

(2015) 04 OHC CK 0046

In the Orissa High Court

Case No : Writ Petition (C) No. 6714 of 2011

Laxmipriya Barik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Citation : (2015) 04 OHC CK 0046

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

Bench : Single Bench

Advocate : P.K. Satpathy, R.N. Parija and A.K. Rout, for the Appellant

Final Decision : Disposed off

Judgement

S.N. Prasad, J.—Heard learned counsels for the petitioner, the opposite party Nos. 1 to 4 and opposite party No. 5.

2. The petitioner being aggrieved with the order dated 14.02.2011 which by way of communication issued under the signature of Deputy Director (Hindi and Sanskrit), Orissa addressed to the Collector,-cum-District Magistrate, Bhadrak has approached this Court.

3. The brief facts of the petitioner is that the petitioner as well as private opposite party No. 5 have made their applications for consideration of Anganwadi Worker had participated in the selection process in which the petitioner was selected and engaged.

4. Being aggrieved with her selection of the petitioner, opposite party No. 5 has filed writ petition before this Court being W.P.(C) No. 11847 of 2009 which was disposed of on 31.08.2009 giving liberty to the opposite party who was the writ petitioner in W.P.(C) No. 11847 of 2009 to file representation before the Director, Social Welfare which was under Women and Child Development Department, Orissa, Bhubaneswar which shall be directed to take a decision within a stipulated period.

5. The private opposite party No. 5 in terms of the said order has made a representation before the Director, W and C.D. department raising the issue of examination of forgery by taking admission in a school after being failed in another school for the purpose of passing Matriculation examination, which was enquired into thereafter director has been concluded that the HSC Certificate of the petitioner is genuine. Accordingly, representation has been dismissed being devoid of merits.

6. The private opposite party No. 5 after lapse of about one and half years has made an application before the Deputy Director (Hindi and Sanskrit), Orissa raising the same issue with respect to the admission of the petitioner in another school after being failed in the High School examination from one school of which the petitioner was a student, the Deputy Director (H and S), Orissa has conducted an enquiry on the basis of which he came to a finding that the petitioner was managed to get admission in Madhyama wing of Gadadhar Sanskrit Vidyalaya by producing false CLC from Daridra Narayan Bidyapitha, Alati, Keonjhar and accordingly action is being proper may be directed to initiate against concerned Anganwadi Worker.

7. The petitioner being aggrieved the order dated 14.2.2011 has filed this writ petition inter alia on the ground as follows:-

(i) That the Deputy Director (H and S), Orissa has no jurisdiction to interfere the matter when a conscious decision has been taken by the Director, Women and Child Development Department (Annexure-2).

(ii) The Deputy Director (H and S) has got no jurisdiction to entertain this application for the same issue which has been decided by the Director, Women and Child Development Department in terms of the order passed by this Court in W.P.(C) No. 11847 of 2009.

8. On the other hand learned counsel for the private opposite party has submitted that the issue before the Director, Women and Child Development Department and Deputy Director (H and S), Orissa is quite different because the Director, W and C.D. Department with respect to issuance of HSC certificate examination while the issue before the Deputy Director (H and S) was regarding the issuance of CLC in favour of the petitioner, the Director, W and C.D. Department has not adjudicated the issue in a proper manner.

9. Hence, the private opposite party has made an application before the Deputy Director (H and S) for enquiry and the authority came to the conclusion that the petitioner has managed to get admission in Madhyama wing of Gadadhar Sanskrit Vidyalaya by producing false CLC from Daridra Narayan Bidyapitha, Alati, Keonjhar. Since Matriculation Certificate was based upon wrong conduct of the petitioner and as such the petitioner has conducted fraud since the petitioner was engaged as Anganwadi Worker which was based upon the genuineness of HSC Certificate and originally the CLC was issued from one school which is false on the basis of the principle that the fraud vitiates everything. So the petitioner

is not entitled to be permitted to continue as Anganwadi Worker.

10. The admitted position in this case is that the petitioner has been selected as Anganwadi Worker by the Selection Committee and the petitioner was continuing as Anganwadi Worker.

11. The private opposite party who although was a candidate but not selected, but however, being aggrieved with the engagement of the petitioner has approached this Court being W.P.(C) No. 11847 of 2009 raising the question on genuineness of the HSC certificate, this Court vide order dated 31.08.2009 has accorded liberty to raise her grievance before the Director, W and C.D. Department who was directed to take a decision within a stipulated period. Then opposite party No. 5 had made representation before the Director, W and C.D. Department vide Annexure-2 dated 3.12.2009. Although it has concluded that the opposite party No. 5 has challenged the admission of the petitioner in both the institutions at the same time. But since the opposite party No. 5 has not challenged the genuineness of the HSC Certificate granted by Gadadhar Sanskruta Vidyalaya, Jajpur and from report it was received from the Headmaster of Gadadhar Sanskruta Vidyalaya shows that the petitioner has actually passed the HSC examination 1998 in second division and hence it was refused to entertain this writ petition. Accordingly the representation of opposite party No. 5 was rejected.

12. Admittedly the petitioner has not assailed the order dated 3.12.2009 before any higher court of law or before any higher authority rather the private opposite party filed a fresh representation before the Deputy Director (H and S) raising her grievance that the petitioner being student of Charampa Girls High School from 1994 to 1997 was appeared both annual and supplementary examination from the same school for the year 1997 and failed in both the examinations. Later without taking transfer certificate from Charampa Girls High School where she was studied earlier had got admission in Gadadhar Sanskruta Vidyalaya, Jajpur and passed her HSC examination in the year 1998.

