

(2008) 07 OHC CK 0057
In the Orissa High Court

Pradeep Kumar Kar

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 28-07-2008

Acts Referred:

Citation : (2008) 2 OLR 521

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.S. Naidu, J.—The dispute in this Writ Petition is with regard to the alleged illegalities and irregularities said to have been committed in course of selection of Swechhasevi Sikshya Sahayaks in Nuapada district so far as B.Ed candidates were concerned.

2. The petitioner in response to an advertisement, it is submitted, had applied for being engaged as a Swechhasevi Sikshya Sahayak in Nuapada district. He was more meritorious than all other candidates and after facing rigorous recruitment tests was selected. A draft selection list was prepared in which the name of the petitioner had been reflected but for reasons best known to the selection committee he was not engaged.

3. Being aggrieved by that he had preferred WPC No. 393 of 2005 challenging the illegal action of the opposite party-authorities. The said Writ Petition was disposed of on 31.1.2005 with observation that if the petitioner would file a representation before the Collector, Nuapada who was the Chairman of the selection committee, he would call for the records, scrutinize the same, conduct an enquiry and pass consequential orders. In compliance with that, the Collector conducted an enquiry and disposed of the representation of the petitioner by order dated 2.5.2005, Annexure-4. The Collector found that the name of the petitioner had been reflected in the provisional merit list but then objections were received as to eligibility of the petitioner to be so selected on the ground

that he had not filed his "residence certificate" issued by the competent revenue authority under Rule 3(H) of the Orissa Miscellaneous Certificate Rules. Consequently, the name of the petitioner was struck off. The Collector held that as the residence certificate had not been filed by the petitioner, the selection committee had not committed any illegality.

4. It appears that in consonance with an interim order passed by this Court the petitioner has been continuing as a Swechhasevi Sikshya Sahayak in Kotmal Primary School.

5. Drawing attention of this Court to the advertisement in question, Annexure-3, learned Counsel for the petitioner submitted that as per Clause 11, a candidate was required to enclose to his application a residential certificate along with other documents. The advertisement did not state that the residential certificate should be one issued under the Orissa Miscellaneous Certificate Rules. It is stated that the petitioner had in fact enclosed a residence certificate issued by the Tahsildar, Nuapada in Misc. Case No. 1652 of 2000 In form No. 2, vide Annexure-5. The said certificate clearly revealed that the petitioner was residing in the village in question. He had also enclosed his voter's identity card, Annexure-6, which revealed that he was residing in village Kareikela. Other materials are also there to reveal that the petitioner was in fact residing in the village in question.

6. A counter-affidavit has been filed by opposite party No. 2 reiterating the stand taken by the Collector and stating that as a residence certificate issued under Rule 3(ii) of the Orissa Miscellaneous Certificate. Rules was not enclosed by the petitioner to his application, his case was not considered. The fact that the petitioner had enclosed a residence certificate issued by the Addl Tahsildar, Nuapada in Form No. 2 is admitted in the counter affidavit.

7. After hearing learned Counsel for the parties and considering the fact that the petitioner is continuing as a Swechhasevi Sikshya Sahayak at Kotmal Primary School since 24.12.2004, i.e. for the last more than three years, and the fact that the advertisement did not specifically state the nature of the certificate to be enclosed to the application, this Court feels that the authorities acted illegally in not accepting the residence certificate produced by the petitioner in form No. 2 issued by the Addl. Tahsildar, Nuapada certifying that the was a resident of the locality.

8. For the discussions made, this Court allows the Writ Petition and quashes the impugned order passed by the Collector and directs that the petitioner should continue as Swechhasevi Sikshya Sahayak.