
(2025) 03 OHC CK 1347
In the Orissa High Court
Case No : Writ Petition (C) No. 5424 Of 2015

Padmabati Suna

APPELLANT

Vs

Secretary, Women & Child Development Department,
Bhubaneswar And Others Vs

RESPONDENT

Date of Decision : 04-03-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2025) 03 OHC CK 1347

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : H.S. Mishra, Dr. A.K. Tripathy, K. Badhai, S. Behera

Final Decision : Dismissed

Judgement

Sashikanta Mishra, J

1. An advertisement was issued by the Child Development Project Officer (CDPO), Agalpur in the district of Balangir in the year 2010 for engagement of Anganwadi Worker of Roth-C Anganwadi Center. The petitioner and opposite party No.6 were among the applicants. In the selection process, the opposite party No.6 having secured the highest marks was selected. According to the petitioner she was the only candidate who submitted the required affidavit as per the advertisement whereas opposite party No.6 submitted a false certificate stating to be a resident of the service area of the center. It is the specific case of the petitioner that the opposite party No.6 came to the village in the year 2010 and obtained residence certificate from the Tahasildar, Balangir by making false declaration. The petitioner's objection in this regard was not considered. As such, she was found to have secured the second highest marks. Being aggrieved by the selection of opposite party No.6, the petitioner filed appeal before the ADM, Balangir being Revenue Misc. Appeal No.57 of 2010. She also filed an appeal before the Sub-Collector challenging the residence certificate of opposite party No.6 being Misc. Appeal No.1 of 2011. Both the appeals were heard separately

but were disposed on the same day, i.e., 30.01.2013. The Anganwadi Appeal was rejected holding that the appellant (petitioner) did not produce the cancellation order of the residence certificate of opposite party No.6. Further, the name of opposite party No.6 along with her photograph finds place in the voter list of 2011. In the other appeal, the Sub-Collector held that the Tahasildar had issued the residence certificate in favour of opposite party No.6 without calling for report from the concerned Revenue Inspector. Since no inquiry had been conducted in the field, the Sub-Collector set aside the order passed by the Tahasildar granting residence certificate to opposite party No.6 and remanded the case to the Tahasildar for fresh disposal by affording opportunity of hearing to both parties. It is the further case of the petitioner that because of the fact that the order was passed by the Sub-Collector on the same day, she could not produce the same before the ADM in the other appeal resulting in the same being rejected. Thereafter, on wrong advice, she preferred WP.(C) No.7621 of 2013. While the matter stood thus, opposite party No. 6 resigned on 24.11.2011 and the post fell vacant. In the meantime, fresh advertisement was issued, which came to be stayed by this Court in the aforementioned writ petition. Ultimately, said writ petition was disposed of on 02.02.2015 on the ground that the petitioner has appeared at the subsequent interview, which was not under challenge. The writ petition was thus held to be infructuous and was disposed of as such. According to the petitioner, the Residence Certificate of opposite party No.6 having been cancelled proves the contention of the petitioner that the selection of opposite party No. 6 was illegal. However, she having resigned subsequently, the further advertisement issued on 22.10.2013 has become redundant, as the petitioner being the second more meritorious candidate in the first selection should be engaged. Since the selection of opposite party No. 6 was under challenge in appeal before the ADM as well as before this Court. The fresh advertisement dated 22.10.2013 should not have been issued. On the above facts, the petitioner has filed this writ petition with the following prayer:-

"The petitioner abovenamed therefore prays in the facts and circumstances of the case that this Hon'ble Court may be pleased to issue notice to the opposite parties directing them to show cause as to why the writ petition shall not be allowed and if they fail to show cause or the causes shown are found to be insufficient in law as well as in the facts and circumstance of the case, this Hon'ble Court may be pleased to allow the petition and quash the impugned advertisement vide Annexure -2 and the entire process of selection of the post on the said advertisement and issue engagement order in favour of the petitioner as Anganwadi Worker, Roth-C Angnwadi Center forthwith out without any further delay by issuing appropriate writ or writs, particularly writ of mandamus and any other order or direction considered fit and proper be passed in favour of the petitioner.

And for which act of kindness, the petitioner as in duty bound shall ever pray."

2. Counter affidavit has been filed by the CDPO (Opposite Party No. 5). It is

stated that opposite party No.6 is a resident of the village and resides within the service area of the Anganwadi Center in question. Her house number is 177 having House Survey No.303 as per Survey Register maintained for the said center. The present center was carved out of the existing Roth-B Center taking into consideration the population. The population of Roth-C Center was 461 at the time when the center was opened taking into consideration 177 houses. It is further stated that opposite party No.6 was selected taking into consideration the fact that she is a resident of the center area and secured the highest marks, i.e., 75.6%. She however, resigned as Anganwadi Worker on 26.11.2011 because she got engagement as Shikshya Sahayak. Another advertisement was issued in the year 2012. The candidate who was selected withdrew. So another advertisement was issued on 22.10.2013 pursuant to which the petitioner along with other candidates have applied. Verification has also been conducted of all the candidates including the petitioner. Therefore, having participated in the selection process, it is not open to the petitioner to challenge the said advertisement. In any case, she is not prejudiced in any way because her right of being considered as per the impugned advertisement is not affected in any manner.

