
(2008) 02 OHC CK 0010
In the Orissa High Court
Case No : W. P. (C) No. 15721 of 2008

Jhasaketan Khamari and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Citation : (2008) 02 OHC CK 0010

Hon'ble Judges : N. Prusty, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N. Prusty, J.—This writ petition been filed by 5 persons, for a direction to the opposite parties to engage them as Sikhya Sahayak. Since this is an individual cause of action and the Petitioners have filed this writ petition jointly, I am not inclined to entertain this writ petition in respect of the Petitioners 2 to 5. This writ petition shall remain confined to only Petitioner No. 1 and as such the names of Petitioners 2 to 5 be deleted.

2. However, this order shall not be a bar for the Petitioners 2 to 5 to approach appropriate forum individually for redressal of their grievance in accordance with law, if so advised.

3. The Petitioner who belongs to Bonai Block in the district of Sundargarh, had applied for his engagement as Sikhya Sahayak in response to advertisement dated 14.10.2006 (Annexure-6), has filed this writ petition to consider his case for his engagement as Sikhya Sahayak in other Blocks, on the basis of Education District wise selection instead of Block wise selection, by quashing Clause 4.1 of Annexure-6.

4. Heard Mr. S.K. Sahu, learned Counsel for the Petitioner and Mr. Badu, learned Standing Counsel for School and Mass Education Department.

5. Learned Counsel for the Petitioner submits that even though the Petitioner

belongs to Bonai Block and applied for his engagement as Sikhya Sahayak for Bonai Block, his candidature ought to have been considered by the concerned authority in respect of existing vacancies in other blocks of the district. In support of his contention, learned Counsel for the Petitioner relied upon the decision of this Court dated. 23.08.2007 passed in W.P.(C) Nos. 14981 of 2006 (Chandramani Jena and Ors. v. State of Orissa reported in 2007 (XI) OLR 577, wherein it has been observed that no candidate can be discriminated for his/her engagement as Swechhasevi Sikhya Sahayak on the ground of residence.

6. As such even if an applicant belongs to any one of the Blocks, throughout the State, he/she can apply for the post of Sikhya Sahayak in respect of any other Block, irrespective of his/her place of residence, if he/she satisfies the eligibility criteria. But that does not mean that even if an applicant has applied in respect of one Block of a district, his/her application shall be considered in respect of other Blocks of the district.

7. In view of the above, the prayer of the Petitioner for engagement in any other Block cannot be entertained, since, as stated above, he can apply for his engagement as Sikhya Sahayak in respect of any one of the Blocks, as per his choice, if he satisfies the criteria of education qualification and other eligibility conditions and his application shall be considered in respect of that Block alone, for which he had submitted his application, irrespective of his actual place of residence, despite of fact that he does not belong to the Block, where such appointment will be made. In other words, as has been observed by this Court in the case of Chandramani Jena and others (supra), there can be no discrimination on the ground of residence and the application filed by an applicant cannot be rejected on the ground of residence, that he does not belong to the block, for which he had submitted his application.

8. So far as the prayer for fixation of unit is concerned, i.e. Block wise or Education district wise, it is up to the appropriate executive authority/Government to fix the Block or Education district as an unit and this Court cannot interfere in the matter of an executive decision relating to fixation of the unit in either way. But no candidate can be denied of his/her engagement in a particular Block or Education District because of the fact that he/she does not belong to the said Block/Education district unit as has been fixed by the Government and a candidate can apply for his/her engagement as Sikhya Sahayak in any one of the blocks or districts unit irrespective of his/her place of residence.

9. As it appears from the contents of the writ petition, the Petitioner, who belongs to Bonai Block and had applied for his engagement as Sikhya Sahayak in response to the advertisement dated 14.10.2006 (Annexure-6) and in the said advertisement, it has been categorically mentioned that the earlier advertisement dated 01.03.2006 stands set aside/rejected/cancelled and the applicants, who had applied for their engagement as Sikhya Sahayak in response to the advertisement dated 01.03.2006, can apply once again. In this writ petition, the Petitioner has prayed to quash the advertisement-dated 14.10.2006

(Annexure-6). This writ petition has been filed on 05.12.2007 i.e. after expiry of more than one year from the date of advertisement and in that view of the matter, I am not inclined to entertain this belated prayer made in this writ petition. Furthermore, since the Petitioner had applied in response to advertisement dated 14.10.2006 and in case the said advertisement is quashed, the prayer of the Petitioner for consideration of his case for appointment of Sikhya Sahayak, on the basis of the Education District wise instead of Block unit wise, by quashing Annexure-6 cannot also be entertained by this Court.

10. At this stage, learned Counsel for the Petitioner submits that the Petitioner may be permitted to withdraw this writ petition with liberty to file a detailed representation highlighting all his grievances, enclosing the documents in support of his contention, before the Director, Elementary Education, Orissa-cum-Director, OPEPA and the Director OPEPA may be directed to consider and dispose of the said representation within a stipulated period keeping in view the decision of this Court in Chandramani Jena and Others, Anirudha Mangal and Others and Narahari Sethi and Others Vs. State of Orissa and Others, .

11. Mr. Badu, learned Standing Counsel submits that he has no serious objection if the writ petition is disposed of with the above direction, as has been submitted by the learned Counsel for the Petitioner, without any observation on the merits of the case.

12. In view of the above the writ petition is dismissed as withdrawn.

13. However, this order shall not be a bar for the Petitioner to file a detailed representation before the Director, Elementary Education, Orissa-cum-Director, OPEPA, highlighting all his grievances, enclosing the documents in support of his contentions, within a period of eight weeks hence, if so advised. In case such a representation is actually filed by the Petitioner, the Director, Elementary Education, Orissa-cum-Director OPEPA shall do well to consider the said representation of the Petitioner and dispose of the same by taking an independent decision in the matter, on its own merit in accordance with law, keeping in view the Guidelines/Circulars with regard to engagement of Sikhya Sahayak as well as the ratio of the decision of this Court rendered in the case of Chandramani Jena and Ors. v. State of Orissa and Ors. passed in W.P.(C) No. 14981 of 2006 reported in s(supra) and the observation made above within a period of four months from the date of receipt of such representation and communicate his decision to the Petitioner within two weeks thereafter.

14. It is made clear that in case by passage of time, the select list of Bonai Block has lost its validity and there are still some vacancies of Sikhya Sahayak available to be filled up in different Blocks of Sundargarh district, the authorities concerned are at liberty to issue fresh advertisement in the matter and if the Petitioner, fulfils all eligibility criteria, he shall be at liberty to apply for the post with all genuine documents in respect of any one of the Blocks of his choice and his application shall be considered along with other applicants, in respect of that

block, for which he submitted his application, irrespective of his place of residence.

15. Requisites for communication of the order to the Director, OPEPA, Orissa along with copy of the writ petition be filed within one week.

16. Urgent certified copy of this order be granted on proper application.