

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 26519 of 2017

An application under Articles 226 & 227 of Constitution of India.

AFR **Smt. Gitarani Behera** -----
..... **Petitioner**

-Versus-

State of Odisha & others **Opp. Parties**

Advocate(s) appeared in this case:-

For Petitioner : M/s. J.K. Khuntia & H.S. Deo,
Advocates.

For Opp. Parties : Mr. P.K. Rout,
Addl. Standing Counsel for the State

M/s. A.K. Mohanty(A), R.K. Behera,
R.C. Pradhan.
[O.P. No.4]

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

6th September, 2022

SASHIKANTA MISHRA, J.

On 20.12.2016 an advertisement was issued by the CDPO, Bhograi in the district of Balasore inviting applications for the post of Anganwadi Worker for

Golabagad Mini Anganwadi Center under CDPO, Bhograi. It was indicated in the said advertisement that the area of operation of the Mini Anganwadi Center would be Golabagad Part from House No. 68 to 76, i.e. the house of Panchu Gopal Das to Saraswati Dutta and from House No. 103 to 113 of Udayaganj Patna i.e. the house of Hemangini Pandit to Ramachandra Pandit. The petitioner belongs to village Udayaganj Patna Part. The advertisement stipulated that the applicant must be resident of the service area and that she is required to submit an affidavit indicating the house number as per the survey report along with the nativity certificate of the Tahasildar along with other terms and conditions, the petitioner submitted her application enclosing all the relevant documents on 05.01.2017. The CDPO, Bhograi called for survey report from the Anganwadi Workers, Ranjulata Sethi and Sangeeta Kundu, who submitted a report that the house of the petitioner's father-in-law, namely, Ramesh Chandra Behera is at serial no.110 of Udayaganj Patna and as such, she belongs to the area defined under House No.103 to House No.113. Three candidates had submitted applications including the

petitioner. One Anjali Das and Puspanjali Das (the present opposite party no.4) are the other two applicants. At the time of scrutiny, it was found that the opposite party No. 4 did not have the requisite qualification for which her application was rejected. Out of the two remaining candidates the petitioner secured 72.2 points, while the said Anjali Das secured 39.5 points. Accordingly, the selection committee selected the petitioner as Anganwadi Worker of Golabagada Mini Anganwadi Center in its proceeding dated 06.04.2017. The final result sheet of selection of the Mini Anganwadi Workers was published on 06.04.2017, wherein the petitioner was declared as selected for Golabagada Mini Anganwadi Center under Barabati-2 Grama Panchayat. Pursuant to publication of such result, the CDPO, Bhograi issued appointment letter on 12.04.2017 in favour of the petitioner. Accordingly, the petitioner submitted her joining report on 17.04.2017 in the office of the CDPO, Remuna and her joining report was accepted. Since then, the petitioner has been performing her duties with utmost satisfaction of the authority without any complaint whatsoever against her from any quarter. While the matter stood thus, the opposite

party no.4 preferred Anganwadi appeal before the ADM, Balasore challenging the selection of the petitioner on the ground that she is not coming under the operational area of Golabagad Mini Anganwadi Center. The CDPO filed a para-wise comment denying the allegation. The petitioner also appeared and filed her objection denying the allegation. The CDPO in his para-wise comment stated that the petitioner is coming under the operational area of the Center as per report given by the Anganwadi Worker. However, the ADM, Balasore held that the survey report is not authentic and that the petitioner is not a resident of the operational area. Accordingly, the appeal was allowed and the selection and appointment of the petitioner was quashed vide order dated 21.11.2017, enclosed as Annexure-11 to the Writ Petition. On such facts, the petitioner has approached this Court seeking the following relief:

“It is therefore prayed that this Hon’ble Court may graciously be pleased to admit the writ petition and issue Rule NISI calling upon the Opposite Parties to show cause as to why the impugned order dt.21.11.2017 under Annexure-11 passed by Opposite Party No.2 in AWW Appeal No. 5 of 2017 shall not be quashed and if the Opposite Parties fail to show cause or show insufficient cause the Hon’ble Court may be pleased to issue a writ of certiorari quashing the impugned order

*dtd.21.11.2017 passed by the Opposite Party No.2
under Annexure.-11*

*And pass such other order/orders as would
be deem fit and proper.”*

2. Counter affidavit has been filed by the opposite party nos. 1 to 3 jointly being sworn by the CDPO, Bhograi. It is, inter alia, stated in the counter that the CDPO, Bhograi had called for a survey report from the Anganwadi Worker of Bagad-2 and Anganwadi Worker of Udayaganj Patna, namely Ranjulata Sethi and Sangita Kundu respectively as per their survey registers. They had submitted report that the house of the petitioner's father-in-law, namely, Ramesh Chandra Behera is at house no. 110 of Udayaganj Patna, wherein the petitioner, her husband and her father-in-law are living, which is within the service area as mentioned in the advertisement dated 20.12.2016. It is further stated that the Sub-Collector, Balasore had approved the service area of Golabagada Mini Anganwadi Center, which was duly checked by the concerned area lady supervisor and CDPO, Bhograi. Nobody had challenged the matter before the higher forum at any point of time. The opposite party no. 3 issued a letter dated 09.01.2017 inviting objection against the applied candidates for selection of Mini Anganwadi

