
(2015) 09 OHC CK 0044

In the Orissa High Court

Case No : Writ Petition (C) Nos. 12536 of 2012 and 5143 of 2013

Jyotshnamayee Mishra and Others

APPELLANT

Vs

A.D.M., Boudh and Others

RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Citation : (2015) 2 ILR (Ori) 1238

Hon'ble Judges : S.N. Prasad, J

Bench : Single Bench

Advocate : L.K. Mohanty and B.K. Jena, for the Appellant; Amit Pattnaik, Addl. Govt. Advocate, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.N. Prasad, J—In both the writ petitions, common issue is involved regarding selection of Anganwadi Worker for Mahulbahali Anganwadi Centre hence both the writ petitions are being disposed of by a common order.

2. In W.P.(C) No. 12536 of 2012 prayer has been made to quash the order dated 5.7.2012 (Annexure-5, report of District Social Welfare Officer, Boudh dated 21.5.2011 (Annexure-6) and fresh advertisement dated 20.6.2012 (Annexure-7).

W.P.(C) No. 5143 of 2013 has been filed for quashing of order dated 1.1.2013 (Annexure-8) and permitting the petitioner to discharge the duty of Anganwadi Worker at Mahulbahali Anganwadi Centre along with consequential benefits.

3. Brief facts of the case in W.P.(C) No. 12536 of 2012 is that advertisement has been issued by the C.D.P.O., Kantamal on 14.1.2011 to fill up four posts of Anganwadi Workers of four Anganwadi Centre including Mahulbahali Anganwadi Centre of Manmunda Gram Panchayat of Kantamal Block. In pursuance to the said advertisement the petitioner being residing in Mahulbahali Anganwadi Centre of Manmunda Gram Panchayat has made an application and selected and was waiting for engagement as Anganwadi Worker but the authorities have not issued order of engagement, petitioner has preferred a writ petition bearing W.P.

(c) No. 18307 of 2011, disposed of on 28.9.2011 giving liberty to the petitioner to prefer appeal before the A.D.M., appeal was rejected on the ground that the Collector has decided for fresh selection in view of changed circumstance.

During pendency of the appeal before the A.D.M. fresh advertisement was issued on 20.6.2012 inviting applications for engagement of Anganwadi Worker for Mahulbahali Anganwadi Centre. Petitioner has filed this writ petition challenging the order of the A.D.M. and fresh advertisement. This Court in Misc. Case No. 11056 of 2012 stayed fresh selection of the Anganwadi Worker in respect of Mahulbahali Anganwadi Centre but the opposite party although has proceeded in terms of the second advertisement and selected opposite party No. 4, but by virtue of order passed by this Court on 23.7.2012 staying fresh selection of Anganwadi Worker, order of disengagement issued in favour of opposite party No. 4 on 1.1.2013 which has been challenged by the opposite party No. 4 filing writ petition bearing W.P.(C) No. 5143 of 2013.

4. Case of the petitioner that when he has made an application in terms of advertisement issued on 14.1.2011, on the date she was eligible for her candidature in view of the guideline dated 2.5.2007 which prescribes that the candidate is to be resident of the area where the centre is situated and the petitioner on the date of advertisement or even on the date of consideration and final selection by the selection committee was residing in the area where the centre is situated but due to subsequent change by taking out area of residence from the purview of the Mahulbahali Anganwadi Centre, petitioner has been said to be ineligible for issuance of engagement order and thereafter the authorities have come for fresh selection.

Ground of challenge by the petitioner is that eligibility of a candidate is to be seen when advertisement was issued or on the due date of consideration and if the condition of eligibility is changed due to subsequent decision of the Government, candidate already considered and selected cannot be adversely affected.

5. Opposite party-State has filed counter affidavit wherein stand has been taken that the petitioner is residing in Kurtipali Village, the village was in Mahulbahali Anganwadi Centre on the date of advertisement or on the date of consideration but subsequently Kurtipali village has been separated from Mahulbahali Anganwadi Centre and as such petitioner has found ineligible and accordingly fresh advertisement has been directed to be issued by the order of the Collector which was based upon decision of the District Social Welfare Officer.

6. Opposite party No. 4 has been represented by her learned Advocate who has submitted that prerequisite qualification laid down in the guideline dated 2.5.2007 is that a candidate must be residing in the area where the centre is situated. Petitioner although was eligible on the date of advertisement or on the date of consideration but not found eligible at the time of issuing of the appointment order due to decision of the Government that Kurtipali village where

the petitioner is residing which is under Mahulbahali Anganwadi Centre has been taken out from the Centre area hence the petitioner is no more eligible as per the guideline dated 2.5.2007. Hence the authorities have taken right decision in terms of the guideline dated 2.5.2007 and has issued second advertisement, in pursuance of the same she has made application, selected and engaged, hence there is no infirmity in the action of the opposite party-State.

