
(2008) 08 OHC CK 0064
In the Orissa High Court

Sudhir Kumar Sahu

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 14-08-2008

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2008) 106 CLT 860 : (2008) 2 OLR 569

Hon'ble Judges : R.N. Biswal, J;B.P. Das, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the petitioner and learned Counsel for the State.
2. The case of the petitioner is that he belongs to the Socially and Educationally Backward Class (SEBC), hails from Bolangir District and has passed +2 Vocational Examination in Agriculture Trade from Titilagarh. According to him, there were limited job vacancies in the field of Agriculture. While the petitioner was unemployed, an advertisement was made in an Oriya daily "The Sambad" on 18.5.2008 for filling up the posts of Village Agricultural Worker (VAW) and Lady Village Agricultural Worker (LVAW) on contractual basis, vide Annexure-2. By this writ petition the petitioner challenges the said advertisement in Annexure-2, so far as it relates to Bolangir District, being de hors the rules, i.e., Recruitment and Training of V.A.W. Rules, 1981, which under Clause 4 of Rule 6 under the heading "Educational Qualification" provides that for the post of VAW, a candidate should have passed the +2 Vocational Course in the field of Agriculture orientated subject or +2 Science or Intermediate in Science.
3. The proviso to the said rule stipulates that the candidates, who have passed +2 Vocational Course in the field of Agriculture, shall be given preference while selecting the candidates for appointment in the post of VAW and LVAW. According to the petitioner, the advertisement does not contain that in the process of selection, preference would be given to the candidates completing +2 Vocational

Course in the field of Agriculture. Therefore, according to him, the same is violative of Clause 4 of Rule 6 of the Rules, thereby the advertisement dated 18.5.2008 and the subsequent corrigendum dated 12.6.2008 (Annexure-3), whereby it had increased from 22 posts to 42 posts in Bolangir District, with regard to the appointment to the posts of VAW are also sought to be quashed as the same are violative of the Rules framed by the State Government.

4. According to the petitioner, He completed the Vocational Training in the year 2001 but due to ban of recruitment of VAWS by the State government, there was no avenue of appointment. The decision of the Government in 2008 was the only ray of hope for him and Ors. similarly placed, but as the said advertisement does not state as to giving any preference to the candidates having Vocational Training in Agriculture Trade, he is prejudiced thereby. Thus the petitioner had no alternative but to seek redress before this Court.

5. The petitioner further submits that vide notification dated 28.8.1908 the Hon"ble Governor of Orissa made certain amendments to the Recruitment and Training of V.A.W. Rules, 1981, which reads as follows:

The Governor of Orissa is pleased to make the following amendments in the "Recruitment & Training of V.A.W. Rules, 1981.

2. This will come into force from the date of its publication in the Orissa Gazette.

3. In the "Recruitment and Training of V.A.W. Rules, 1981" for Clause 7 of Rule 5, the following shall be substituted, namely:

Selection should be made on the basis of marks obtained in the +2 Vocational examination in the field of Agriculture or +2 Science or Intermediate in Science.

4. In the said Rules for Clause 4 of Rule 6, the following shall be substituted namely:

(4) Educational Qualification

A candidate should have passed the +2 Vocational course in the field of Agriculture oriented subject or +2 Science or Intermediate in science.

Provided that candidates who have passed +2 Vocational course in the field of Agriculture shall be given preference while selecting the candidates for appointment in the post of V.A.W./L.V.A.W.S.

6. According to the petitioner, the Rules are abundantly clear that any advertisement to the post of VAW should be in consonance with the above Rules. But, as indicated above, the Rules were given a go bye in the advertisement as well as the corrigendum.

