

**(2016) 01 OHC CK 0020**

**ORISSA HIGH COURT**

**Case No:** W.P.(C) No. 31244 of 2011

Chandrakanti Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

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**Date of Decision:** Jan. 29, 2016

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Hon'ble Judges:** S.N. Prasad, J.

**Bench:** Single Bench

**Advocate:** Sachidananda Sahoo and P.R. Bhuyan, for the Appellant; Sanjibani Mishra, Addl. Standing Counsel, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

S.N. Prasad, J.

1. The petitioner being aggrieved with the order passed in Anganwadi Appeal No. 32 of 2011 dated 23.08.2011 is before this Court.

2. Brief facts of the case of the petitioner is that in pursuance to notification dated 12.7.2006 a meeting of Mahila Sabha was scheduled to be fixed on 8.8.2006 in order to select and engage the Anganwadi Worker in Kandiasahi Anganwadi centre and accordingly four candidates namely Chandrakanti Nayak (petitioner), Geetanjali Jena, Shantilata Rout and Swapnarani Parida submitted their applications before the C.D.P.O., Chandbali. The meeting of Mahila Sabha was held on 8.8.2006, candidature of Swapnarani Parida was rejected due to underage. The candidature of Shantilata Rout was also rejected on the ground of not belonging to the service area of the centre, candidature of Geetanjali Jena was not taken into consideration by the Mahila Sabha as she filed a petition for withdrawal of her candidature and hence the petitioner became single eligible candidate and accordingly her name was suggested by the Mahila Sabha for selection and engagement of Anganwadi Worker for the centre.

3. But the CDPO, instead of issuing engagement order in favour of the petitioner, delayed the matter and in the meanwhile revised guideline has come into force w.e.f. 2.5.2007 and hence a new notification inviting fresh applications was issued on 9.7.2007. In pursuance of the notification dated 9.7.2007, Swapnarani Parida whose candidature was rejected in the earlier notification dated 12.07.06 applied for the said post.

4. The petitioner being aggrieved with the action of the CDPO has filed writ petition before this Court being W.P.(C) No. 1756 of 2011 for issuance of direction to issue engagement order in favour of the petitioner, the writ petition was disposed of vide order dated 05.05.2011 directing the petitioner to file fresh representation before the authority who shall consider the same.

5. Opposite party No. 5 has also filed another writ petition being W.P.(C) No. 11467 of 2011 praying therein to direct opposite party No. 3 to conclude the appeal and to direct the Collector, Bhadrak to expedite the selection process and after receipt of order passed by this Court in W.P.(C) No. 1756 of 2011 and W.P.(C) No. 11467 of 2011, the ADM, Bhadrak clubbed the Anganwadi Appeal No. 32 of 2011 filed by the petitioner and Anganwadi Appeal No. 35 of 2011 filed by opposite party No. 5 for analogous hearing and thereafter the ADM, Bhadrak has passed common order on 23.08.2011 which is assailed in this writ petition on the ground that the irregularities having been pointed out by the ADM vide notification dated 12.07.2006 cannot be vitiated entire selection process since the CDPO who has issued the notification in the capacity of member secretary of the Selection Committee as per the Guideline issued in the year 1998.

6. So far as the irregularities No. 2 is concerned, it has been submitted that the guideline for selection of Anganwadi Worker is of the year 1998 which authorizes the Mahila Sabha to recommend the name or names of the candidates and also to discharge certain duties in connection with the selection of Anganwadi worker. Hence, the finding of the learned ADM is that the decision taken in the Mahila Sabha has been fault and cannot be held good.

7. So far as irregularities No. 3 is concerned, rejection of candidature of two candidates on the ground of outside service area and underage respectively is matter on record and after verifying all these aspects of the matter, the petitioner was found to be eligible candidate.

8. So far as irregularities No. 4 is concerned, it has been submitted that the earlier notification dated 12.07.2006 was never been cancelled.

9. It has been contended that once any advertisement is issued, it has to be given its logical end by concluding the selection process.

It has further been contended that since the notification dated 12.07.2006 was issued in pursuance to the guideline issued in the year 1998 as such the selection

process ought to have been concluded in pursuance to the guideline issued in the year 1998 and on the basis of the subsequent guideline which has been issued on 2.5.2007, in pursuance of the same new guideline has been issued.

