

(2024) 05 OHC CK 0112

Orissa High Court

Case No: Writ Petition (C) No. 5619 Of 2017

Mudhusmita Dash

APPELLANT

Vs

Collector, Nayagarh &
Others

RESPONDENT

Date of Decision: May 14, 2024

Acts Referred:

- Constitution of India, 1950 - Article 19, 226, 227

Hon'ble Judges: Sashikanta Mishra, J

Bench: Single Bench

Advocate: M.K. Dash, P.K. Nanda, D. Sahoo, R. Hota, H. K. Dash, S.N. Patanaik, S.K.Mishra,
J. Pradhan, S. Rout, P.S. Mohanty, G. Pattanaik

Final Decision: Allowed

Judgement

Sashikanta Mishra, J

1. Being aggrieved by the order dated 01.03.2017 passed by the Addl. District Magistrate, Nayagarh in Anganwadi Appeal No.5 of 2016 setting aside

the order of her selection as Anganwadi worker, the petitioner has approached this Court with the following prayer:

“It is, therefore, humbly prayed that this Hon’ble Court may graciously be pleased to issue Rule NISI calling upon the Opp. Parties to show cause as to

why a writ in the nature of mandamus shall not be issued, for quashing the order dated 01.03.2017 passed in Anganwadi Appeal No. 5 of 2016 at Annexure -5 by

declaring the same as illegal, unreasonable, and in case the opp. Parties do not show any cause or show insufficient or wrong cause the Hon’ble Court may

make the Rule absolute, by setting aside the impugned Order in Annexure-5, consequently declaring the petitioner’s engagement as proper, or may issue any

other directions as deem fit and proper. And for this act of kindness, the petitioner shall as in duty bound, shall every pray.â€

2. The facts of the case are that pursuant to an advertisement issued by the C.D.P.O., Nayagarh on 19.08.2016 for engagement of Anganwadi

Worker of Anganwadi Center Ward No. 7, Keuta Sahi, the petitioner submitted her application. She was earlier working as a Balwadi worker in the

same ward. The Selection Committee after verifying the documents and the eligibility of the petitioner, found her suitable for engagement.

Accordingly, she was issued with an order of engagement on 05.10.2016 pursuant to which she joined on 07.10.2016. The private Opposite Party

No.5 challenged her selection by filing appeal being A.W. Appeal No. 5 of 2016 before the A.D.M., Nayagarh mainly on the ground that she had not

submitted her Resident Certificate along with her application. The A.D.M. though held that the petitioner is a permanent resident of the area in

question, yet considered her selection to be illegal as she had not submitted the Resident certificate along with her application form. Accordingly, the

impugned order was passed setting aside the engagement of the petitioner.

3. Being aggrieved, the petitioner has filed the present writ petition alleging, inter alia, that the Opposite Party No.5 had no locus standi to challenge

her selection as she was herself guilty of manipulation of the marks secured by her in the H.S.C. Examination as reflected in her application form. In

any case, the petitioner admittedly had secured more marks than Opposite Party No.5 and further, she had experience of working as a Balwadi

worker in the same area.

4. Counter Affidavit has been filed by the C.D.P.O. stating that as per Clause-8 of the advertisement, candidates having experience as Balwadi

Worker with minimum qualification shall be engaged even by accepting undertaking by the candidates of producing H.S.C. Certificate within three

years. Since the petitioner had experience as a Balwadi Teacher under the same Ward No.7 where the Anganwadi center situates, her case was

taken into consideration. Further, she had submitted acknowledgment receipt of residential certificate along with other documents. It is also stated that

the Opposite Party No.5 had manipulated the marks secured in her application form by mentioning it as 55% instead of 44%. However, such ground

was never raised before the Appellate Authority.

5. Heard Mr. Manmaya Kumar Dash, learned counsel for the petitioner, Mr. S.N. Patanaik, learned Addl. Government Advocate for the State and

Mr. S.K. Mishra, learned Senior Counsel with Mr. J. Pradhan, learned counsel for the Opposite Party No.5

6. Mr. Dash would argue that there is no dispute that the petitioner was working as Balwadi worker since 2004 in the area in which the Anganwadi

Center of Ward No.7 situates and therefore, as per Clause-8 of the advertisement, she was entitled to appear. Being a Balwadi worker, undertaking

related to submission of H.S.C. certificate within three years is acceptable. Mr. Dash further argues that even otherwise there is no dispute that the

petitioner is a resident of the service area of the Anganwadi Center. Her selection was challenged by Opposite Party No.5 only on the ground that she

had not submitted the resident certificate along with the application form. The A.D.M. also erroneously accepted such objection without considering

the fact that the petitioner being a resident of that area had worked as Balwadi worker. That apart, the Opposite Party No.5, is herself guilty of

playing fraud as admitted by the C.D.P.O. in the counter filed before this Court and therefore, the selection of the petitioner cannot be questioned by

her.

7. Mr. S.N. Patanaik, learned State Counsel would argue that if the terms of the advertisement are to be strictly construed then the petitioner's

application has to be treated as incomplete inasmuch as she had not enclosed any residential certificate along with the documents. Mr. Patanaik

however, fairly submits that there is no dispute that the petitioner was working as a Balwadi worker in the same area and also a resident of the same

area.

8. Mr. Samir Kumar Mishra, learned Senior Counsel would argue that it is the settled position of law that the conditions stipulated in the advertisement

are to be strictly adhered to. It is not open to the authority concerned to extend the last date of submission of documents under any circumstances.

