
(2010) 07 OHC CK 0059
In the Orissa High Court
Case No : Writ Petition (C) No. 12440 of 2009

Smt. Tarunakanti Sethi	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Citation : (2010) 110 CLT 545

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Mishra, J.—Heard Admit.

2. The Petitioner assails her disengagement from the post of Swechhasebi Sikhya Sahayak by the Collector, Bhadrak.

3. The State Government on principle decided to engage Sikhya Sahayak. hereinafter- referred to as the "SS" for brevity, as against vacancies of Primary School Teachers on contractual basis. Such S Ss were to be regularized in due course of their employment on successfully completion of 6 years of service. In pursuance of such decision, an advertisement was issued on 14.10.2006 to engage SS through out the State by the Director, OPEPA, Bhubaneswar.

As per the resolution of the Government & the advertisement, untrained ST/SC candidates having +2 qualifications should also be eligible to apply & could also be engaged in absence of trained candidates The Petitioner claims that he has passed +2 Examination & hence she applied for appointment as Sikhya Sahayak for Bhadrak Block under Bhadrak District. Since there is no adequate number of S.C. candidates, the applicant was selected as Sikhya Sahayak & engagement order was issued in her favour on 31.12.2007. She joined on 02.01.2008 in Saragadia U.G. M.E. School, Saragadia. Her selection was made only on the basis of marks Secured in the qualifying examination, i.e. +2 Examination. While the Petitioner was so continuing, she was directed to remain present before the Opp.

Party No. 4, i.e. District Project Coordinator, S.S.A. Bhadrak for verification of her original certificates. She remained present with all her original certificates. On such verification, no infirmity or irregularity was detected nor anything was communicated to her. However, on 26.11.2008 her service was terminated along with some others on the ground that the average percentage of marks of the Petitioner has come down below the minimum requirement, after verification.

Petitioner claims that, as per the Government Policy resolution, no minimum required percentage was fixed by the State Government for selection of Sikhya Sahayak. She claims that she has secured 492 marks out of total 1000 in +2 Examination. On receipt of such order she approached the Collector, Bhadrak by filing a representation dated 05.12.2008. She approached this Court by filing Writ Petition (C) No. 18920 of 2008, which was disposed of by this Court on 20.01.2009 with a direction to consider her representation within a stipulated time. In response thereto, the Collector took up the case on 29.05.2009 & he rejected the claims of the Petitioner. Petitioner, therefore, submits that the disengagement order & the order rejecting her representation, i.e. Annexures-8 & 9, respectively, be quashed & she be reengaged as Sikhya Sahayak.

4. Opp. Party No. 3 has filed a counter affidavit, inter alia, alleging that the Collector, Bhadrak after due adjudication & personal hearing rejected her representation. It is specifically pleaded that during verification of mark-sheet of the Petitioner, pursuant to the notice No. 14097 (177) dated 07.11.2008, it came to light that the calculation of marks of +2 examination was wrongly made, as a result of which, she was selected as Sikhya Sahayak. As per norm, it is pleaded, extra optional marks are not to be calculated to prepare merit panel in pursuance of G.O. No. 29557 dated 04.11.2000. It is further pleaded that in this case the mark-sheet reveals that she has secured 492 marks including extra optional marks of 40. But cross checking on 18.11.2008 it was confirmed that she has secured $492 - 40 = 452$ marks out of 1000. Accordingly, her position came down so as not to be considered for engagement as Sikshya Sahayak. Though the Opp. Party admits that no notice to show-cause was issued, she had appeared on 18.11.2008 & was explained the result of reduction of marks. Moreover, the Collector in Misc. Case No. 15 of 2009 also informed the result of her disengagement. Thus, it is submitted that the Petitioner was selected & engaged as Sikhya Sahayak on wrong calculation of her marks. Hence, her engagement was recalled. It is seen from the Order Dated 29.05.2009 as at Annexure-9 that the Collector held that the Petitioner has secured 452 marks out of 1000 in +2 Arts Examination in 2002. But after scrutiny, the Collector further observed, her mark was wrongly mentioned as 492 out of 1000, which was subsequently detected & rectified. Thus, the Collector held that the Petitioner became ineligible for the post of SS basing on the merit list published on 30.10.2007. Therefore, it is held by the Collector that in consonance of the above scrutiny, the Petitioner was lawfully disengaged vide order No. 14335 dated 26.11.2008.

5. It is seen that Annexure-5 is the copy of the mark sheet, which shows that the

Petitioner has secured 492 marks including 40 marks in the optional subject. Thus, there is no misrepresentation of the Petitioner regarding total marks obtained by her in the examination. The advertisement, Annexure-1 also does not reflect that while calculating the total marks, the marks obtained in extra optional should be excluded.

6. Learned Standing Counsel for School & Mass Education Department filed a resolution No. 29557/S & M.E. dated 04.11.2000, wherein it has been mentioned that the marks secured in 4th optional or extra-optional subject in HSC Examination is to be deducted from the total marks for arriving at the effective percentage of marks (clause-10(a)). This clause is not applicable to this case as in the present case the qualifying mark is the mark obtained in +2 Examination. Such clause should not be invoked to apply to cases where +2 Examination is to be considered as the qualifying examination. Moreover, it is seen that in this case the extra optional is in the discipline of education. In view of the fact that the Petitioner is to be engaged as SS in the absence of trained candidates & the Petitioner has received training in education as an extra optional, it should be rather counted in her favour. In cases where the candidates opt for extra optional, then she puts in more labour & also acquires knowledge in an additional subject. In recognition of such additional labour & knowledge, bonus marks equal to marks secured in such paper, minus the minimum pass mark is added to the total mark. There is no logical & cogent reason why such excess of marks should not be accredited to the candidate, especially when such marks are taken into consideration while determining the division of the student.

7. In course of hearing Learned Standing Counsel for the School & Mass Education Department has also produced the entire list of candidates. From the file it is seen that the categorized final merit list was prepared for 1680 candidates. The selected candidate, who had secured least percentage of marks i.e., Saipriya Sethi, has secured 47.44%, i.e. total marks of 427 & has been appointed. Thus, the cut off point for candidates who has passed +2 Examinations (CHSC) is 427. Even if the additional mark of 40 is reduced from the total marks secured by the Petitioner, then also she does not come under the cut off mark. Even in such a case her position would be 50th in the merit list instead of 39. So, the disengagement order passed by the Collector or Opp. Parties is wholly unjustified. This aspect was never looked into by the Learned Collector. Hence, the order passed by the Collector in Misc. Case No. 15 of 2009, as at Annexure-9 is also wrong.

8. The writ application is accordingly allowed. Annexures- 8 & 9 are hereby quashed. The Opp. Parties are directed to issue re-engagement order in favour of the Petitioner within two months of production of certified copy of this order. Issue writ. Petitioner shall file the requisites within seven days.