

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No. 12874 of 2004

Hemanta Kanhar

....

Petitioner

Mr. J.K. Lenka, Advocate

-versus-

***The District Judge, Kandhamal-Boudh
and others***

....

Opposite Parties

Mr. P.K. Muduli, AGA

CORAM:

THE CHIEF JUSTICE

JUSTICE M. S. RAMAN

ORDER

13.04.2022

Order No.

08.

1. The challenge in this writ petition is to an order dated 29th September 2004, passed by the learned District and Sessions Judge, Kandhamal-Boudh, Phulbani, terminating the services of the Petitioner with effect from 30th September 2004. Challenge is also laid to the consequential relieving order dated 30th September, 2004.

2. The background facts are that the Petitioner who belongs to the Scheduled Tribe was engaged as a Class-IV Peon in the District Judgeship of Kandhamal-Boudh by a letter dated 17th January 2002. The Petitioner claims that he produced all the necessary documents and submitted his joining report before the Registrar, Civil Courts, Phulbani on 25th January 2002.

3. On 4th April 2003, the Registrar, Civil Courts, Phulbani issued a notice to the Petitioner requiring him to produce the originals of his educational and caste certificates in three days. The Petitioner states

that he received the above notice on 18th April 2003 and produced the originals on the very next day for verification. It is stated that all of a sudden, a Show Cause Notice (SCN) was issued on 21st August 2004, directing the Petitioner to submit a reply within seven days why his services should not be terminated, since his appointment was illegal. The Petitioner submitted a reply to the SCN on 30th August 2004 stating that after coming to know the vacancies in Class-IV Posts, he had submitted an application and after due selection, he was appointed. Thereafter, the impugned order was passed terminating the Petitioner's services.

4. In the present petition it is *inter alia* stated that the appointment of the Petitioner as well as one Prasanta Kumar Mallik was earlier challenged by some candidate peons in OJC No.1468 of 2002 and this Court by an order dated 2nd May 2002, dismissed the said writ petition. It is submitted that with the dismissal of the above writ petition, there could not have been any further reopening of the question of the validity of the Petitioner's appointment.

5. Dr. J.K. Lenka, learned counsel for the Petitioner submits that the impugned order is violative of the principles of natural justice. It is a one-line unreasoned order. Dr. Lenka also referred to an enquiry report submitted by Justice M. Papanna on the allegations levelled against the District Judge regarding illegal appointments made of persons in Class-IV Posts; the said report concluded that the appointment of the Petitioner could not be said to be illegal. Reliance was also placed on the decisions in ***Makhan Singh v. Narainpura Cooperative Agricultural Service Society Ltd.*** AIR 1987 SC 1892 and ***D.K. Yadav v. J.M.A. Industries Ltd.*** (1993) 3

SCC 259 in support of the submission that impugned order was unsustainable in law and is required to be set aside.

6. Mr. P.K. Muduli, learned Additional Government Advocate, appearing for the Opposite Parties drew attention to the counter affidavit filed by the District & Sessions Judge (D&SJ), Kandhamal-Boudh, Phulbani where *inter alia* in Para-, it is pointed out that the appointment not only of the Petitioner but certain other persons in Class-IV Posts was done by the then District & Sessions Judge illegally, without conducting any interview and without observing the provisions of Rule-71 of the G.R & C.O. (Criminal) Vol.1. No advertisement was issued, no applications were received from the eligible candidates nor any examination or test conducted. It is pointed out that the Petitioner was unable to file the copy of the advertisement, copy of the call letter etc.

7. In the counter affidavit it also mentioned how the Portfolio Judge at the relevant time Justice A.S. Naidu of this Court made a surprise visit to the District and noticed that the Petitioner had submitted a certificate indicating that he had passed Class VIII in Sanskrit but, in fact, had no knowledge of Sanskrit. Justice Naidu observed that the veracity and genuineness of the educational certificates was not enquired into at the time of appointment of the Petitioner.

8. As a result of the above visit of Justice Naidu to the District, the High Court on 3rd August 2004, directed the D&SJ to initiate necessary proceedings against the persons illegally appointed. Thereafter the SCN was issued to the Petitioner. In reply thereto, the Petitioner claimed ignorance about the selection procedure and contended that he was not responsible for the illegality committed

by the then D&SJ in appointing him. Even with this reply to the SCN, he could not produce the advertisement, the call letter, the copy of the merit list etc. Therefore, the Opposite Party concluded that the Petitioner's appointment was illegal. Accordingly, the termination order was issued.

9. Dr. Lenka, learned counsel insisted that since this Court in the judicial side by its order dated 2nd May, 2002 in O.J.C. No.1468 of 2002 upheld the appointment of the Petitioner, that question could not have been reopened by the Opposite Parties.

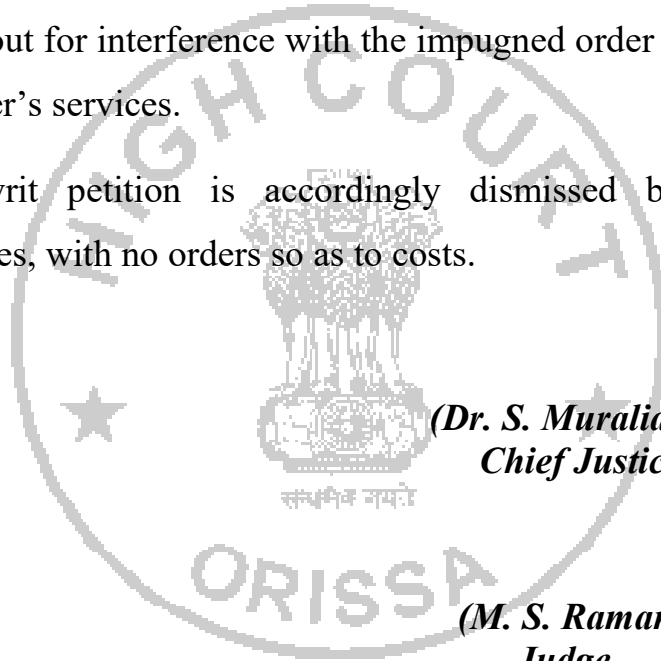
10. Having perused the order dated 2nd May, 2002 of this Court in OJC No.1468 of 2002, it is seen that while it is true that the Court declined to interfere with the appointment of the Petitioner at that stage, it did not do so by issuing notice to the Opposite Parties in that petition. The dismissal was *in limine*, probably on the very first date of hearing of the petition. There was no occasion for this Court to examine in depth whether the procedure outlined in the G.R & C.O. (Criminal) for making such appointments was in fact complied with. Consequently, the order dated 2nd May 2002 cannot be said to put a stamp of approval on the legality of the Petitioner's appointment.

11. Moreover, the visit undertaken by Justice Naidu to the District was subsequent to the above order of the Court on the judicial side. That visit revealed that the certificates produced by the Petitioner to say that he had passed Class VIII in Sanskrit appeared to be of doubtful veracity particularly since the Petitioner was not able to speak Sanskrit.

12. The plea that the impugned order was in violation of the principles of natural justice also does not appear to be correct. The SCN was issued to the Petitioner prior to his services being terminated. His reply to the said SCN was not found to be satisfactory. Interestingly, the Petitioner did not dispute that his appointment was without any advertisement or selection process. He only laid the blame for the illegality in the process on the doorstep of the D&SJ.

13. Consequently, the Court is not satisfied that any grounds have been made out for interference with the impugned order terminating the Petitioner's services.

14. The writ petition is accordingly dismissed but, in the circumstances, with no orders so as to costs.



(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

S. Behera