7. In W.P.(C) No. 5143 of 2012 the petitioner in view of the advertisement issued on 20.6.2012 made an application, being eligible from all corner as per the terms and conditions laid down in the guideline, selected and engaged but subsequently disengaged vide order passed by the authority on 1.1.2013 (Annexure-8) which is absolutely illegal and improper because the petitioner has been selected when found eligible and meritorious as such authorities ought not to have disengaged the petitioner from service.

In this case State has not filed counter affidavit although direction has been issued but however detail counter affidavit has been filed in W.P.(C) No. 12536 of 2012, since facts of both the cases are same as such counter affidavit filed by the opposite party-State will also be taken into consideration for the purpose of adjudication of this case.

8. Heard learned counsel for the parties and perused the documents on record.

9. Fact which is not in dispute is that one advertisement was issued on 14.1.2011 in which petitioner in W.P.(C) No. 12536 of 2012 being eligible as per the guideline and being residing in the area where the centre is situated i.e. Kurtipali Village was selected on 29.2.2011 as would be evident from Annexure-3 annexed to the W.P.(C) No. 12536 of 2012. Thereafter no engagement order has been issued in favour of the petitioner in W.P.(C) No. 12536 of 2012 fairly for long period and by virtue of the decision of the District Social Welfare Officer dated 21.5.2011 the area where the petitioner was residing was taken away from the purview of Mahulbahali Anganwadi Centre which would be evident from Annexure-6 and on that pretext engagement of the petitioner has not been issued on the ground that on or after 21.5.2011 the petitioner is not eligible as per the guideline dated 2.5.2007.

10. Question arises for consideration before this Court what will be the date of consideration of eligibility.

In order to decide this issue reference of judgments rendered by the Hon''ble Apex Court in the case of Rakesh Kumar Sharma Vs. Govt. of NCT of Delhi and Others, (2013) 10 SCALE 42 : (2013) 11 SCC 58 : (2013) 4 SCT 543 although similar is with respect to regular service law and this case pertains to Anganwadi Worker but in order to take help of principles regarding due date of consideration of eligibility reference of these judgment is being made.

The Hon''ble Apex Court after taking into consideration all several judgments like U.P. Public Service Commission U.P., Allahabad and Another Vs. Alpana, (1994)

68 FLR 750 : (1994) 1 JT 94 : (1994) 1 SCALE 98 : (1994) 2 SCC 723 : (1994) 1 SCR 131 : (1995) 1 SLJ 183 : (1994) 1 UJ 330 , Dr. M.V. Nair Vs. Union of India (UOI) and Others, (1993) 1 JT 255 : (1993) LabIC 1111 : (1993) 2 LLJ 347 : (1993) 1 SCALE 180 : (1993) 2 SCC 429 : (1993) 1 SLJ 111 , Harpal Kaur Chahal v. Director, Punjab Instructions reported in 1995 Supp(4) SCC 706 , Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others, (1993) 1 JT 220 : (1993) 1 LLJ 617 : (1993) 1 SCALE 93 : (1993) 3 SCC 168 Supp : (1993) 1 SCR 186 , Ashok Kumar Sharma and Another Vs. Chander Shekher and Another, (1992) JT 684 Supp : (1994) 1 LLJ 267 : (1992) 3 SCALE 528 : (1993) 2 SCC 611 Supp : (1992) 3 SCR 768 Supp has been pleased to observe that the requisite qualification on the last date of submission of application is to be considered. Reference may be made to the extract of paragraphs 21 and 22 which is being quoted below:

"21. In the instant case, the appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification i.e. eligibility, character verification, etc. Clause 11 of the letter of offer of appointment dated 23.2.2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court.

22. It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/ advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement."

wherein their Lordships has been pleased to held that eligibility condition is to be seen on the due date of consideration or the date of declaration of the result.

Likewise judgment rendered by the Hon''ble Supreme Court in the in the case of Bishnu Biswas and Others Vs. Union of India (UOI) and Others, AIR 2014 SC 1570 : (2014) AIRSCW 1969 : (2014) 4 JT 462 : (2014) 4 SCALE 468 : (2014) 5 SCC 774 where their Lordships has been pleased to hold by taking into so many judgments passed by the Hon''ble Supreme Court and also taking into consideration the order passed by the Hon''ble Supreme Court in the case of Tej Prakash Pathak and Others Vs. Rajasthan High Court and Others, (2013) 8 JT 498 : (2013) 5 SCALE 1 : (2013) 4 SCC 540 : (2013) 2 SCC(L&S) 353 : (2013) 2

SCT 699 : (2013) 2 SLJ 139 (where matter has been sent before the larger Bench) has been pleased to hold that has been reflected at paragraph-19 to the effect that the rules of game cannot be changed after process of selection once been initiated.