10. Learned counsel for the petitioner has relied upon judgment of Hon"ble Apex Court in the cases of Y.V. Rangaiah vs. J. Sreenivasa reported in , AIR 1983 SC 852 and State of Bihar and another vs. Madan Mohan Singh reported in , AIR 1994 SC 765 and also judgment passed by this Court in the case of Kabita Swain vs. State of Orissa and others reported in , 2014 (I) OLR 194 and unreported order passed in W.P.(C) No. 9180 of 2007 in support of his case.

11. Opposite party No. 4-the CDPO has filed counter affidavit inter alia stating therein that in pursuance to notification dated 12.07.2006 Mahila Sabha was conducted on 8.8.2007 for selection and engagement of Anganwadi worker and ultimately Mahila Sabha had recommended the name of the petitioner and one Geetanjali Jena, in the said selection process, Geetanjali Jena had secured more marks than the petitioner but she withdrawn her application as on the relevant point of time she was working as Gram Sikhya Sahayak at Tentulidihi ME School and finally the name of the petitioner recommended to be selected as Anganwadi Worker as such there was no candidate except the petitioner hence fresh advertisement has been issued.

12. Opposite party-State has appeared and filed counter affidavit inter alia stating therein that the petitioner since has got lesser marks than Geetanjali Jena and there is some irregularities having been found out by the competent authority hence the authorities have decided to go for fresh selection and accordingly fresh notification was issued on 9.7.2007 in which the petitioner has participated but declared fail. Hence, after becoming unsuccessful in the selection process he cannot challenge the said section process.

13. It has been contended by the opposite parties that the judgment relied upon by the petitioner is not applicable in the facts and circumstances of this case.

14. Heard learned counsel for the parties and perused the documents on record.

Undisputed fact in this case is that in pursuance to an advertisement issued on 12.07.2006, out of four candidates, the petitioner and one Geetanjali Jena has secured higher marks but she withdrawn her candidature hence the petitioner being the single candidate, the competent authority has come out a fresh advertisement on 9.7.2007 inviting fresh applications in which the petitioner has also made application along with opposite party No. 5 who was unsuccessful candidate in pursuance to the advertisement dated 12.07.2006.

15. The petitioner has challenged the subsequent advertisement dated 9.7.2007 on the ground that the first advertisement issued on 12.07.2006 ought to have been given logical end by concluding the selection process by making engagement but

that has not been done hence the selection committee has committed an illegality.

Further argument of the learned counsel for the petitioner is that the authority should not have issued a second advertisement on 9.7.2007 in which the petitioner has participated but declared unsuccessful.

16. Now, question which fell for consideration before this Court is as to whether the petitioner has a right to challenge the second advertisement in which she has participated and declared unsuccessful.

17. Rule is settled that if in an advertisement, a candidate appears crossed through all the selection process and declared unsuccessful he will cease to challenge the said selection process.

18. In this regard, reference may be made to the judgment rendered by Hon"ble Supreme Court in the case of K.H. Siraj vs. High Court of Kerala reported in , (2006) 6 SCC 395 in paras 72 and 74, it has been held that the candidates who participated in the interview with knowledge that for selection they had to secure prescribed minimum marks on being unsuccessful in interview could not turn around and challenge that the said provision of minimum marks was improper, said challenge is liable to be dismissed on the ground of estoppel.

Another reference made to the judgment rendered by Hon"ble Supreme Court in the case of Union of India vs. S. Vinod Kumar reported in , (2007) 8 SCC 100 at para-18 it has been held that is being reproduced herein below:-

"18. .... It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same."

Another reference made to the judgment rendered by Hon"ble Supreme Court in the case of Vijendra Kumar Verma vs. Public Service Commission, Uttarakhand and others reported , (2011) 1 SCC 150 at para-24, it has been held that:-

"24. .... Knowing the said criteria, the appellant also appeared in the interview, faced the questions from the expert of computer application and has taken a chance and opportunity therein without any protest at any stage and now cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction."

19. Applying the settled principle laid down by Hon"ble Supreme Court referred hereinabove, it is being held here that the petitioner will cease to challenge the selection process after participation in the same and declared unsuccessful.

20. So far as the contention of the petitioner is that the authority ought to have concluded the selection process which was initiated in pursuance of the advertisement dated 12.07.2006 by issuing engagement order in favour of the petitioner.

