
(2007) 12 OHC CK 0032
In the Orissa High Court

Chittaranjan Mohanandia

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-12-2007

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2008) 105 CLT 464 : (2008) 117 FLR 348 : (2008) 1 OLR 387

Hon'ble Judges : N. Prusty, J; I.M. Quddusi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—This writ petition has been filed against the impugned order dated 12.12.2005 passed by the Orissa Administrative Tribunal in Original Application No. 1166 of 2005 observing that in the limited scope of adjudication, it would meet the ends of justice if the respondents are directed to consider the candidature of the applicant within the ambit of rules and procedures as well as preference decided by the Government and if the applicant is found suitable for appointment by merit to a post available after allowing preference to local candidates, then there would be no bar to his appointment.

2. The brief facts of the case are that the Chief District Medical Officer, Kanchanalak at Phulbani issued an advertisement on 17.7.2005 inviting applications in the prescribed format from the eligible candidates for appointment to various posts including the post of attendant/sweeper on consolidated salary. One of the conditions was that the candidates belonging to Kandhamal district would be given preference and the appointment was purely temporary and may be terminated at any time without assigning any reasons thereof and the selected candidates will have to submit an undertaking to the effect that they will not claim any Government/regular appointment in future. Thereafter a corrigendum was issued on 21.8.2005 in which the criteria for selection and eligibility for the post of Attendants and Sweepers was mentioned according to which selection of candidates shall be made on merit on the basis of marks

secured in M.E. School Certificate Examination only and there shall be no viva voce test.

3. The district of Phulbani was bifurcated into two districts in the year 1991 that is district of Boudh and district of Kandhamal. The petitioner, who belonged to undivided Phulbani district after the division, belonged to Boudh district and moved to an area within the district of Kandhamal in the year 1992 and since then he is regularly living in the district of Kandhamal. He applied for the post of Attendant/ Sweeper from general category and submitted a certificate of residence issued by the Tahasildar Kandhamal at Phulbani mentioning therein that the petitioner with his family temporarily resides in village/town Phulbani in the district of Kandhamal since 1992. Thus it is clear that at the time when the petitioner applied for the post in question, he was a resident of Phulbani for the last more than about 13 years. But his application was not kept in preferential category being not belonging to the district of Kandhamal. The Chief District Medical Officer, Kandhamal also invited objection on the provisional appointment of the candidates on the ground of nativity vide notice dated 13.12.2005. However, the petitioner had already protested before that to which a reply was given by the Chief District Medical Officer, Kandhamal to the petitioner under reference O.A. Case No. 1988 (C) of 2005, which is reproduced below.

As per the decision of the Selection Committee, the applicants belonging to the native of Kandhamal district are given preference for appointment in the post of Attendant/Sweeper. Accordingly basing on the marks secured in M.E. School Certificate Examination, the names of such candidates were sent to the District Inspector of Schools for verification.

Since, you are belonging to the native of Boudh District and temporarily resides in Kandhamal district, your mark sheet was not sent for verification.

Sd/- Chief District Medical Officer, Kandhamal.

Thereafter petitioner filed the O.A. in question i.e. O.A. No. 1166 of 2005, which was disposed of in the terms mentioned above.

4. There is no doubt that the petitioner secured 140 marks in the M.E. School Certificate Examination. The last candidate who was selected from the general category had secured 125 marks in the M.E. School Certificate Examination i.e. much lesser mark than the petitioner. However, the appointment of the petitioner has been denied on the ground of place of birth. Article 16 of the Constitution so far as relevant reads as under:

16(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

16(2). No citizen shall, on grounds only of religion, race caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

5. An identical question came up for consideration before a Division Bench of this Court presided over by Hon"ble the Chief Justice in a W.P. (C) No. 14981 of 2006 and batch 2007 11 OLR 577 (Chandramani Jena and Ors. v. State of Orissa) disposed of on 23.8.2007. In those cases, Clause 4.1 of the advertisement for the post of Swechhasevi Sikshaya Sahayak which confined the appointment only to the residents of the block in question in which the appointment was to take place was under challenge. Considering the constitutional provision as enshrined in Article 16 of the Constitution and relying on the various decisions of the apex Court, the Division Bench observed as under:

From the discussions above, this Court is of the opinion that Clause 4.1 of the advertisement dated 14.10.2006 under Annexure-6 for appointment of Swechhasevi Sikhya Sahayak as amended by the corrigendum dated 12.10.2006 is violative of the provisions of Article 16(2) of the Constitution and the same is set aside. This Court, however, declares that any person who satisfies the criteria of educational qualification and other eligibility condition, shall be entitled to apply for appointment to the post of Swechhasevi Sikhya Sahayak despite the fact that he or she does not stay within any block where such appointment will be made. In other words, there can be no disqualification on the ground of residence.

6. Since the place of birth of the petitioner was within the undivided district of Phulbani which was bifurcated into Boudh and Kandhamal districts in the year 1991 and he has been residing for last more than 13 years continuously at Phulbani, which is now in the district of Kandhamal, he should not have been discriminated on the ground that though he belonged to the undivided district of Phulbani, after bifurcation, his place of birth has come within the district of Boudh.

7. In view of the above, we feel that the opp. parties should not have discriminated the petitioner on the ground of place of birth, since he was born as a native of the undivided district of Phulbani and is residing within the district, for which preference was to be given, for last about 13 years.

8. In view of the above mentioned facts and circumstances, we quash the impugned judgment and orders passed by the Tribunal. Since this Court by way of interim order i.e. Order No. 3 dated 16.1.2006 passed in Misc. Case No. 299 of 2006 had directed the opp. parties that one post of Sweeper belonging to the general category should be kept reserved and should not be filled up, the same may be given to the petitioner if on verification by Opp. party No. 3, Chief District Medical Officer, Kandhamal, it is found that any person having less marks than the petitioner in M.E. School Certificate Examination from general category has been given appointment to the post of Attendant/Sweeper for which no viva-vice test was held and only on the basis of marks obtained in the M.E. School Certificate Examination the appointment was given.

9. The writ petition is accordingly allowed. No order as to costs.

N. Prusty, J.

10. I agree.