

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 8 of 2018

Manorama Panigrahi

....

Appellant

Mr. Anjan Kumar Biswal, Advocate
-versus-

State of Odisha and Others

....

Respondents

Mr. D.R. Mohapatra, Senior Standing Counsel
for School and Mass Education Department

**CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

ORDER

05.12.2022

Order No.

02. 1. The challenge in the present writ appeal is to an order dated 6th December, 2017 passed by the learned Single Judge dismissing the Appellant's writ petition i.e. W.P.(C) No. 10408 of 2007.
2. The background facts are that the Petitioner was initially appointed as Swechhasevi Sikshya Sahayak (SSS) and an engagement order was issued in her favour on 10th February, 2004.
3. Subsequently, in W.P.(C) No.11748 of 2003 this Court delivered a judgment dated 29th April, 2004 quashing the entire selection of SSSs in the entire State. A chance was granted to the selected candidates to apply afresh and for giving additional marks to be given to them at the time of their selection.

4. Thereafter, on 20th September, 2004 the Appellant again applied to the Tahasildar, Udala for issuance of a residential certificate in her favour. Pursuant thereto, on 23rd September 2004 the Tahasildar is said to have issued such a certificate that the Appellant was a native of district Mayurbhanj in the State of Odisha and that her family ordinarily resided in village Mouda under Udala Tahasil.

5. On 13th June, 2005 the Appellant was married to a resident in Balasore District. In October, 2006 a fresh advertisement was issued for selection and appointment of SS in the State as per Block/Unit wise. Pursuant thereto, on 27th October, 2006 the Appellant submitted her application enclosing the necessary documents. In the provisional list of selected candidates published on 1st December, 2006, the name of the Appellant was at Sl.No.3.

6. However, when the Appellant's residential certificate was sent for verification a report was submitted that it was not genuine. It was stated that after marriage the Appellant was no longer residing at the original address given in the certificate. In the final list of selected candidates of SS published on 7th April, 2007, the Appellant's name did not figure.

7. When the Appellant appeared before the Tahasildar, the report was called for from the Revenue Supervisor (RS), Kaptipada. Although, a report was submitted by the RS that the Appellant was staying in a rented house in Kaptipada, the Tahasildar, Udala on 20th April, 2007 issued an order holding that the residential status of the Appellant was no more valid. At that stage the Appellant filed Writ Petition (C)

No.5777 of 2007 which was disposed of by this Court on 9th May, 2007 permitting the Appellant to submit a representation before the Collector, Mayurbhanj which was to be considered within two months. The Collector rejected the Appellant's representation on 4th July, 2017 on the ground that the Appellant was not a resident of village Mouda after her marriage.

8. The Appellant again filed W.P.(C) No.10408 of 2007 in this Court challenging the order of the Collector as well as the order dated 20th April, 2007 passed by the Tahasildar, Udala.

9. On 23rd August, 2007 a judgment was delivered by this Court in ***Chandramani Jena v. State of Odisha 104 (2007) CLT 613*** stating for the post of SSS the requirement of a residential certificate showing the candidate to be a resident of the particular area when the appointment was going to be made, was not required. In other words, as far as present Appellant is concerned, the fact that she no longer was a permanent resident of village Mouda would not come in the way of her being appointed as SSS.

10. An interim order was passed in the writ petition staying the order of the Tahasildar and the Collector. As a result, the Appellant continued as SSS throughout till the dismissal of her writ petition by the learned Single Judge on 6th December, 2017. She appears to have been actually relieved from service sometimes in January, 2018.

11. While it is true, as submitted by learned counsel for the Appellant that as a result of judgment of this Court in ***Chandramani Jena***

(*supra*) there was no disqualification for the Appellant to be selected as SSS, the fact remains that the said post of SSS itself now stands abolished. Learned counsel for the State informed the Court that this was a scheme sponsored by the Central Government and implemented by the State Government and the scheme itself has come to an end. Those serving as SSS were subsequently absorbed as regular teachers in the State Government. However, as far as the Appellant is concerned, by virtue of the dismissal of the writ petition by the learned Single Judge, she did not continue as SSS after January, 2018.

12. The net effect is that today the Court is not in a position to issue any mandamus to the Respondent-State to reinstate the Appellant as SSS without which the question of considering her case for being absorbed as a regular teacher does not arise.

13. Learned counsel for the Appellant urged that the Appellant was out of service for no fault of hers and, therefore, this Court should in exercise of its powers under Article 226 of the Constitution direct her absorption in the State Government.

14. On account of subsequent events, it is not legally feasible for this Court to issue the mandamus as prayed for by the Appellant. In other words, when the post of SSS is no longer available, it is not possible for this Court, while setting aside the impugned order of the learned Single Judge, to direct the Appellant's reinstatement as SSS. Unless that status of the Appellant is restored, the question of directing that

she should be regularly appointed as a teacher in the State Government does not arise.

15. Consequently, while holding that the impugned order of the learned Single Judge does not reflect the correct legal position as far as the Appellant's engagement as SSS is concerned, the Court is not in a position to grant any further relief to the Appellant by virtue of the subsequent development. It will nevertheless be open to the Appellant to seek other appropriate remedies in accordance with law for compensating her for the loss suffered by her, as a result of the illegal action of the State Government of disengaging her as SSS.

16. The appeal is accordingly disposed of.

(Dr. S. Muralidhar)
Chief Justice

(M.S.Raman)
Judge

S.K. Jena/Secy.