7. Considering the allegations of the petitioner, we had directed the State Counsel to obtain instruction regarding the reason for not giving preference to the candidates, who have passed +2 Vocation examination in the field of Agriculture as per the recruitment and training of V.A.W. Rules, 1981 as amended

on 28th August, 1998. A counter affidavit has been filed by the O.Ps. While going through the same, particularly, paragraph-3, to our utter surprise, we find that a stand has been taken by the deponent, who is a Joint Director of Agriculture (Administration), Directorate of Agriculture & Food Production, which reads as follows:

?It is submitted that the above advertisement as at Annexure-2 has been made for engagement of eligible candidates as VAW/LVAW on contractual basis with monthly remuneration of Rs. 3200/- and not for the candidates as VAW/LVAW on regular manner. It is not necessary to mention in the advertisement to give preference to the candidates who have passed +2 vocational course in the field of Agriculture in mode of selection of the candidates for their engagement as VAW/LVAW on contractual basis. The selection of the candidates can not confine to only candidates those who have passed +2 Vocational examination in Agriculture ignoring the case of candidates passed +2 Science/Intermediate Science examination who are found more suitable securing higher marks than the candidates pass out vocational Higher Secondary Examination.

8. Bare perusal of the aforesaid statement made on oath fortifies the plea of the petitioner that the provision of the aforesaid rule has been given a go bye. In the counter affidavit, a stand has been taken that the Rule was framed by the Government of Orissa but not under the proviso to Article 309 of the Constitution of India, as if the O.Ps. are not bound by the rule framed by the Government)

9. A further stand has been taken that the advertisement in Annexure-2 has been made for engagement of eligible candidates as VAW/LVAW on contractual basis with monthly remuneration of Rs. 3200/- and not for the candidates as VAW/LVAW on regular manner. Further it is not necessary to mention in the advertisement to give preference to the candidates who have passed +2 Vocational Course in the field of Agriculture in mode of selection of the candidates for their engagement as VAW/LVAW. It is further stated that the selection of the candidates cannot be based on the marks secured in the +2 Vocational course only excluding the marks secured in +2 Science/Intermediate Science Examination. The Recruitment Rules never provide that selection process is only to be confined to the candidates who have passed +2 Vocational course. It is further indicated that the petitioner has passed Higher Secondary Examination in vocational held in the year 2001 and was placed in 3rd Division. Due to such placement, he cannot claim to be selected for appointment as VAW.

10. We are not on the question whether the petitioner will be selected or not. The entire dispute revolves round the question whether the Rules framed by the Government and notified on 11th February, 1981 and amended thereafter, are applicable to the candidates for appointment against the aforesaid post on contractual basis. True, the appointment is contractual, but in the contractual appointment also it is expected that the recruitment authority should follow the rules that have been framed by the Government. The counter affidavit absolutely does not meet our query; on the other hand, the Joint Director has tried to

justify the violation of the Rules. However, when the Rules framed by the State Government provide for giving preference to the fit candidates for the post of VAW/LVAW that is bound to be followed, be it regular or contractual. The authorities cannot go beyond the scope and ambit of the Rules with a plea that appointments are not regular but contractual because in the present day's scenario, regular appointments have become exception; contractual appointments are the rule of the day.

11. The rules framed by the Government, if not followed by its own minorities, will ultimately lead to confusion, the advantage of which would be taken by the dishonest officials and unscrupulous candidates. In a case of similar nature (W.P. (C) No. 7833/2007 disposed of on 8.7.2008) this Court while dealing with the provision of Section 3(d) of the O.R.V. Act has observed that the provision of the O.R.V. Act is also applicable in respect of contractual employment in the Government or in the Governmental organisations, as the case may be.

12. In We are satisfied that the rules that have been framed by the Government, have not been followed and the advertisement has not been made in consonance with the provisions of the aforesaid Rules. Therefore, in our considered opinion, the Rules framed by the Government, i.e., Recruitment and Training of Village Agricultural Workers Rules, 1981 and amended vide notification dated 24.6.1991, are applicable to the cases of recruitment of VAW/LVAW on contractual basis.

13. Accordingly, the writ petition is allowed. The advertisement in Annexure-2 is quashed to the aforesaid extent. The O.Ps. are directed to issue a corrigendum to this effect and fix the last date of application afresh. Issue urgent certified copy.