

(2016) 01 OHC CK 0082

In the Orissa High Court

Case No : Writ Petition (C) No. 23974, 23977, 23981 and 23988 of 2015.

**Rathunath Mallik - Petitioner @HASH State of Odisha and Others -
Opposite Parties**

Date of Decision : 11-01-2016

Acts Referred:

Citation : (2016) LIC 4173

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

Bench : Single Bench

Advocate : M/s Dillip Ray, S. Das, K.B. Mishra, and S.P. Mishra, Advocates, for the Petitioner; Sri S.N. Mohapatra, Additional Government Advocate, for the Opp. Parties

Final Decision : Dismissed

Judgement

S.N. Prasad, J. - Since in all the four writ petitions common order has been challenged hence same is being disposed of by way of common order.

2. Petitioners have challenged the orders passed by the Commissioner-cum-Secretary, School and Mass Education Department dated 17.11.2015, 26.11.2015 and 10.12.2015 as contained in letter Nos.23112/SME, 23950/SME and 24992/SME respectively.

3. Case of the petitioners is that in pursuance to one notification being in the year 2006 for appointment of Trained Matriculation candidate as Swechha Sevi Sikhya Sahayak, conditions laid down therein restricting block-unit wise have been challenged before this Court in W.P.(C) No. 14981 of 2006 (Chandramani Jena and others v. State of Orissa and others) which was disposed of vide order dated 23.8.2007 whereby and where under this Court has been pleased to hold that there may be any restriction for making application on the ground of residence and thereafter one revised guideline was issued on 14.11.2007 in supersession of all previous resolutions in consonance by making applications for any block-unit of the State irrespective of his/her home block subject to condition that he/she shall apply in respect of one block only.

4. Grievance of the petitioners that they are coming under Bhadrak district and although they have secured higher marks than the candidates in other district, they have been selected and if the authorities would have allowed to make application for other districts, then the petitioners would have selected on the ground of having secured higher marks. Against this action of the authorities, writ petitions have been preferred before this Court and in pursuance to the order, Commissioner-cum-Secretary has passed orders on different dates rejecting claim of the petitioners on the ground that as on date after coming into for the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as "the RTE Act") the condition has already been changed and in view thereof new guideline has been issued by the Government dated 6.8.2013, petitioners are not eligible as per the guideline, hence there is no question of consideration of candidature of the petitioners.

5. Learned Additional Advocate appearing for the opposite party-School and Mass Education Department has vehemently opposed the prayer of the petitioners. It has been submitted that initially the authorities have issued resolution making appointment block wise in block and same was being under challenge before this Court, after having been set aside the said clause by this Court new resolution has come and appointment has been directed to be made taking the entire district as unit. Since petitioners have made applications for Bhadrak district hence a combined merit list was prepared for Bhadrak district along with other districts and in the combined merit list prepared for the Bhadrak district petitioners had been found below in the merit list hence not selected. Now the petitioners claim that since other candidates in other districts who have got lesser marks than the petitioners, they should have been appointed, which cannot be accepted for the reason that the authorities in pursuance to the order passed by this Court in the case of Chandramani Jena & others v. State of Orissa and others reported in 2007(II) OLR 577 whereby and where under restrictions on the basis of residence has been set aside being contrary to the provisions as contained in Article 16(2) of the Constitution of India and thereafter new resolution dated 14.11.2007 basis upon which selection process has been concluded in the year 2007 by preparing merit list district wise in which petitioners were not found to be qualified having secured lesser marks hence they cannot be given engagement merely on the ground that in other district candidates having secured lesser marks because in all the districts there was separate merit list. Moreover, Government resolution dated 14.11.2007 has not been challenged by any one and on the basis of the said resolution selection process has already been commenced and concluded.

