard to the finding of the inquiry conducted by the CDM & PHO, this Court finds nothing wrong in the issuance of fresh advertisement and consequently the selection of Opposite Party No. 6 as ASHA of the concerned village.

8. In the result, this Court finds no merit in the writ application which is therefore, dismissed..

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