
(2008) 06 OHC CK 0009
In the Orissa High Court
Case No : O.J.C. No. 5268 and 2000

Kishore Chandra Padhi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-06-2008

Acts Referred:

Citation : (2008) 106 CLT 403 : (2008) 2 OLR 759 Supp

Hon'ble Judges : I.M. Quddusi, Acting C.J.; S.C. Parija, J

Bench : Division Bench

Advocate : S.K. Nayak-1, V. Narasingh, S.K. Nayak, D. Nayak and M.S. Sahoo, for the Appellant; P.K. Barik, A.S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.C. Parija, J.—This writ application has been filed challenging the order dated 28.3.2000 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack, in Original Application No. 583 of 1994 quashing the appointment of the Petitioner to the post of Extra Departmental Branch Post Master (EDBPM for short), Sihala. The Petitioner also assails the subsequent order dated 9.6.2000 passed by the Senior Superintendent of Post Offices, Berhampur, Ganjam, opposite party No. 3, in appointing opposite party No. 5 as EDBPM, Sihala.

2. The brief facts of the case is that opposite party No. 3 issued an advertisement on 10/17.2.1994, inviting applications for the post of EDBPM. Sihala, as per Annexure-2 to the writ application. In the said advertisement, the eligibility conditions inier alia prescribed that the candidate should have passed Matriculation or equivalent examination and he should have adequate personal income from other sources. The said advertisement also prescribed that the candidates were required to produce supporting proofs/documents with regard to original income certificate of the candidate issued by the competent Revenue Authority (Tahasildar).

3. Pursuant to the said advertisement issued by opposite party No. 3 for the post

of EDBPM, Sihala, four applications were received, including that of the present Petitioner and opposite party No. 5 and on considering the said applications, the Petitioner was selected and appointed as EDBPM, Sihala, vide appointment order dated 29.4.1994 under Annexure-3 to the writ application.

4. Being aggrieved by the said order of opposite party No. 3 selecting and appointing the Petitioner as EDBPM, Sihala, opposite party No. 5 filed Original Application No. 583 of 1994 before the Central Administrative Tribunal, Cuttack Bench, Cuttack. Before the Tribunal, opposite party No. 5 (who was the Applicant before the Tribunal) alleged that she applied for the post of EDBPM, Sihala, in response to the advertisement dated 10.17.2.1994 along with necessary documents and that there was only four candidates including her and the present Petitioner (Respondent No. 4 before the Tribunal) and that she had secured highest percentage of marks in the Matriculation Examination. It was specifically pleaded by opposite party No. 5 before the Tribunal that she had secured 314 marks whereas the present Petitioner had secured 301 marks in the Matriculation Examination. Opposite party No. 5 had accordingly pleaded before the Tribunal that ignoring the departmental instruction that person who has got highest percentage or marks must be taken to be most meritorious the present Petitioner had been appointed ignoring her case. Her representation made to the authorities in that regard had also been rejected.

5. Before the Tribunal, the opposite parties 1 to 3 (Respondents 1 to 3 before the Tribunal) in their counter affidavit, which is annexed to the present writ application as Annexure-5, had admitted that amongst the four persons, opposite party No. 5 got the highest percentage of marks. The departmental authorities farther stated that along with her application, opposite party No. 5 had submitted an income certificate issued by the Tahasildar, Konisi, showing her annual income from agriculture as Rs. 5,000/- and from salary as Rs. 9,000/-. The departmental authorities stated before the Tribunal that as opposite party No. 5 is an unemployed lady in the village her income from salary cannot be Rs. 9,000/- per year. They have also stated that the said opposite party No. 5 did not have any land in her own name and therefore, her income of Rs. 5,000/- from agriculture is also without any basis. It was further submitted by the departmental authorities that opposite party No. 5 did purchase some land and filed the sale deed with the departmental authorities, but that was after the last date of receipt of the application and therefore the purchase of land by opposite party No. 5 had no bearing on the income of Rs. 5,000/- from agriculture. Accordingly it had been pleaded by the departmental authorities before the Tribunal that as opposite party No. 5 at the relevant point of time did not have any agriculture land in her own, her case could not have been considered.

6. The Tribunal on considering the contentions of the parties, came to hold as under:

The departmental instructions clearly provide that amongst the eligible candidates, the person with the highest percentage of marks in the Matriculation

Examination will be taken as most meritorious. In this case admittedly the Applicant has got highest percentage of marks, but her candidature has been rejected on the aforesaid grounds mentioned by the departmental Respondents in their counter. We note that before rejecting the income certificate which has been issued by the local Tahasildar, who is the appropriate authority for issuing such income certificate, the departmental authorities have not issued any notice to the Applicant and have not heard her version with regard to the genuineness of the income certificate. It has been submitted by the learned Counsel for the Petitioner that the Applicant by remaining in her house is earning income by tailoring and stitching and such income has been mentioned against the heading "Salary" because there is no separate heading for this. We do not want to go into this aspect of the matter because we feel that before rejecting the income certificate, which has been issued by the Tahasildar and when such rejection has resulted in adverse consequences to the Applicant, the departmental authorities should have given her an opportunity of being heard. As regards the other aspect that the Applicant at the relevant point of time did not have any land in her own name, we note that the departmental instructions only provide that the selected candidate must have adequate means of livelihood. In view of this, this contention of the departmental Respondents is held to be without any merit and is rejected.

7. In view of the above findings, the Tribunal disposed of Original Application No. 583 of 1994 directing the departmental authorities that they should issue a notice to opposite party No. 5 and after hearing her, take a view on the genuineness of the income certificate. In case, ultimately the income certificate is held to be genuine by the departmental authorities, they should take up fresh selection for the post of EOBPM, Sihala, keeping the consideration confined to the four candidates who had applied in response to the advertisement dated 10/17.2.1994. Accordingly the Tribunal proceeded to quash the appointment of the present Petitioner to the post of EDBPM, Sihala, and made it clear that till the reconsideration is done by the departmental authorities, the present Petitioner will continue in the post of EDBPM, Sihala.

8. It appears that in pursuant to the aforesaid order and/or direction of the Tribunal, opposite party No. 3 issued a notice to opposite party No. 5 and after personal hearing and going through the documents, the income certificate which was produced by her was held to be genuine. Accordingly opposite party No. 5 was found to be most suitable candidate among the four candidates and she was selected for provisional appointment as EDBPM, Sihala, as per letter of appointment dated 9.6.2000 issued by opposite party No. 3, under Annexure-6 to the present writ application.

9. In view of the facts and circumstances as narrated above and considering the findings of the Tribunal as detailed above, no impropriety or illegality can be said to have been committed by the Tribunal in passing the impugned order dated 28.3.2000 as well as subsequent order of appointment dated 9.6.2000 passed by

opposite party No. 3, appointing opposite party No. 5 as EDBPM, Sihala, so as to warrant any interference by this Court.

The writ application is therefore devoid of merits and the same is accordingly dismissed.

I.M. Quddusi, A.C.J.

10. I agree.