It has been submitted that by now after promulgation of RTE Act it has been made mandatory to declare fixed minimum qualification and the candidate must have possessed minimum qualification as prescribed by the National Council of Teacher Education and on the basis of that Government has come out with a fresh resolution dated 6.8.2013 and as such appointment is to be made today, resolution dated 6.8.2013 will be the paramount consideration but the petitioners

since are trained matriculate they have not fulfilled the prescribed qualification as per the resolution dated 6.8.2013, hence their cases has been rejected by the authority concerned. It has further been submitted regarding argument advanced on behalf of the petitioners that the petitioners are claiming appointment on the basis of the resolution dated 31.5.2006 hence resolution dated 6.8.2013 will not come in the way, this has strongly been refuted by learned counsel for the opposite party-State by submitted that since the petitioners have found not to be eligible so far as merit is concerned, on the basis of the resolution dated 14.11.2007 it has been issued in supersession of the notification dated 31.5.2006 and corrigendum dated 12.10.2006 and that resolution has not been challenged by the petitioners, hence they cannot be given engagement on the basis of the resolution dated 31.5.2006 since said resolution has been superseded by new resolution dated 14.11.2007 and as on date even the resolution dated 14.11.2007 has been superseded by the resolution dated 6.8.2013, as such it is settled that any appointment if made, the resolution as on the date for appointment will have of paramount consideration.

6. Heard learned counsel for the parties and perused the documents on record.

7. Admitted case of the petitioners that they being applicants for consideration of candidatures for engagement as Sikhya Sahayak in pursuance to the resolution dated 31.5.2006 and its corrigendum dated 12.10.2006 made their applications for Bhadrak district.

8. Three writ petitions have been filed challenging Clause of the resolution dated 31.5.2006 and its corrigendum dated 12.10.2006 by which applicants were required to submit residential certificate of a block and engagement was to be made block-unit wise, said condition was challenged before this Court by way of writ petition leading to the case of Chandramani Jena & others v. State of Orissa and others (supra) wherein clause 4.1 which came into existence by virtue of resolution dated 31.5.2006 but amended by corrigendum dated 12.10.2006 by which the word "block-unit" has been substituted in place of the words "education district". The expression "block unit" means the Panchayati Raj Block as defined by the Panchayati Raj Department and includes the Urban Local Bodies situated in the same Block headquarters or adjoining to the same block headquarters. This Court has taken into consideration all aspects of the matter and considered the principles as contained in Article 16(2) of the Constitution of India and clause 4.1 of the advertisement dated 31.5.2006 and its corrigendum dated 12.10.2006 has set aside being in violation of the provisions of Article 16(2) of the Constitution of India, with a direction that any person who satisfies the criteria of educational qualification and other eligibility condition, shall be entitled to apply for appointment of Swechhasevi Sikhya Sahayak despite the fact that he or she does not stay within any block where such appointment will be made, otherwise there can be no disqualification on the ground of residence.

9. After the order having been passed by this Court, the State Government has come out with revised guideline as contained in Resolution No. 22438/SME dated

14.11.2007 in supersession of all previous resolutions in consonance with the direction of the High Court and accordingly applications were invited from the eligible candidates for engagement of Sikhya Sahayak by making applications for any block unit of the State irrespective of his/her home block subject to condition that he/she shall apply in respect of one block only. Thus the resolution dated 31.5.2006 and its corrigendum dated 12.10.2006 has been superseded by the guideline dated 14.11.2007.

10. At this juncture, it further needs to refer the direction passed by this Court in the case of Chandramani Jena & others v. State of Orissa and others(supra) and in the said case applications were received from the Bhadrak district and as such at para-18 the following order was passed.

"This Court has been informed by the learned counsel for State that in view of the interim order passed by this Court, no appointment has been made in connection with the advertisement which has been made in these three writ petitions. As such, this Court is not required to pass any order for setting aside any appointment order. This Court, therefore, directs that appointment may now be made in the light of the decision given by this Court ignoring any disqualification on the ground of residence.

Thus, there is no dispute about the fact that the resolution dated 31.5.2006 or its corrigendum dated 12.10.2006 has been replaced by revised guideline as contained in resolution dated 14.11.2007 which was in the light of the order passed by this Court in the case of Chandramani Jena & others v. State of Orissa and others(supra) and applications have been processed ignoring any disqualification on the ground of residence.

