
(2009) 02 NCDRC CK 0058

In the National Consumer Disputes Redressal Commission

SECRETARY, BOARD OF SECONDARY EDUCATION

APPELLANT

Vs

Santosh Kumar Sahoo

RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Citation : 2009 0 NCDRC 22 : 2009 2 CPJ 21 : 2009 2 UC 1084

Hon'ble Judges : Ashok Bhan , B.K.Taimni J.

Final Decision : Petition dismiss

Judgement

1. SECRETARY, Board of Secondary Education, Orissa-petitioner herein and Opposite Party before the District Consumer Disputes Redressal Forum, Phulbani (hereinafter referred to as the District Forum for short), aggrieved against the Order of the State Consumer Disputes Redressal Commission, Orissa (hereinafter referred to as the State Commission for short) dated 21.06.2004 in C.D. Appeal No. 711 of 1995, has filed the present Revision Petition. By the impugned Order, the State Commission has affirmed the Order passed by the District Forum.

2. SHORTLY stated, the facts of the case are: - Complainant appeared in the High School Certificate (Supplementary Examination) as an ex-regular student of G. Udaygiri Hubback High School in 1983. The examination was conducted by the petitioner. Respondent obtained his mark-sheet and provisional pass certificate issued by the petitioner through the Headmaster, G. Udaygiri Hubback High School. His date of birth was recorded in the provisional certificate and admit card as 10.05.1964 but in the original matriculation certificate issued by the petitioner, his date of birth was shown as 10.05.1961. Taking it to be a mistake on the part of the petitioner, the respondent brought it to the notice of the Headmaster of the school who assured him that he would send a letter to the petitioner to correct the date of birth. As nothing was done, the petitioner again approached the Headmaster and, on his request, the Headmaster concerned wrote a reminder to the Secretary of the petitioner-Board. Respondent himself personally approached the Board Office several times, but in vein. Respondent being an unemployed youth, attended several interviews but due to want of

original Board certificate, his case was rejected. During these years, he went to Cuttack several times and spent about Rs.25,000/-. By that time, he had completed 30 years of age.

On these facts, the respondent filed the complaint seeking following reliefs: - 1) Directing the opposite party to issue the original H.S.C. Examination passed Certificate to the complainant after necessary correction within a period of 15 days. 2) Directing the opposite party to pay a compensation of Rs.75,000/- to the complainant since due to the negligency of the opposite party the complainant could not get any employment and his future became dark. 3) Directing the opposite party to pay a further compensation of tax of Rs.25,000/- to the complainant for the mental and physical injury which he suffered during last 9 years and also, 4) Directing the opposite party to pay a sum of Rs.5,000/- towards the litigation cost.

The petitioner in its written statement stated that the concerned Headmaster was responsible for the correction of the date of birth in the certificate. Board had asked the Headmaster to submit the admission register and cancelled transfer certificate for verification. But because the petitioner did not get the reply from the Headmaster, corrected certificate could not be issued.

3. DISTRICT Forum framed following three issues: - 1. Whether the complaint is maintainable? 2. Whether the Ops committee any deficiency in service? 3. Whether the complainant is entitled for any of the reliefs claimed?

The Counsel appearing for the petitioner as well as the Headmaster did not dispute the fact that respondent was a consumer and, accordingly, issue no.1 was decided in favour of the respondent. Issue nos. 2 and 3 were taken up together. It was held that the petitioner was deficient in service and, accordingly, petitioner was directed to issue the original certificate to the respondent after necessary correction. Compensation of Rs.75,000/- was awarded for negligence on the part of the petitioner because of whose fault, the respondent did not get any employment and a further compensation of Rs.25,000/- for mental and physical injury/inconvenience, which he suffered during 9 years along with cost of Rs.5,000/-.

4. AGGRIEVED against the Order passed by the District Forum, the petitioner filed an Appeal before the State Commission. The State Commission partly accepted the Appeal. It affirmed the finding of the District Forum that there was deficiency in service on the part of the petitioner and, accordingly, directed the petitioner to issue the certificate to the respondent for having passed the High School Certificate Examination with correct date of birth and pay Rs.20,000/- as compensation and Rs.1,000/- as litigation cost. Respondent no.2, Headmaster of the school was directed to pay a sum of Rs.5,000/- to the complainant by way of compensation. Being aggrieved, the petitioner has filed the Revision Petition. Headmaster has not filed a Revision Petition. Order of the State Commission as regards the Headmaster has become final. In the provisional certificate issued by

the petitioner, the date of birth of the respondent was shown as 10.05.1964 but in the subsequent original/final certificate, the date of birth of the respondent was shown as 10.05.1961. Learned Counsel for the petitioner submitted that the date of birth of the respondent could not be corrected, as it did not receive the admission register and the cancelled transfer certificate from the Headmaster for verification. We are unable to accept this submission. In the provisional certificate issued by the petitioner, the date of birth of the respondent was shown as 10.05.1964 but in the subsequent original/final certificate, his date of birth was shown as 10.05.1961. Learned Counsel for the petitioner was not in a position to explain as to how the date of birth shown in the provisional certificate as 10.05.1964 changed to 10.05.1961 while issuing the original certificate.

5. LEARNED Counsel for the Petitioner sought to raise the point regarding the maintainability of the complaint although this point was conceded before the District Forum. The Counsel for the petitioner is not justified in raising this point afresh at this stage. Having conceded before the District Forum that the complaint was maintainable, the petitioner is debarred from taking a position contrary to it at this stage especially in view of the fact that this point was not raised before the State Commission.

6. COUNSEL for the petitioner then referred to a Report of the Deputy Secretary of the Board of Secondary Education, Orissa to contend that Transfer Certificate No. 63 dated 24.06.1978 had been issued in favour of one Santosh Kumar Pradhan s/o Appa Rao Pradhan of Sujeli in G. Udayagiri in Class IX from Government High School, Balliguda whereas the respondent/complainant is Santosh Kumar Sahoo s/o Appa Rao Sahoo of Sujeli was admitted in Hubback High School, G. Udayagiri on 14.07.1978. According to him, the respondent got admission in Hubback High School, G. Udayagiri fraudulently on the basis of the Transfer Certificate issued to Santosh Kumar Pradhan. This Report is of the year 1995. No such defense was taken by the petitioner-Board in its written statement. Petitioner cannot be permitted to plead a new fact, which was not taken by it either in the written statement or before the District Forum or before the State Commission. Moreover, as stated above, this is a Report of 1995 whereas the original certificate was issued in the year 1985. This seems to be clearly an afterthought to cover up the deficiency committed by the petitioner in showing an incorrect date of birth of the respondent, which has resulted in miscarriage of justice. For the reasons stated above, we do not find any merit in this Revision Petition and dismiss the same. As the respondent is not represented before us, we refrain from awarding any costs in this Revision Petition.