11. Now in the light of the observations of the Hon"ble Apex Court in the cases referred above if the facts of the cases will be compared with the instant case the advertisement was issued on 14.1.2011, petitioner in W.P.(C) No. 12536 of 2012 has made application as per the eligibility condition as provided in the guideline dated 2.5.2007 which provides that a candidate is to be residing in the area where the centre is situated. Petitioner admittedly was residing in Kurtipali village, the area which was on the date of advertisement, was within the Mahulbahali Anganwadi Centre and accordingly being eligible as per the guideline, has found eligible, selected but no engagement order has been issued. Although guideline dated 2.5.2007 provides that engagement order is to be issued without any delay and, to that effect relevant portion is quoted for ready reference:

"After the enquiry into the objection and verification of documents, the Selection Committee will give points to all the eligible candidates as per the criteria spelt out in the guideline. The Committee will finally select the candidate who secures the maximum points. In case two or more candidates secure same points, preference will be given to the older candidate. The Committee will notify the candidate selects on the same day in Panchayat Samiti and CDPO's office and within 48 hours at the GP and village level, CDPO is authorized to issue engagement order in favour of the candidate selected and this should be issued within 24 hours of the selection of the candidate."

12. Thus engagement order ought to have been issued forthwith. Petitioner was admittedly being selected on 29.2.2011 hence as per the provisions of the guideline as indicated hereinabove, engagement order ought to have been issued in favour of the petitioner but not issued.

All of a sudden on 21.5.2011 District Social Welfare Officer has taken out Kurtipali village from the purview of Mohulbahali Anganwadi Centre and thereafter gone for fresh advertisement on the pretext that the petitioner already selected is no more residing in the centre area on or after 21.5.2011 hence is not eligible as per the guideline dated 2.5.2007. The authorities have gone for second advertisement inviting fresh applications, opposite party No. 4 has applied, selected but by virtue of interim order passed in Misc. Case No. 11056 of 2012 she has been directed which is subject matter of W.P.(C) No. 5143 of 2013.

13. There is no dispute that as on 14.1.2011 petitioner was eligible even after due date of consideration. When the petitioner was declared successful petitioner was eligible. Engagement order has not been issued fairly for a period of three months which will be said to be inordinate delay because guideline provides within period of three days by completing all procedure engagement order has to

be issued i.e. 48 hours will be taken for notifying selected candidate and when it will be notified, engagement order shall be issued within 24 hours of selection of candidate. During these three months authorities have taken out Kurtipali village from the purview of the Mohulbahali Anganwadi Centre and the petitioner has been said to be ineligible.

14. Learned counsel for the opposite party No. 4 and petitioner in W.P.(C) No. 5134 of 2013 as well as learned counsel for the opposite party-State has submitted that the petitioner in W.P.(c) No. 12536 of 2012 since not been appointed, hence she was at all eligible to be engaged in view of the non-eligibility in pursuance to the guideline. This argument cannot be accepted for the two fold reasons:

"(i) Admittedly petitioner was selected on 29.2.2011 but engagement order has not been issued which was contrary to the provision of the guideline.

If the authorities would have followed the guideline in strict sense the order of engagement would have been issued and if then decision would have been taken regarding taking out Kurtipali village from Mohulbahali Anganwadi Centre then decision of the authority will not have adversely affected the petitioner and in that situation petitioner would not have been disengaged from service due to subsequent change in eligibility condition due to settled proposition of law that any decision of the authority cannot be given its retrospective application which will adversely affect right of a party.

(ii) When applications have been invited stipulating certain condition therein it is expected from the authority to follow the same and simultaneously candidate is supposed to follow the said terms and conditions. Hence applying the view of Hon"ble Apex Court as observed in the cases referred above. The petitioner cannot be said to be ineligible as per condition dated 2.5.2007 regarding condition pertaining to residing in area where centre is situated."

Petitioner in this case on the due date application or on the date of consideration was found eligible and thereafter selected but engagement order has not been issued which was contrary to the provision of the guideline since no explanation has been furnished in the counter affidavit what led the authority not to issue engagement order fairly for a period of three months while the guidelines provides that engagement order will be issued within 24 hours from the date of publication of the selection list.

On the basis of these two fold reasons, argument advanced by learned counsel for the State as well as private opposite party cannot be accepted.

15. In view of the foregoing reasons action of the opposite party-State cannot be approved and accordingly second advertisement dated 20.6.2012 is hereby quashed.

16. In the result, appointment of opposite party No. 4 who is petitioner in W.P. (C) No. 5143 of 2013 is also hereby quashed.

Accordingly, opposite party-State is directed to issue appropriate engagement order in favour of the petitioner in W.P.(C) No. 12536 of 2012 within reasonable period preferably within four weeks from the date of receipt of copy of this order.

With the above observation and directions, both the writ petitions are disposed of.