11. All the writ petitions being applicants of Bhadrak District having submitted applications for a particular block have been considered taking the entire district as a unit in the light of the revised guideline dated 14.11.2007 since the revised guideline pertains to engagement of Sikhya Sahayak making the district as a unit which suggests that Sikhya Sahayaks were supposed to be appointed district wise and for that purpose selection committee has prepared a district wise merit list.

12. It is admitted case of the petitioners that they have secured lesser marks in the district of Bhadrak hence not selected.

Now the petitioners claim that other candidates of other districts who have secured lesser marks than the petitioners since been selected, hence the petitioners also have to be selected. This condition of the petitioners cannot be accepted for the following reasons.

(i) Petitioners are claiming their engagement on the basis of the fact that other candidates having secured lesser marks in other districts have been selected but by taking advantage of lesser marks of other candidates in other districts petitioners cannot be selected and engaged as because in view of the guideline

dated 14.11.2007 appointment has been made district wise with specific direction of the Hon"ble High Court that there will not be any disqualification on the ground of residence, but petitioners had not make their applications to be selected for other districts rather they have made applications to be appointed for Bhadrak district only.

Since the matter of appointment of Sikhya Sahayak is purely on contractual basis and the guideline also does not provide that their cadre can be changed to other district even they cannot be transferred to other district, hence engagement will also restrict to the district for which applications have been made by the candidates.

Since the petitioners have made application for Bhadrak district and as such selection having been made district as a unit, merit list has also been prepared district wise in which petitioners have been shown to be secured lesser marks from the last selected candidate.

(ii) Petitioners have not challenged the revised guideline dated 14.11.2007 which was issued by the State Government in terms of the order passed by this Court in the case of Chandramani Jena & others v. State of Orissa and others(supra). Thereafter selection process had been concluded way back in the year 2007, hence after lapse of 9 years no direction can be issued selecting the petitioners for the advertisement issued in the year 2006. Moreover, revised guideline dated 14.11.2007 has never been challenged by the petitioners.

(iii) In the meanwhile Right of Children to Free and Compulsory Education Act,2009 by which qualifications have also been changed and the same has been made in consonance with the guideline prescribing qualification to Higher Secondary with Diploma in Elementary Education along with eligibility test but admittedly the petitioners were Matric Trained, hence they are not eligible for being engaged as on date as Sikhya Sahayak.

However, nature of engagement of Sikhya Sahayak is contractual which is the basic entry of the regular teachers as because as per the resolution Sikhya Sahayaks used to be appointed as Junior Teachers after completion of certain period of service on contractual basis and thereafter after completion of further three years of service to be appointed as regular Primary School Teacher who are supposed to impart education to the students in the school situated within the territory of the State, hence provision leading to the guideline shall have to be followed. Accordingly, the conditions as laid down in pursuance to educational qualification issued by the State Government is mandatorily to be followed.

(iv) The contention of the petitioners that they are seeking engagements pursuant to the advertisement dated 31.5.2006 not on the basis of the resolution dated 6.8.2013 cannot be accepted because the resolution dated 31.5.2006 or its corrigendum dated 12.10.2006 is no more in existence after issuance of resolution dated 14.11.2007, hence there is no question of consideration of candidatures of the petitioner on the basis of the resolution dated 31.5.2006 or

its corrigendum dated 12.10.2006.

Moreover, engagement is to be made as on date petitioners claim that there are so many vacancies of Sikhya Sahayak existing in different districts of the State, it does not mean that the petitioners and other candidates without any eligibility condition as per the recruitment resolution will be selected and engaged rather eligibility condition on the date of consideration has to be seen and admittedly as on date the petitioners are not fulfilling eligibility condition as prescribed in the guideline/resolution dated 6.8.2013.

13. Taking into all these aspects of the matter, the orders passed by the Commissioner-cum-Secretary, School and Mass Education Department has been perused by this Court, there is no infirmity found, hence this Court decline to interfere with the impugned orders.

14. Accordingly, all the writ petitions are dismissed being devoid of merit.