Since the petitioner had admittedly not submitted the resident certificate along with her application, the same has to be treated as incomplete and

therefore her selection was rightly set aside by the A.D.M.

9. Reference to the advertisement dated 19.08.2016 (copy enclosed as Annexure-1) reveals that the applicants were required to be permanent

residents of the village/area/locality in which the Anganwadi center is located. Further, they were required to submit permanent resident certificate

issued by the concerned Tahasildar in 2016. Admittedly, the petitioner had not submitted the resident certificate. She applied for such certificate on

03.09.2016, i.e. after the last date fixed for receipt of applications, i.e., 02.09.2016. A certificate was issued in her favour on 15.09.2016 showing her a

resident of Nayagarh. It is nobody's case that the petitioner is not a permanent resident of the service area of the Anganwadi center. Even the

A.D.M. arrived at such a finding as mentioned in the impugned order in the following words:

“Having heard both the parties to the dispute and going through the evidence on record I am of the opinion that the Respondent No.1 has been residing in

Ward No.7 of Nayagarh NAC for more than last 10 years as it evident from R.I. report vide Annex-II submitted by the Appellant and enquiry report of the CDPO,

Nayagarh. There is no bar against a person belonging to the village Angisingi to reside in Nayagarh Town. Article 19 of Indian constitution guarantees the

liberty to any Indian citizen to reside and settle in any part of the country except in the state of Jammu and Kashmir. The voters list i.e. Annex-I submitted by the

Appellant is not the conclusive evidence of residence. Moreover, the Resident Certificate issued by the Tahasildar, Nayagarh still holds good having not been

assailed in appropriate forum.”

10. Thus the only shortcoming of the petitioner was non-submission of resident certificate before 02.09.2016. The question is, whether this

shortcoming would stand in her way of being engaged as Anganwadi worker. There is no dispute that the petitioner secured more marks than

Opposite Party No.5 in HSC examination, which forms the basis of selection. Another aspect, which appears to have been lost sight of by the ADM is

the undisputed fact that the petitioner was working as Balwadi worker in the same area, i.e., Ward No.7 since 2004. As already stated, Clause-8 of

the advertisement permits selection of Balwadi worker having five years of experience as such along with minimum qualification as Anganwadi

worker. In case they do not possess matriculation qualification, they are permitted to acquire such qualification within three years by submitting an undertaking to that effect. In this regard, reference can also be had to Revised Guidelines dated 02.05.2007 for selection of Anganwadi workers issued by the Government in Women & Child Development Department. Paragraph-5 (a) reads as follows:

“5.(a) A Balwadi worker can be engaged as Anganwadi Worker provided that she had worked as Balwadi worker in that particular village.

A Balwadi worker not having matriculation certificate can be engaged as Anganwadi worker based on undertaking that she will has matriculation examination within 3 years of her engagement.”

11. Obviously, Clause-8 of the advertisement is in consonance with paragraph-5(a) of the Revised Guidelines. Since it is not disputed that the

petitioner had worked as Balwadi worker of the very same area and had also secured more marks than the Opposite Party No.6, her selection cannot

be disputed only on the technical ground that she had not submitted the resident certificate along with her application form. In fact, as already stated,

in the counter filed by the C.D.P.O. this has been averred in the following manner:

“6. That as regards to the averment made in para 5 of the petition, it is humbly submitted that, that as per Clause 8 of the advertisement candidates having

experience as balwadi worker with minimum qualification shall be engaged even accepting the undertaking for producing HSC certificate within 3 years. In that

respect the candidate having experience of balwadi teacher under the same Ward No. 7 where the AWC situates, her case was taken into consideration. In that

view of the matter her candidature was accepted, but in appeal that aspect was not raised by any party.

7. That as regards to the averment made in para 5 of the petition, it is humbly submitted that, on the day of verification the petitioner submitted acknowledgment

receipt of residential certificate with all documents where as the committee accepted the application form since the petitioner having higher qualification and

working experience as balwadi teacher her candidature has been taken into consideration.”

(Emphasis added)

12. Mr. Sameer Kumar Mishra, learned Senior Counsel has relied upon a judgment of this Court passed in Smt. Jhunulata Naik v. State of Odisha &

Others 2023 (II) OLR 704 704 to drive home the point that the last date fixed for receipt of applications cannot be extended by the

authorities. Having perused the cited judgment, this Court finds that the same was rendered on entirely different facts, whereas the present case is

one in which the petitioner was, unlike other applicants, already had experience of working as Balwadi worker in the same Ward. In fact, as has been

narrated in the preceding paragraph, the authorities have taken note of such fact while selecting the petitioner. Here, the selection of the petitioner

was entirely on the basis of her previous experience as Balwadi worker and therefore, was in terms of paragraph-5(a) of the Revised Guidelines

dated 02.05.2007.

13. In so far as the requirement of the advertisement of submitting resident certificate is concerned, obviously same cannot be strictly applied in case

of applicants who have already worked as Balwadi worker in the same area unless, it is factually proved that they have moved out from the said area

subsequently. Such is not the fact situation in the present case. This Court is therefore, of the considered view that the petitioner having already

worked as Balwadi worker in the same area and being a resident also of the same area and further having secured more marks than the Opposite

Party No. 6 was rightly selected by the Selection Committee. The A.D.M. has not taken these vital aspects of the matter into consideration for which

the impugned order becomes vulnerable, and warrants interference.

14. For the foregoing reasons therefore, the writ petition is allowed. The impugned order under Annexure-5 is hereby set aside.

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