

(1997) 11 OHC CK 0011

In the Orissa High Court

Case No : Original Jurisdiction Case No. 593 of 1996

Sanghamitra Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-11-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1997) 2 OLR 561

Hon'ble Judges : Susanta Chatterji, J; Ratnakar Dash, J

Bench : Division Bench

Advocate : Bidhayak Patnaik, B. Mohanty, M.K. Badu and P.K. Panda, for the Appellant; G.K. Mohanty, G.P. Samal, B.P. Pradhan, S.R. Swain and A.K. Mohanty for O.P. 4, B.C. Patry, A.K. Mishra, H.N. Tripathy, D.C. Rout, S. Bose, D. Panigrahi, R.K. Swain, G. Patnaik and R.K. Sahoo for O.P. 5 and Additional Government Advocate for O.Ps. 1, 2 and 3, for the Respondent

Judgement

R.K. Dash, J.—The petitioner in the present writ application filed under Articles 226 and 227 of the Constitution of India challenges the selection and appointment of opposite party No. 5 as Market Supervisor in the Municipal Corporation, Bhubaneswar, opposite party No. 3.

2. To put shortly, the case of the petitioner is that in order to fill up newly created post of Market Supervisor in the Municipal Corporation, Bhubaneswar, the Executive Officer, opposite party No. 4 requested the District Employment Officer, Bhubaneswar vide letter Annexure -1 to sponsor the names of at least 20 candidates. It was indicated in the said letter that the candidates must be Bachelor of Arts having two years experience as Market Supervisor and if sufficient number of candidates having such experience are not available, then simple Graduates may be sponsored. The District Employment Officer however, submitted a list of 40 candidates including the names of the petitioner and opposite party No. 5 who are simple graduates having no requisite experience. Thereupon interview as conducted on 12.10.1993 at 11 a.m. in the Corporation Office, Bhubaneswar and in the said interview out of 40 sponsored candidates,

only 11 appeared and finally a merit list was prepared, wherein opposite party No. 5 having secured 59 marks was placed in the first position, where as one Bijay Kumar Das having secured 57 marks was placed in the second position. So far as the petitioner is concerned, it is stated that she secured 53.7 marks. The grievance of the petitioner is that awarding of 5 marks to the opposite party No. 5 for his acquiring LL.B Degree and 10 marks towards experience as Market Supervisor is illegal and arbitrary. She asserts that opposite party No. 5 had no required experience as notified in Annexure-1. As it appears from Annexure-3 he has previous experience as an Investigator in Agricultural Finance Construction Ltd. and Industrial Management Consultants, Orissa, and as a clerk-cum-typist in another institution. These experiences, according to the petitioner, should not have been taken into consideration for awarding 10 more marks. So 15 marks awarded towards LL.B. Degree and experience, if deducted from the total marks, then his position would be below the petitioners. One Bijay Kumar Das who had secured 57 marks and had been placed in second position approached this Court in O.J.C. No. 3675 of 1994 challenging the selection of opposite party No. 5. It was only thereafter that the authorities revised the merit list, placed Sri Das in serial No. 1 and appointed him as Market Supervisor. Since he got the desired result, he did not pursue the writ petition and consequently it was disposed of being not pressed. The petitioner did not challenge the manner of selection since no more post of Market Supervisor was available in the Municipal Corporation. Subsequently in the year 1995 another post was created by the Director, Urban Development, Government of Orissa -opposite party No. 2 as is evident from Annexure-6 and the said post was filled up by giving appointment to opposite party No. 5 on the basis of the earlier selection. Petitioner asserts that since she secured more market than opposite party No. 5 in the interview as aforesaid, in all fairness the authority should have considered her case and appointed her as Market Supervisor. In the circumstances, she has urged that the order of appointment of opposite party No. 5 as Market Supervisor should be quashed and the authorities should be directed to appoint her in the said post.

