
(2004) 04 OHC CK 0021
In the Orissa High Court
Case No : O.J.C. No. 8381 of 2001

Santosh Kumar Gouda

APPELLANT

Vs

Collector, Koraput and Others

RESPONDENT

Date of Decision : 08-04-2004

Acts Referred:

Citation : (2004) 2 OLR 431

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

Bench : Single Bench

Advocate : Amitav Das, S.K. Mandal and S.S. Jena, for the Appellant; S.N. Mishra, A.S.C. (S and ME), for the Respondent

Judgement

1. Heard.

2. This is the second Writ application filed by the petitioner who aspires to be engaged as a Swechhasevi Sikshya Sahayak. According to the learned Counsel for the petitioner, the petitioner satisfies all the eligibility criteria. He had secured 104.32% marks, but for reasons best known to the opposite party-authorities his name did not find place in the select list of S.E.B.C. (Male) candidates.

3. As there was some factual dispute, this Court in OJC No. 6057/01 earlier filed by the petitioner, directed the Collector, Koraput to look into the grievances of the petitioner and dispose of the representation filed before him by the petitioner. It appears, after receipt of the order of this Court, the Collector disposed of the representation of the petitioner by a bald order, as per Annexure-10 observing that as the petitioner was not a permanent resident of the said district his case was not considered. Being aggrieved by the said order Annexure-10 the petitioner has once again approached the portals of this Court by the present Writ application.

3.1 On 1.3.2001 when the matter was taken up for admission, learned Addl. Govt. Advocate accepted notice for opposite party Nos. 1 and 4. This Court directed that two copies of the Writ application along with annexures be served

on him. This Court also directed that requisites be filed for taking out notice on opposite party Nos. 2 and 3 both ways. On the same day it was further directed that appointment of opposite party Nos. 2 and 3, if made, would be subject to result of the Writ application.

4. The matter was thereafter listed on 13.11.2003 when Mr. D.P. Sarangi, learned Senior Standing Counsel for the School and Mass Education Department submitted that he had received instructions in the case and prayed for some time to file counter-affidavit and therefore the matter was adjourned to 15.12.2003. On 15.12.2003, Mr. R. Behera, learned Counsel appearing for the School and Mass Education Department, again prayed for some more time as the last chance to file counter affidavit. Thereafter the matter was listed on 8.1.2004 when once again adjournment was sought. Then the matter was listed on 5.2.2004 when this Court again granted time to the State counsel to file counter-affidavit. When the matter was taken up today, it appears that no counter-affidavit has been filed on behalf of the School and Mass Education Department. Though notice was served on opposite party Nos. 2 and 3, they have also not chosen to appear. In view of the fact that State has chosen not to file any counter-affidavit, it is evident that it does not deny the averments made in the Writ application and the averments of the petitioner are accepted on the principle of non-traverse.

5. Learned Counsel for the petitioner forcefully submitted that the petitioner was not considered for engagement as a Swechhasevi Sikshya Sahayak in spite of the fact that he had secured higher marks and was better qualified than others only on the ground that he was not a permanent resident of the district. According to the learned Counsel for the petitioner, this ground was not justified, inasmuch as the petitioner had filed the certificate granted by the Addl. Tahsildar, Koraput in Misc. Certificate Case No. 1444/97 on 6.12.1997 to the effect that the family members of the petitioner ordinarily reside in Village/Town-Koraput, P.S. Koraput, Tahsil-Koraput in the district of Koraput, filed as Annexure-3 to the Writ application. On the face of such certificate issued by the competent authority, in consonance with the Rules framed by the State Government, the opposite party-authorities acted illegally in holding that the petitioner was not a resident of the district. It was not open to the opposite party-authorities to overlook the said certificate granted by a statutory authority after following the principles laid down in the Rules. The ground stated in Annexure-1 is vulnerable in law and cannot be sustained. Even the Notification inviting applications for engagement as Swechhasevi Sikshya Sahayak reveals that an applicant had only to produce a certificate indicating that he/she was a resident of the district.

6. In view of the aforesaid facts and in absence of any counter-affidavit repudiating the averments of the petitioner, this Court has no hesitation to quash the impugned order dated 28.5.2001, Annexure-10, and direct opposite party Nos. 1 and 4 to consider the case of the petitioner for his engagement as a Swechhasevi Sikshya Sahayak on the strength of the resident certificate, Annexure-3, within three months of this order.

Before parting, I am constrained to mention that non-filing of counter-affidavit by the opposite party-authorities in spite of several opportunities caused a dent in speedy disposal of the case. After availing several opportunities the learned Counsel for the State failed to file any counter affidavit. Such action definitely causes difficulty for the Court to deal with cases in proper way. But then if a party chooses not to file counter-affidavit in spite of availing several opportunities, this Court has to dispose of the case basing upon the averments made by the petitioner as the averments by the petitioner are not repudiated, so as not to cause prejudice to the petitioner.

The Writ application is accordingly disposed of.

A copy of this order be communicated to the Secretary, Law Department and Secretary, School and Mass Education Department.

Copy of this order be communicated to opposite party Nos. 1 and 4 at the cost of the petitioner. Requisites be filed within three days.