21. From perusal of the order passed by the ADM, four irregularities have been found in the selection process which is being quoted herein below for ready reference:-

(1) On perusal of Notification, it is seen that the letter number has been written as 195 dated 12.07.2006 by cutting letter No. 226 dated 2.5.2006 without initial. The memo numbers have also been cut without initial. This is highly irregular and lacks transparency.

(2) The decision taken in Mahila Sabha is not fir, it has been decided in the above Mahila Sabha to select Chandrakanti Nayak (appellant in Appeal No. 32 of 2011) first who had secured less marks which was illegal. Subsequently, they decided to select another applicant namely Gitanjali Nayak who had scored highest marks. Subsequently, it was managed to bring one no-objection certificate in favour of Gitanjali Nayak which indicates that Chandrakanti Nayak gained over Mahila Sabha. It is against transparency and the proceeding is vitiated.

(3) The selection of the name of two candidates on the ground of outside area and under age has not been duly enquired into which transpires that the then Mahila Sabha had preconceived thought to appoint a particular candidate which is illegal.

(4) Probably due to the above reasons the Ex-CDPO, Chandbali has again issued notification vide letter No. 338 dated 9.7.2007.

Allegation No. 2 and 3 is important which was taken into consideration by the competent authority by holding therein that some irregularities have been committed in the selection process and as such in order to adopt fair and transparency, the selection committee has decided to go for fresh notification on 9.7.2007.

22. The contention raised by the petitioner is that logical end ought to have been given to the first advertisement issued on 12.07.2006 by issuing engagement order, that cannot be accepted in the facts and circumstances of this case as because the Selection Committee has taken decision after perusing irregularities committed in the selection process and as such they have decided to go for fresh advertisement which is their decision and in the facts of this case, the decision taken by the competent authority cannot be held to be improper for the reason that irregularities have been committed which is being reflected in the order impugned.

23. The petitioner has not been prejudiced by issuance of second advertisement since she has been given the opportunity to participate in the fresh selection process in which she has participated but become unsuccessful.

24. It is settled that a candidate cannot be held to be having vested right merely on account of having been selected in the selection process or recommended for engagement in the said selection process rather the vested right will be said to be accrued only when the appointment letter will be issued in favour of the candidate

but that stage had not come and merely on the ground of sole candidate in the competition, the petitioner cannot claim engagement as a matter of right and she cannot question the decision of the competent authority in issuing the second advertisement.

25. If the selection committee has found that some irregularities/illegalities have been committed, they are free to take decision on the basis of the facts before them to go for fresh selection in order to adopt fair and transparent selection process and this Court sitting under Article 226 of the Constitution of India who refrain from interfere when the policy decision of the Selection Committee unless some mala fide will be shown in the decision making process. But that is not the case of the petitioner.

The ADM after taking into consideration all aspects of the matter has approved the decision of the Selection Committee and passed order.

26. So far as the judgment referred by the learned counsel for the petitioner in the case of State of Bihar and another vs. Madan Mohan Singh and others reported in , AIR 1994 SC 765, the same is not applicable in the facts and circumstances of this case as because the said case is related with filling up the vacancies of Add. Dist. Judge while the judgment rendered in the case of Y.V. Rangaiah and others vs. J. Sreenivasa reported in , AIR 1983 SC 852 the same is also not applicable since the facts and circumstances of this is totally different from the case of said judgment since the said case is related regarding grant of promotion on the basis of amended rule or pre-amended rule but that is not applicable in the facts of this case because the petitioner has participated in pursuance of the second advertisement which according to the petitioner has been issued in terms of new guideline dated 2.5.2007 hence she will be ceased to challenge the same since participated in the selection process.

The judgment referred in the case of Kabita Swain vs. State of Orissa and others reported in , 2014 (I) OLR 194 and the order passed in W.P.(C) No. 9180 of 2007 is also not applicable, in view of the fact that in the said judgment, the facts are totally different.

27. This Court sitting under Article 226 of the Constitution of India cannot act as an appellate court and reverse the fact finding given by the Selection Committee or the appellate authority.

In view thereof and for the foregoing reasons, there is no infirmity in the impugned order or in the selection making process, accordingly the writ petition is dismissed being devoid of merits.