3. Separate counter affidavits have been filed by opposite parties 1 and 2 and opposite party No. 5. The case of the opposite parties 1 and 2, in brief is that interview was held on 12.10.1993 fill up the post of Market Supervisor and the selection committee on consideration of the educational qualification and the experience coupled with the mark secured in the viva voce, prepared the list of selected candidates, Annexure - 8/1. In the interview opposite party No. 5 having secured 59 marks was placed in first position and two others, namely Bijay Kumar Das and Sudhiranjan Baral having secured 57 and 56 marks respectively, were placed in second and third position. Since the post was one and Shri Das approached this Court challenging the decision of the selection committee, the authorities revised the merit list, placed Shri Das in first position and appointed him as Market Supervisor. The further case of opposite parties 1 and 2 is that the Municipal Corporation submitted a proposal to the Director, Municipal Corporation for sanction of another post of Market Supervisor and on

receipt of the said proposal, the Director considered for creation of the second post and directed for appointment of opposite party No. 5 from out of the revised merit list it was in these circumstances that the opposite party No. 5 was given appointment in the second post of Market Supervisor.

4. Opposite party No. 5, the main contestant in the writ petition, in his counter affidavit contends inter alia, that the selection committee took into consideration his educational qualification, experience and performance in the viva voce and placed him in serial No. 1 and one Bijay Kumar Das in Serial No. 2. Subsequently, the list was revised in which Shri Das was placed in first position and he was placed in the second position and the post of Market Supervisor being one. Shri Das was appointed. Subsequently another post was created in the Municipal Corporation and he being the second in the revised merit list, the authorities appointed him against the said post. He contends that since no new selection committee was constituted, the action of the authorities in giving appointment to him from the previous selection list cannot be questioned.

5. We have heard the learned counsel representing the parties at length. The only question that requires our consideration and determination is whether appointment of opposite party No. 5 as Market Supervisor is legal and justified and if not, whether the petitioner as of right is entitled to such appointment.

6. The undisputed factual position emerging from the pleadings of the parties is that to fill up one post of Market Supervisor in the Municipal Corporation, Bhubaneswar, a selection was held and merit-list was prepared. The said list was subsequently revised and as per the revised list Bijay Kumar Das was given appointment. Almost two years thereafter another new post of Market Supervisor was sanctioned by the Government in the Housing and Urban Development Department and the same was filled up by giving appointment to opposite party No. 5 from out of that merit list. This action of the authorities cannot be appreciated, being contrary to the mandate of the Apex Court in a series of decisions.

In a recent decision in the case of Prem Singh and Others Vs. Haryana State Electricity Board and Others, , the Court held that appointments of the candidates beyond the number of posts for which advertisement was made must be regarded as invalid. The relevant observation of the Court in paragraph 26 of the judgment is extracted hereunder :

"In the present case, as against 62 advertised posts the Board made appointments on 138 posts. The selection process was started for 62 clear vacancies and at that time anticipated vacancies were not taken into account. Therefore, strictly speaking, the Board was not justified in making more than 62 appointments pursuant to the advertisement published on 2.11.1991 and the selection process which followed thereafter. But as the Board could have taken into account not only the actual vacancies but also vacancies which were likely to arise because of retirement etc. by the time the selection process was completed

it would not be just and equitable to invalidate all the appointments made on posts in excess of 62. However, the appointments which were made against future vacancies - in this case on posts which were newly created - must be regarded as invalid ..."

In the said case, reference was made to an earlier decision of the Court in *State of Bihar v. Madan Mohan Singh* : JT 1993 (Supp) SC 198, where it was held that if the advertisement and the consequent selection process were meant only to fill up certain number of vacancies, then the merit list will hold good for the purpose of filling up those notified vacancies and no further.

From the aforesaid authoritative pronouncements the principle that emerges is that if the advertisement is made for certain posts, selection shall be made to fill up those posts only and if subsequently new post or posts are created, the same cannot be filled up from out of that merit list. Regard being had to be facts and circumstances of the case and keeping in mind the authoritative pronouncements of the Supreme Court referred to above, we are of the considered opinion that appointment of opposite party No. 5 as Market Supervisor from out of the selection list prepared in 1993 is illegal and invalid. In view of our such finding and conclusion, no relief can be granted to the petitioner, since she claims to be appointed against the said post on the basis of the merit list of 1993.

The writ application is accordingly disposed of. No. cost.

S. Chatterji, J.

7. I agree.