
(2022) 05 OHC CK 0154
In the Orissa High Court
Case No : Writ Petition (C) No. 7322 Of 2020

Sukanti Nayak

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 05-05-2022

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2022) 05 OHC CK 0154

Hon'ble Judges : V.Narasingh, J

Bench : Single Bench

Advocate : Pradosh Kumar Das, B.N.Mohanty, Bhaskar Samantaray, P.Mohaptra

Final Decision : Allowed

Judgement

V. Narasingh, J

1. Heard learned counsel for the petitioner and learned Additional Standing Counsel for the State.

2. There is no appearance on behalf of opposite party No.5 when the matter is called.

3. The petitioner has approached this Court by filing the present writ petition under Article 226 of the Constitution of India assailing the order passed by the Collector-cum-District Magistrate, Puri-O.P.No.2 dated 20.01.2022 in A.W.W. Misc. Case No.110 of 2010 (Annexure-1) thereby affirming the order dated 08.05.2015 by which the petitioner working as Anganwadi Helper was disengaged.

4. This case has chequered history. The brief background as evident from the pleadings is stated as under for convenience of appreciation of the lis.

On the basis of an advertisement for selection of Anganwadi Helper, a meeting of Mahila Shabha was held on 30.01.2010 in the village Bisimatri relating to Bisimatri Anganwadi Centre. It is stated that in the said meeting there was

overwhelming support for appointment of Pravasin Mohanty (O.P. No.5). It is stated that while such meeting was going on a group of people came to the meeting place and created disturbance in smooth completion of the meeting. Hence, as per guidelines it was decided to shift selection to the Project Headquarter. Accordingly, selection at Project Headquarter was held on 23.04.2010 of which due notice was given and in response thereof three candidates, the present petitioner, opposite party No.5 and one Bharati Panda appeared. To test the eligibility of the candidates, the members of the Selection Committee, i.e., C.D.P.O., Nimapara, Supervisor and ANM asked some questions on I.C.D.S. activities and their capability.

5. After preparing comparative chart of performance of the three candidates it came the fore that petitioner had secured 19 marks out of 30 whereas opposite party No.5 had secured 18 marks and Bharati Panda had secured 17 marks. As the petitioner had secured the highest mark she was engaged as Anganwadi Helper in Bisimatri Anganwadi Centre.

6. Such appointment order was set aside by the Collector on 08.05.2015 in A.W.W. Misc. Case No.110 of 2010 and opposite party No.5 was directed to be engaged as Anganwadi Helper in Bisimatri Anganwadi Centre as per office order No. 35 dated 11.01.2016.

7. Assailing the same, the petitioner approached this Court by filing the W.P.(C) No. 23721 of 2015 and by order dated 30.01.2018 the order dated 08.05.2015 disengaging the petitioner was set aside and the matter was remitted back to the Collector, Puri- opposite party No.2 therein for reconsideration.

8. It was also further observed that:-

"Engagement of any person already in the meantime to the post of Anganwadi Helper in Bishi Matri AWC of Bhodara Grama Panchayat in the district of Puri shall be subject to the ultimate outcome on the decision of the Collector."

9. On remand opposite party No.2 heard the matter afresh and has passed the impugned order at Annexure-1, which is the subject matter of challenge in the present writ petition.

10. Counter affidavit has been filed by the opposite parties 2, 3 and 4 justifying the direction in the impugned order confirmed disengagement of the present petitioner and engaging opposite party No.5 as Anganwadi Helper in Bisimatri Anganwadi Centre.

11. The petitioner has controverted the recitals in the counter by filing a rejoinder.

12. On perusal of the impugned order at Annexure-1 it can be seen that after discussing the history of the litigation, opposite party No.2 the Collector came to the finding that the allegation regarding disturbance in the Mahila Sabha meeting dated 30.01.2010 is an afterthought and as such on the basis of overwhelming

support in favour of opposite party No.5 she deserves to be engaged as Anganwadi Helper in Bisimatri Anganwadi Centre and thereby rejected the prayer of the petitioner being devoid of merit.

13. Counter affidavit has been filed by the C.D.P.O.-opposite party No.4 on behalf of opposite parties 2 and 3 more pertinently also on behalf of the Collector (Opp. Party No.4) whose decision is under challenge in this writ petition.

14. In paragraph-4 of the counter affidavit it is clearly stated regarding disturbance which has taken place in the meeting and the subsequent procedure which was followed as per the guidelines. The said paragraph-4 is quoted hereunder for convenience and ready reference.

"4. That it is respectfully submitted that on the basis of an advertisement, a meeting of Mahila Sabha was held on 30.1.2010 in the village Bisimatri AWC. In the said meeting, twenty-five numbers of women were present to participate in the discussion with regarding to selection of Anganwadi Helper. During the meeting, though the members present in the meeting supported the candidate of opposite party No.5, at the same time, a few members of the meeting created disturbance for which the purpose of the meeting could not be materialized and consequently decision was taken go for selection at the Project headquarter as per the government guidelines.

It is pertinent to mention here that so far the selection of Anganwadi Helper is concerned, the same is governed by the guidelines dated 24.11.1997. The said circular clearly provides that the committee should select the Helper in consultation with the women groups of the village. In case, for any reason to be recorded in writing it is not possible to make the selection in a particular village, the selection may be made at the Project Headquarter."

15. Relevant extract of the guidelines relating to selection at Project Headquarter is also quoted hereunder for ready reference.

"A helper will be selected by a committee consisting the CDPO of the project Chairperson, Supervisor in charge of the area-Member & A.N.M. in charge of the area-Member.

The above committee should select the helper in consultation with the women groups of the village. In case for any reasons, to be recorded in writing it is not possible to make the selection in a particular village, the selection may be made in the project Head quarters by the above mention committee."

16. The stand taken in the counter affidavit in paragraph-4 which is filed also on behalf of the Collector whose order is impugned, on the face of it, is contradictory to the stand taken in the impugned order. There is no material on the basis of which opposite party No.2 could come to the conclusion that the factum of disturbance is an afterthought thereby directing for appointment of opposite party No.5.

17. It is clear from the impugned order that an objective assessment was made to test the qualification inter se between the petitioner and two others who participated in the selection procedure.

18. On such objective assessment based on the guidelines in which all the members of the Selection Committee participated, admittedly the petitioner secured the highest mark. In the face of such selection it was not open to the Collector to come to a conclusion in a highly arbitrary manner without any rhyme and reason that the selection of opposite party No.5 is to take precedence over that of the petitioner.

19. Considering the submission of learned counsel and taking into account the recitals in the counter affidavit, this Court is of the considered opinion that the impugned order is outcome of arbitrary, exercise of power and is tainted with malafide due to non-application of mind and hence, the same is set aside.

20. In terms of the earlier direction of this Court in the writ petition at the instance of the petitioner quoted hereinabove (order dated 30.01.2018 in W.P.(C) No.23721 of 2015), opposite party no.4 is directed to issue appointment order to the petitioner as Anganwadi Helper of Bisimatri Anganwadi Centre within 60 (sixty) days from the date of receipt/production of certified copy of this order.

21. The writ petition is accordingly allowed.

22. There shall be no order as to costs.

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