
(2009) 03 OHC CK 0101
In the Orissa High Court
Case No : Writ Petition (C) No. 9008 of 2006

Smt. Chhabilata Dei

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 04-03-2009

Acts Referred:

Citation : (2009) CLT 23 Supp

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : K. Patnaik, K.C. Mishra, M. Pani and P.C. Moharana, for the Appellant; S.C. Panda and N.K. Behera for O.P. No. 4, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Das, J.—A notice dated 11.11.2005 was issued by the opp. Party No. 3-Child development Project Officer, Begunia, notifying that the Government has created 12 additional Anganwadi centres, out of which, one has been created at village Goti and applications were invited from interested women candidates to be appointed as Anganwadi Worker in the said Anganwadi centre. In response to the said notice, the Petitioner, opposite party No. 4 and some other candidates made their applications. The Petitioner has contended that she came to know that she secured 59.35 marks whereas the opp. Party No. 4 secured 60.75 marks. Such mark was allotted to the opp. Party No. 4 by taking into account her service certificate in the voluntary organization in support of her experience by adding five marks. If such five marks would not have been allotted to the opp. Party No. 4, the Petitioner would have been selected. The further case of the Petitioner is that the appointing authority very well knew that she (petitioner) has submitted her service certificate in support of her experience with regard to her service in a voluntary organization, but the same has not been taken into consideration and no marks have been awarded to the Petitioner even though she also possessed Experience. The Petitioner being aggrieved by the action of the opp. Parties 1 to 3 in not selecting her, preferred writ petition, being W.P. (C)

No. 2537 of 2006 before this Court, which was disposed of by order dated 6.3.2006 with a direction to the Collector to look into the grievance of the Petitioner as made out in her representation dated 4.2.2006 annexed to the said writ petition as Annexure-3. The Collector was also directed to take a decision as to whether selection of the opp. Party No. 4 was legal or not and, such decision was directed to be taken with reference to the records of the selection, if necessary, by giving opportunity of hearing to the Petitioner as well as the opp. Party No. 4. Such decision was also directed to be taken within three months from the date of communication of the order.

2. In accordance with the above order, the Collector, called for the Petitioner and the opp. Party No. 4 to attend his office on 21.4.2006, but on that day, the matter was not taken up. Subsequently, the Petitioner and the opp. party No. 4 appeared before the Collector, Khurda on 11.5.2006. The Petitioner has alleged that in spite of the direction of this Court to dispose of the said representation of the Petitioner within three months from the date of communication of the order, the Petitioner did not receive any intimation. Being aggrieved by such inaction on the part of the Collector, the Petitioner has filed the present writ petition, inter alia, on the ground that the Petitioner having also submitted certificate in support of her work in a voluntary organization, should have been awarded 5 marks extra and should have been duly selected as Anganwadi worker instead of the opp. Party No. 4.

3. The opp. Party No. 4 has filed a counter affidavit annexing the copy of the order of the Collector as Annexure-A/4 which was passed pursuant to the order of this Court in the writ petition previously filed by the Petitioner. It has been averred in the counter affidavit that in course of enquiry by the Collector, it is revealed that the Petitioner has not given any undertaking to produce the experience certificate in her application and, rather, in the column meant for mentioning past experience, the Petitioner had put a cross mark. According to the opp. Party No. 4, the experience certificates annexed to the writ petition as Annexure-3 series, are manufactured documents.

4. This Court, while issuing notice in the present writ petition, by order dated 5.9.2006, called for the records dealing with the appointment of opp. Party No. 4 and directed that the said records shall be kept with the learned Counsel for the State, who shall produce the same on the next date. On 26.10.2006, when the matter was taken up, such record was produced before this Court, which indicated that there is an overwriting in one of the pages of the said record and the Registry was directed to keep the said record in sealed cover. The matter was posted to 31.10.2006 on which day, the C.D.P.O. Begunia was directed to remain present in person. On 31.10.2006, the C.D.P.O. appeared before this Court and stated that she was not the C.D.P.O. Begunia at the relevant time when the selection of Anganwadi worker was made.

5. Learned Counsel for the State was directed to secure the presence of the officer, who was functioning as C.D.P.O., Begunia during the time of selection of

the Anganwadi worker. Ultimately, one Sri Ranjan Kumar Das, appeared before this Court, who was functioning as the C.D.P.O during the relevant time and on being directed, filed an affidavit before this Court. By order dated 20.6.2007, when Shri Ranjan Kumar Das was present personally in Court, this Court recorded as follows:-

xx xx xx

In the order dated 9.5.2007, this Court directed that Sri Das shall appear before this Court in person to explain as to under what circumstance, there was over writing in the marks allotted to the opp. Party No. 4. From the affidavit, it appears that the said question has not been clarified. The document kept in sealed cover was also shown to Mr. Ranjan Kumar Das, who is present in the Court. A prayer is made that a further affidavit shall be filed by him explaining the over writing in the concerned document which is kept by this Court.