13. The private opposite party has challenged the admission of Smt. Barik in both the institutions at the same time. The Deputy Director (H and S) has conducted an enquiry and on the basis of said enquiry he came to the conclusion that the petitioner has got admission in two institutions by producing false SLC from Daridra Narayan Bidyapitha, Alati, Keonjhar and accordingly, directing appropriate action to be taken against Anganwadi Worker.

14. Here, the question is this Court has passed a direction and accordingly liberty was given to the opposite party No. 5 to represent before the Director, W and C.D. department to adjudicate the issue regarding the fraud having been played by the petitioner which is the main allegation of private opposite party. The Director although has referred the said issue but not decided however, he has given much emphasis regarding genuineness of HSC Certificate which has been found to be genuine since he has corroborated the same from the record finding

concerned Headmaster of the school and accordingly the HSC Certificate is genuine and accordingly he refused to interfere.

15. The Director, W and C.D. department has not decided the entire issue in right perspective in one place he has observed regarding the allegation that the petitioner has taken admission in both the institutions at the same time without having got SLC. This issue has to be decided by the Director, but the reason best known to him. This has not been decided rather the Director has got genuineness of HSC Certificate and accordingly he refused to entertain the representation.

16. The private opposite party in stead of challenging the order passed by the Director, W and C.D. department had chosen wrong forum and filed representation before the Deputy Director, (H and S) raising the same grievance. But the Deputy Director in a very improper manner has entertained the representation and proceeded the matter would might be a position that opposite party No. 5 might not have placed regarding the order passed by this Court or the order passed by the Director, W and C.D. department and perhaps in that pretext the Deputy Director, (H and S) has entertained representation and conducted an enquiry in this regard, on the basis of enquiry which was based upon the admission register of the concerned school, the Deputy Director, (H and S) has come to the conclusion regarding use of unfair play by the petitioner and on that basis a direction has been issued upon the authorities to initiate action against concerned Anganwadi Worker which is under challenged in this writ petition.

17. Without going to the issue as to whether the petitioner has brought all the facts before the Deputy Director (H and S) or not, but the fact remains that the Deputy Director (H and S) has conducted enquiry based upon the admission register as the copy of the order has been produced by way of Annexure-B/3 on behalf of the opposite party No. 3 dated 5.5.2010 on the basis of which the Deputy Director (H and S) has come to the conclusion regarding unfairness having been played by the petitioner based upon which the Deputy Director has directed to take action against the petitioner.

18. Be that as it may anything it has come against the petitioner which is going to be adversely affect it is the requirement of law to provide an opportunity of being heard.

19. Without going into the merits of claim of the petitioner regarding genuineness of the SLC which is to be reproduced by the petitioner but since no opportunity of being was provided to the petitioner after conducting an enquiry rather the Deputy Director (H and S) has passed an order regarding SLC based upon his enquiry to initiate action against Anganwadi Worker concerned which in my considered view in violation of the principle of natural justice and the enquiry which has been conducted by the Deputy Director (H and S) order dated 14.2.2011 was issued behind the back of the petitioner since no opportunity of being heard was given to the petitioner before coming to the conclusion that the

petitioner has used unfair play in getting HSC Certificate.

20. In view thereof, the order dated 14.2.2011 is not sustainable in the eye of law, due to the following reasons:-

(i) Once this Court directed the Director, W and C.D. Department to take a decision and accordingly, decision has been taken in right perspective but the private opposite party had chosen the forum to approach before the Deputy Director (H and S) rather appropriate forum must be the higher authority or any court of law.

(ii) The Deputy Director (H and S) has entertained the representation there might be the situation that the order passed by the Director, W and C.D. department has not been placed before him.

21. Be that as it may, the Deputy Director (H and S) since passed the order based upon enquiry report without providing an opportunity of being heard to the petitioner. Hence the same is not sustainable.

22. In view of the reason stated hereinabove the order dated 14.2.2011 is hereby quashed.

23. Since this Court has directed the Director, W and C.D. department vide order dated 31.08.2009 being W.P.(C) No. 11847 of 2009 regarding the genuineness of the HSC Certificate, but the Director has not taken decision in right perspective regarding the admission of the petitioner in both the institutions at the same time, since no finding in the order dated 3.12.2009 rather the genuineness of HSC Certificate has given much emphasis which is not the case of the petitioner, rather the case of the petitioner is that same unfair play played by the petitioner regarding issuance of certificate, which amounts to fraud since the definition of fraud is very clear as has been dealt with in the judgment rendered by the Hon"ble Supreme Court in the case of A.V. Papayya Sastry and Others Vs. Government of A.P. and Others, AIR 2007 SC 1546 : (2007) 4 JT 186 : (2007) 2 RCR(Civil) 431 : (2007) 4 SCALE 88 : (2007) 4 SCC 221 : (2007) 3 SCR 603 : (2007) AIRSCW 2212 : (2007) 2 Supreme 837 , it has been held as follows:-

"fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss and cost of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in persona. The principle of "finality of litigation" cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants."

24. This aspect of the matter has not been dealt with by the Director, W and C.D. department.

25. Hence, the matter is remitted before the Director concerned to take a final

decision. The Director, W and C.D. department is directed to take an appropriate decision within 8 weeks from the date of receipt of copy of this order after providing an opportunity of being heard both the parties.

26. With such observation and direction, the writ petition is disposed of.