

(2006) 04 OHC CK 0009
In the Orissa High Court
Case No : O.J.C. No. 11541 of 2000

Suresh Ch. Nayak and Others

APPELLANT

Vs

Orissa Administrative Tribunal and Others

RESPONDENT

Date of Decision : 25-04-2006

Acts Referred:

Citation : (2006) 1 OLR 614 Supp

Hon'ble Judges : N. Prusty, J;I.M. Quddusi, J

Bench : Division Bench

Judgement

1. Heard learned Counsel for the Petitioners, Mr. R.K. Rath and learned Standing Counsel for the School and Mass Education for opposite parties 2 to 5.

2. The Petitioners, who belong to socially educationally backward classes (under S.E.B.C. category) got their names registered in the Employment Exchange, Rayagada as they were having matriculation qualification with Teacher's training course.

3. Some posts of Primary School Teachers were created in Rayagada Education District and the Employment Officer, Employment Exchange, Rayagada was asked to sponsor the names of qualified persons to fill up the said posts. The Employment Officer sponsored the names of so many candidates including the Petitioners. Thereafter, the District Inspector of Schools, Rayagada sent application forms to the candidates, but the same were not received by the Petitioners. Interview for the selection was held on 9.4.1998. When the Petitioners got knowledge about the same, they immediately approached and appeared before the Selection Committee, but due to agitation of the local people they were prevented from participating in the interview. Some other persons who could not get the application form whose names were sponsored by the Employment Exchange also tried to participate in the interview, but the local people prevented them, as a result of which they had filed writ petition before this Court, which was registered as O.J.C. No. 14204 of 1998. The relevant portion of the said order is quoted herein below.

The name of the Petitioner was struck off from the live Register of Employment Exchange. The matter was however, reconsidered pursuant to the direction of this Court and his name was again included. The District Inspector of Schools, Gunpur O.P. No. 4 gave for appointment as Primary School teachers, which was held on 5.4.1998. Grievances of the Petitioner is that he could not appear the test because of intervention of the local people. We direct that let another viva voce test be held wherein the Petitioner shall be allowed to appear.

4. The Petitioners instead of approaching this Court approached the Orissa Administrative Tribunal Cuttack Bench Cuttack in O.A. No. 3002(C) of 2000. The said O.A. was disposed of vide order dated 7.9.2000 with the observation that "Since the date of interview has been already over, no direction can be given to appear at the interview which was held at a date which is already over. If, however, further interview will be held and if their names were actually sponsored by the Employment Exchange call letters were issued to them and they were prevented from appearing at the same by violence, they may be allowed to participate in the interview." But as the interview were already over and there was no direction by the Tribunal in respect of these Petitioners to hold interview, they approached this Court by filing the instant writ petition.

5. It may be noticed here that this writ petition was disposed of on 20.2.2001, but a review petition was filed on behalf of opposite parties 2 to 5 to review that order on the ground that the opposite parties were not given any chance to defend and the order has been passed. In such circumstances, the review petition (Civil Review No. 63 of 2002) was allowed vide order dated 7.1.2005 recalling the orders passed in the writ petition as well as Misc. Cases on the ground that the order was passed without notice to the opposite parties in the writ petition. However, we found that there was already a counter affidavit available on record, which was filed much before the final decision of the case. However, the same is being discussed below.

The order disposing of this writ petition vide order dated 20.2.2001 is quoted hereunder.

Without going into the controversies raised by the parties, and in view of the undertaking given by the learned Additional Government Advocate that the Petitioners will be given a chance of appearing at interview within three months from this date, the writ petition is disposed of.

6. It appears that in pursuance of the above quote direction, interview was held and the Petitioners were allowed to participate in the interview. But the result of the interview was not declared due to which the Petitioners filed a Misc. Case No. 9264 of 2001 which was disposed of vide order dated 24.7.2001 directing the authority concerned to publish the results within four weeks from the date of order. Thereafter, the result was declared, but appointments were not made accordingly and ultimately, the Petitioners filed another Misc. Case No. 11162 of 2001 which was disposed of vide order dated 24.9.2001 with a direction that "Let

appointments be made from the merit list of candidates within a period of eight weeks from this date".

But no appointments were made and the opposite parties 2 to 5 decided to file review petition which was filed on 21.6.2002 on the ground that no opportunity to defend the case was provided to the opposite parties which was allowed vide order dated 7.1.2005 as already indicated above.