Put up this matter on 4th July, 2007 on which date further affidavit explaining the over writing as directed earlier shall be filed by Sri Ranjan Kumar Das, who shall appear in Court in person on that date.

xx xx xx

6. As per the above direction, Shri Ranjan Kumar Das was present on 4.7.2007 and it was stated that a show cause affidavit has already been filed. In the show cause affidavit, it is stated that the marks awarded to the Petitioner and the opp. Party No. 4 were scrutinized on the date of interview by the committee consisting of the C.D.P.O., Begunia, Vice Chairman, Begunia, S.E.O., Begunia and D.S.W.O., Khurda. The committee decided to award 5 marks to the opp. Party No. 4 for her past experience instead of 3 marks awarded by the C.D.P.O. and, accordingly, the committee recorded a resolution. In pursuance of such collective decision, the marks have been awarded to the Petitioner and the opp. Party No. 4 and after interview was conducted, the proposal for appointment of opp. Party No. 4 was duly approved in the 4th Standing Committee Meeting of the Zilla Parishad, Khurda held on 8.2.2006.

7. This Court has perused the original record dealing with selection of opp. Party No. 4 as well as the order passed by the Collector as at Annexure-A/4 to the counter filed by the opp. Party No. 4. On perusal of the original application filed by the Petitioner, it appears that the column meant for mentioning the past experience in any Government or Non-Government voluntary organization, has been marked with a cross "X" symbol. The qualification of both, the Petitioner as well as the opp. Party No. 4 is H.S.C. The percentage of marks secured in the said examination by both the Petitioner and the opp. Party No. 4 has been correctly mentioned. The opp. Party No. 4 having mentioned in her form regarding her past experience and having produced the documents in support of such experience has been awarded 5 marks extra as per the guidelines for selection of Anganwadi worker. The overwriting appearing in the selection list as well as the calculation of marks does not show any incorrect calculation. It is,

therefore, presumed that, initially, there being error in calculation, the same has been rectified correcting the same.

8. At this juncture, Mr. Patnaik, learned Counsel drew the attention of this Court to the selection list appearing in page 50 of the File No. 43/05 and page 62 of the Part File of File No. 43/05 and contended that when the selection list was notified in the notice board, the marks secured by the selected candidate in respect of the experience was mentioned as "3", but in the records maintained in the file, the same has been interpolated to "5" marks. He further submitted that as per Clause - 8 (e) of the guidelines, the marks to be allotted to a candidate for past experience is out of "5" and, as such, each individual member of the committee must have given different marks for the past experience of opp. Party No. 4. However, no such document is available in the connected file. He, therefore, submitted that the records have been manipulated to illegally appoint the opp. Party No. 4. He further submitted that though members of the interview have given individual marks to the candidates and the average of such marks have been taken as the mark obtained in the interview by each of the candidates, but no such similar procedure has been adopted in course of awarding marks for past experience.

9. On a reading of the guidelines, it appears that in Clause - 8 (e) thereof, it has been stated that marks to be awarded for past experience is out of "5" marks. The experience relevant for this purpose will be experience in any area of the duties of Anganwadi worker acquired in Government employment or in a Programme under a registered voluntary organization funded by the State/ Central Government for this purpose. It is, therefore, clear that the maximum marks that can be awarded for experience is "5". From the record as well as the affidavit filed by the C.D.P.O., it is revealed that the C.D.P.O. awarded initially "3" marks to the opp. Party No. 4 for her past experience, but the selection committee was of the unanimous view that the opp. Party No. 4 should be awarded "5" marks, and, accordingly, the three marks awarded to the opp. Party No. 4 towards past experience was corrected to "5". The contention of Mr. Patnaik that separate marks were to be allotted to a candidate by each of the members of the selection committee for past experience as is done in the interview of the candidate, cannot be accepted as there is nothing in the guideline prescribing as such.

10. This Court, therefore, finds no mistake on the part of the opp. Parties 1 to 3 in selecting the opp. party No. 4. as it is clearly evident that she has been rightly, allotted with more marks than the Petitioner: The stand of the Petitioner that her experience certificate has not been taken into consideration cannot be acceded to as she did not produce such certificate along with her application form, though required. Even, it appears from the record that the Collector in his order dated 9.6.2006 has taken into consideration all aspects of the matter and has dealt with the grievance of the Petitioner in detail and arrived at a finding of fact that the Petitioner has not submitted the experience certificate nor given any

undertaking to produce the same at the time of viva voce, as mentioned in her grievance petition.

11. Considering all aspects of the matter, no error can be found In the decision of the Collector rejecting the representation of the Petitioner. This Court also does not find from the original records produced any error to have been committed in selecting the opp. Party No. 4 as Anganwadi worker of Goti Anganwadi centre.

12. In the result, the writ petition, being devoid of merit, is dismissed. No costs.