
(2013) 09 OHC CK 0068
In the Orissa High Court
Case No : W.P. (C) No. 2297 of 2005

Lili Lata Sahoo

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Citation : (2014) 117 CLT 479 : (2014) 1 ILR (Ori) 36

Hon'ble Judges : I. Mahanty, J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

I. Mahanty, J.—The present Writ Petition has come up before this Court being filed by Petitioner-Lili Lata Sahoo seeking to challenge the order of termination of her appointment as Junior Stenographer vide Order Dated 29th January, 2005 (Annexure-3), whereby the Learned District Judge, Kandhamal-Boudh, Phulbani, directed for termination of Petitioner's service with effect from 31.01.2005 since her appointment was held to be illegal. Mr. Aswini Ku. Mishra, Learned Senior Advocate for the Petitioner submits that the Petitioner was recruited as Junior Stenographer in the Judgeship of Kandhamal-Boudh at Phulbani vide Office Order No. 3409 dated 02.08.2002 & the Petitioner joined the said job on 05.08.2002. It is further submitted that thereafter the Petitioner has been transferred & posted in different Sub-ordinate Courts under the same Judgeship. While working as such on 21.08.2004, Petitioner received a show cause notice (Annexure-1) calling upon her to show cause as to why her services shall not be terminated since it was alleged that the Petitioner has neither been selected as Junior Stenographer in the competitive examination held on 18.03.2001 nor her name finds a place in the merit list prepared on 19.06.2001. In the said show cause notice, it was further alleged that the Petitioner was illegally appointed by the then District Judge, Phulbani in violation of Rule 6 of the Orissa District & Subordinate Courts Ministerial Services (Method of Recruitment & Conditions of Services) Rules, 1969 (hereinafter referred to as "Rules, 1969").

A reply to such show cause notice was filed by the Petitioner vide her letter dated 30.08.2004 denying the allegations & claiming therein that she had applied for the post of Junior Stenographer pursuant to the Notification issued by the District Judge, Kandhamal-Boudh, Phulbani on 20.05.2000 for the same & was allotted Roll No. 160; & interview was fixed to 24.02.2001 & 25.02.2001. The interview having been deferred was ultimately held on 18.03.2001. Since the Petitioner was found successful in such examination, she was issued with appointment letter dated 02.08.2002 by the then District Judge, it is therefore asserted that the Petitioner has been selected on merit & therefore rejection of her show cause reply & the issue of the impugned order of termination issued on 29.01.2005 under Annexure-3 is wholly illegal.

2. Sri Mishra, Learned Senior Advocate for the Petitioner submits that in any event, Petitioner having joined the service & performed her duties to the best satisfaction of the authorities from time to time; therefore show cause notice issued & reply of the Petitioner thereto, if found to be deficient, a disciplinary proceeding could have been initiated against the Petitioner. In stead, order of termination has been issued which is violative of Rules governing the services of Government servants & therefore the same is non est in the eye of law. Further, Mr. Mishra drew our attention to the enquiry report (Annexure-4) conducted by a Hon''ble Judge of this Court, who was Administrative Judge in-charge of the concerned district & submitted that the same would show that the allegations made against the Petitioner and/or the District Judge, who issued the appointment order is favour of the Petitioner, were incorrect & baseless.

3. Learned Government Advocate, on the other hand, referring to the averments made in the counter affidavit filed by Opp. Party No. 2-the District Judge, Kandhamal-Boudh, Phulbani submits that, the Learned District Judge was neither aware of any enquiry conducted by the Hon''ble Judge of this Court nor any such report was available in his office. Apart from this, it is categorically stated that there was an advertisement on 20.05.2000 for recruitment of the Junior Stenographers for the Judgeship of Kandhamal-Boudh, Phulbani & the date of interview was fixed to 24th- 25th February, 2001. However, subsequently, such date of interview was deferred to 18.03.2001 in which Petitioner along with other appeared in that interview & a merit list of successful candidates was published on 19.06.2001, wherein, the name of the Petitioner did not find place. It is further stated that there is no justification for issuance of such letter of appointment claimed to have been made in favour of the Petitioner on 02.08.2002 by the then District Judge, since the Petitioner had not been found successful & her name id not find a place in the merit list, a copy of which is also attached to the counter as Annexure-A/2.

4. Heard Learned Counsel for the parties; considered their respective submissions; perused the pleadings made & documents annexed thereto.

5. It is clear that the Petitioner has been trying to take a prevaricating stand while admittedly she was a candidate for the post of Junior Stenographer

pursuant to Notification dated 20.05.2000. Yet Petitioner's name did not find place in the merit list & there exists no justification for her to be issued with the appointment letter after publication of such merit list. Reliance having placed on the enquiry report of the Learned Administrative Judge under Annexure-4 & on perusal of such report reveals that the then Learned District Judge, Mr. M.C. Ray, claims to have conducted another recruitment test for the reserved categories on 29.09.2002 by way of a special drive. After conduct of such examination, the then District Judge, "carefully & confidentially, as per prevalent norms & guidelines, kept the answer papers in English, General Knowledge & Arithmetic's in separate bundles under seal & sought for instruction of the Registry of this Court for entrusting the same to different examiners for valuation". Therefore, if the Petitioner had appeared in such a recruitment test purportedly conducted by the then District Judge the same cannot provide any foundation for any appointment made on 02.08.2002. Apart from the same, it would be clear that the Petitioner had appeared in the earlier recruitment test held in the year 2001 pursuant to Notification dated 20.05.2000, but she having not been found successful in the said recruitment test, no right accrues in her favour to be issued with appointment letter dated 02.08.2002. Therefore, once the issuance of letter of appointment dated 02.08.2002 is found to be wholly without jurisdiction, no right flows thereby to the Petitioner to make her entitled to any claim. The case at hand highlights utter disregard of all canons of law as well as the 1969 Recruitment Rules & the manner of conduct of such officers unfortunately who are part of the Judiciary in a manner to benefit certain individuals to the detriment of others cannot be accepted. We are taking much pain to record all the necessary facts since day by day the common citizens are fast losing faith in Judiciary & therefore all administrative decisions by Judicial Officers should not only be above board, but should act as examples & must meet the highest standard of probity.

6. We, therefore find no justification to entertain this Writ Petition since we are of the considered view that Petitioner's order of appointment itself was non est in the eye of law, having been passed without jurisdiction. Since the Petitioner did not qualify in the interview & examination held on 18.03.2001 & her name did not find place in the merit list dated 19.06.2001, there cannot be any justification for issuance of appointment letter dated 02.08.2002 on the basis of which a right has been sought to be claimed by the Petitioner. We are constrained to observe that we find no merit in the challenge to the impugned Order Dated 29.01.2005 by which the Petitioner's appointment was held to be illegal & she was terminated from service with effect from 31.01.2005. In the result, the Writ Petition is dismissed.