7. Now today when this case was called on for hearing, it was found that the Counter Affidavit was already filed by opposite party No. 5 i.e. District Inspector of Schools, Rayagada Education District, Rayagada on 5.1.2001. It may be noticed that the final order in the instant writ petition was passed on 20.02.2001 and at that time the Counter Affidavit was very much available on record on the plea that no opportunity was given to them to defend their case. The said order disposing of the instant writ petition finally was recalled and all the orders passed in the Misc. Cases as mentioned above were also recalled and the writ petition was restored to its original number.

8. Before proceeding further, it would be appropriate to quote the relevant portion of the counter affidavit shown by Sekhar Chandra Sahoo, the then District Inspector of Schools Rayagada Education District, Rayagada.

3. That it is a fact that the Petitioners are all Matric C.T. and belong to specially economically backward classes and they have registered their names in the local Employment Exchange. On the requisition of the District Inspector of Schools of Koraput Circle to fill up certain posts of Government Teacher in Primary Schools, the Employment Officer, Rayagada sponsored the name of the Petitioners along with others. As per the procedure this deponent has sent application forms through registered post with A.D. to the Petitioners to resubmit the same duly filled in by the candidates along with documents.

The Petitioners and some others have made representations to the Inspector of Schools, Koraput Circle, Koraput to consider their case on the ground that they have fallen prey to the prevailing circumstances and no form could be received by them. The Inspector of Schools on consideration of the case of those 26 candidates have sought for instruction from the Director, Elementary Education in Annexure-1.

Due to filing of different cases in the State Administrative tribunal, no decision has yet been communicated to the Circle Inspector of Schools, Koraput.

It is also a fact that similarly situated candidates have approached the Orissa Administrative Tribunal as well as this Hon''ble Court in different writ applications. After considering their cases both the Hon''ble Tribunal as well as Hon''ble High Court have directed the opposite parties to conduct fresh interview for the Petitioners in those cases. But the present Petitioners were not parties in those writ applications, So they were not considered for interview. But whatever may be the fact the District Inspector of Schools has sent the application forms

to the candidates as required under law. As such he has not committed any illegalities in the matter of selection of candidates for the post of Government Teachers to be appointed in Primary Schools and in absence of any orders from the Hon"ble Court it was not possible on the part of the District Inspector of Schools to allow the Petitioners to appear in the interview.

9. In the counter affidavit as quoted above the opposite parties have mentioned that other similarly situated persons had approached the Tribunal as well as this Court with the similar grievances and in their case a direction was issued to conduct fresh interview, but as the instant Petitioners were not parties in that writ application, their cases were not considered. But the question before this Court is that when similarly situated persons approached this Court and in their case orders were passed for conducting a fresh interview why the instant Petitioners should be prevented from getting similar benefits.

10. From the letter of the Director Elementary Education Orissa addressed to the Inspector of Schools, Koraput Circle dated 15.3.2000 it appears that this Court had given similar directions in O.J.C. No. 5955 of 1997 decided on 6.12.1997, O.J.C. No. 11022 of 1996 decided on 02.12.1998, O.J.C. No. 12508, 12580, 12533, 12542, 12544, 12627 and 12686 of 1996 decided on 05.12.1997. It was directed therein by this Court that the Petitioners shall be entitled for consideration for appointment as Primary School Teachers by appointing authorities and for other consequential benefits in accordance with law after relaxing the upper age limit in their cases in O.J.C. No. 13909/1996 and in Misc. Case this Court had directed as under.

We direct the opposite parties to permit the Petitioners to appear in the interview for appointment to the post of Primary School Teachers along with other candidates.

11. In that letter the Director, Elementary Education, Orissa had asked the Inspector of Schools, Koraput Circle to intimate the position of the applicants with all detailed facts as to what steps were taken regarding the 26 persons selected for appointment under SEBC Category seeking approval in the letter No. 1917 dated 19.3.1998 of Inspector of Schools.

12. Now, the position is that in pursuance of the direction issued earlier by this Court in Misc. Cases, the Petitioners were allowed to participate in the interview and the result has also been declared and there is a merit list prepared by opposite party No. 2 to 5, but appointment orders have not been given due to a decision to file review petition. But now, we feel that the orders passed in Misc. Cases are liable to be followed and the appointments are liable to be made according to the merit list published by them accordingly.

13. In view of the above mentioned facts and circumstances, this writ petition is disposed of with the direction that steps which have already been taken pursuant to the interim orders passed by this Court earlier in the instant writ petition are held valid and further writ of mandamus is issued commanding the opposite

parties 3 to 5 to issue appointment orders to the selected candidates according to the merit list published by them.

14. Urgent certified copy of this order be granted on proper application.