3. Heard Sri H.S. Mishra, learned counsel for the petitioner and Sri. S. Behera, learned Addl. Government Advocate for the State.

4. Sri Mishra would argue that the selection of opposite party No. 6 must be held to be nonest in the eye of law because of the cancellation of her residence certificate by the Sub-Collector in the appeal filed by the petitioner. Therefore, the petitioner having secured the second highest marks ought to have been appointed. In any case, opposite party No.6 having resigned and her initial engagement being illegal, the authorities should have engaged the petitioner in the vacancy instead of going for a fresh advertisement. Even though the Anganwadi Appeal filed by the petitioner was rejected, the same cannot be a bar for accepting the contentions of the petitioner as the residence certificate of opp. party No.6 was cancelled and she has also resigned. Under such circumstances, the advertisement dated 22.10.2013 is completely unnecessary and redundant.

5. Per contra, Sri Behera, learned State Counsel would argue that the writ petition is not maintainable being directed against the advertisement pursuant to which the petitioner is herself a candidate and has also gone through the process of selection. Having participated in the selection process, it is not open to the petitioner to challenge the advertisement. On merits, Sri Behera would submit that the residence certificate issued by the Tahasildar was set aside by the Sub-Collector in appeal but the matter was remanded for fresh disposal. So it cannot be treated as a final order. On the other hand, the opposite party No.6 was found to be a resident of the service area of the center in view of the Survey Register and voter list. It cannot therefore, be said that her selection was wrong. The impugned advertisement was issued as per the Government guidelines, which lays down that any vacancy caused can only be filled up by going for fresh selection. Since the petitioner is already an applicant, her case can be considered

along with other applicants on merits.

6. Admittedly, in the selection held pursuant to the first advertisement the petitioner secured 60.2% marks whereas the opposite party No.6 secured 75.6%. She was therefore selected. Her selection was challenged by the petitioner before the ADM specifically on the ground that she did not belong to the service area. In course of hearing of the appeal, the ADM verified the connected file containing all requisite documents. He found the name of opposite party No.6 in the voter list of 2011. At the same time, the petitioner could not submit proof of cancellation of the residence certificate of opposite party No.6. The appeal thus came to be rejected. It has been argued that the petitioner was unable to produce the order cancelling the residence certificate of opposite party No.6 as the same was passed on the very day the appeal was heard by the ADM. Be that as it may, the petitioner has enclosed the order passed by the Sub-Collector, Balangir in Misc. Appeal No.1 of 2011 challenging the order of the Tahasildar granting the residence certificate to the opposite party No.6.

It is seen that after hearing the parties, the Sub-Collector, inter alia, passed the following order:-

"Heard the learned advocates of both the parties Gone through the lower court case record and the documents placed therein. It is noticed that the order of learned Addl. Tahasildar dtd.17.06.2010 is erroneous. No report has been obtained from the concerned Revenue Inspector. Even though, it has been mentioned about submission of affidavit and other documents, no affidavit is enclosed to the case record and there is no mention of documents. In view of absence of report from the Revenue Inspector, Addl. Tahasildar should not have issued the residential certificate to the respondent. It indicates that no enquiry has been conducted in the field. The certificate has been issued in haste. Accordingly, the order dtd.17.06.2010 of learned Addl. Tahasildar, Balangir in Mise. Certificate Case No.5732 of 2010 is set aside and the case is remanded to Tahasildar, Balangir for fresh disposal by affording due opportunity of being heard to' both the parties. Accordingly, the appeal is allowed."

7. Bare look at the order quoted above makes it clear that though the appeal was allowed and the order of the Tahasildar granting residence certificate in favour of opposite party No.6 was set aside, yet the matter cannot be said to have attained finality in view of the order of remand to the Tahasildar for fresh disposal. What happened thereafter has not been stated nor brought on record by any of the parties. Under such circumstances, it is difficult to accept that the residence certificate issued in favour of opposite party No.6 was finally cancelled.

8. As against the above, there is, prima facie, evidence in the form of the survey list of the village enclosed to the counter affidavit which shows the opposite party No.6 of being a resident of the service area with her house number being 177. In view of the above, it is difficult to accept the contention advanced that the selection of opposite party No.6 was illegal.

9. As regards maintainability of the writ petition, it is the settled position of law that a person having applied pursuant to the advertisement and participated in the selection process cannot simultaneously question the advertisement, as the same would amount to reprobation and approbation, which is not permissible in law. Reference in this regard may be had in the case of *Vijendra Kumar Verma v. Public Service Commission Uttarkhand and Others* (2011) 1 SCC 150.

10. This Court is therefore, of the view that the petitioner having applied pursuant to the impugned advertisement and participated in the selection process cannot challenge the same.

11. It is significant to note that as per letter dated 01.10.2010 of the Government, any vacancy caused either by resignation, disengagement, death, retirement etc. has to be filled up by fresh selection. Since this Court has found nothing wrong in the selection of opposite party No.6 in the first place and the fact that a vacancy was caused because of her resignation subsequently, the opposite parties-authorities have taken the right decision to go for fresh advertisement which is in consonance with the guidelines referred to above. This Court therefore, finds no reason to interfere with the impugned advertisement.

12. For the foregoing reasons, this Court finds no merit in the writ application, which is therefore, dismissed.

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