Worker within a period of seven days but no objections were received regarding the qualification, service area etc. within the scheduled date and time. However, the opposite party no.4 challenged the service area of the petitioner by filing Anganwadi Appeal No.5 of 2017 after lapse of three months. It is further stated that she should have submitted such objection before the then CDPO, Bhograi within the scheduled date and time. It is further stated that in the advertisement notified by opposite party No.3 it was clearly mentioned that the house number as per survey report submitted by the Anganwadi Worker of the concerned area will be treated as the house number of the inhabitant of the said area, i.e., in the village, pada, sahi but not as per the voter list or the Gram Panchayat voter list of Udayaganj Patna. Therefore, the petitioner is the candidate of Udayaganj Patna Part in House No.110, which is coming within the service area of Golabagada Mini Anganwadi Center. It is also stated that as per the survey report of the Anganwadi Worker of Udayaganj Patna it is clear that the house of the petitioner's father-in-law, namely, Ramesh Chandra Behera is at serial no.110 of Udayaganj Patna,

which is within the service area. Further, the Tahasildar has also issued a resident certificate in favour of the petitioner after proper enquiry by the field functionary under his control. The certificate was placed before the selection committee and they have accepted the same and passed order to engage the petitioner as the Mini Anganwadi Worker.

3. The opposite party No.4 has filed counter. It is basically stated that the petitioner's name does not find place in the voter list of the year 2012, 2014 and 2017. It is asserted that the petitioner does not reside in village Udayaganj Patna and that she had obtained the nativity certificate only for service purpose. Neither her house comes within the service area nor the name of her father-in-law is there in the service area. On the contrary, the house of opposite party No.4 comes between the house of Panchu Gopal Das and Saraswati Dutta and therefore, she belongs to the service area. Though the petitioner has obtained the highest marks in HSC Examination, but as she is not a resident within the service area she does not fulfill the main criteria laid down in the advertisement. On the contrary, the

opposite party no.4 fulfills all the criteria of the advertisement as also the requisite qualification. The finding of the ADM that the survey list prepared and submitted by the lady supervisor and the CDPO, Bhograi of Udayaganj Patna has not been authenticated as it was prepared on pick and choose manner. Therefore, the order passed by the ADM does not require any interference. The opposite party no.4 has also filed an objection to the rejoinder filed by the petitioner and to the counter filed by the opposite parties no.1, 2 and 3. It is stated that the averments made in paragraphs 1, 13, 14, 15 , 16, 18 and 19 of the said counter affidavit are directly against the order of the ADM. However, the opposite party no.3 being the CDPO has filed the affidavit on behalf of opposite parties no.1 to 3 and the entire averments are in support of the case of the petitioner. Since the matter is pending adjudication before this court, no such counter should have been filled. The opposite party no.4 has also filed a rejoinder to the counter affidavit by the opposite parties no.1, 2 and 3 on the same ground, more or less.

4. Heard Mr. J.K. Khuntia, learned counsel for the petitioner; Mr. A.K. Mohanty (A), learned counsel for opposite party no.4; and Mr. P.K. Rout, learned Addl. Standing Counsel for the State.

5. Mr. Khuntia has questioned the locus standi of the opposite party no.4 to challenge the selection of the petitioner on the ground that she being a disqualified candidate could not have been allowed to file the Anganwadi Appeal. Moreover she never challenged the candidature of the petitioner during the stipulated period in which objections were invited by the CDPO and therefore, she is estopped from doing so at a later stage. It is further argued that the Anganwadi Appeal is also barred by limitation and should not have been entertained on such score alone. On merits, it is argued by Mr. Khuntia that as per the advertisement it is the survey number of the house which is relevant rather than the voter list. The survey list clearly shows the petitioner to be a resident of the service area and therefore, she is eligible to apply for the post. According to Mr. Khuntia, the ADM has mechanically passed the order allowing the appeal on the ground that the survey report is

not authentic even though the CDPO, Bhograi has himself accepted such report. Moreover, the selection committee headed by the Sub-Collector also found no reason to disbelieve the survey report. That apart the Tahasildar has issued a nativity certificate in favour of the petitioner and there is no reason whatsoever to disbelieve the same. The finding of ADM that the petitioner is not a resident of Udayaganj Patna is without any basis or evidence on record. Therefore, according Mr. Khuntia, the impugned order cannot be sustained in the eye of law.

6. Mr. P.K. Rout, learned Addl. Standing Counsel has contended that the impugned order was passed by the ADM and though the counter affidavit has been filed on behalf of opposite parties no.1, 2 and 3 including the ADM, but the same is by the present incumbent. Since the stand originally taken by the CDPO was correct and there was no reason to depart from it, the same was also reflected in the counter. The State Government being a model employer is not expected to place any fact, which is contrary to records. Therefore, there can be no objection to the filing of the counter affidavit on behalf of the ADM even though the

order of the ADM is under challenge. The counter affidavit seeks to place the correct facts on record for proper adjudication of the lis by this Court and therefore, by no stretch of imagination can it be said that it is so filed only to support the case of the petitioner.

7. Mr. A.K. Mohanty on the other hand, has supported the impugned order by submitting that the petitioner has locus standi to file the Anganwadi Appeal in view of the fact that as per the terms and conditions of the advertisement an under-matric candidate can also be considered if candidates with matric qualification are not available. Since, according to the opposite party No. 4, the petitioner did not belong to the service area, the fact that she had matric qualification is of no consequence and therefore, the petitioner could not have been considered. Such being the position, the opposite party No.4 being an under-matric ought to have been considered as a candidate. To such extent therefore, she has got every locus standi to challenge the process of selection as also the appointment of the petitioner. On merits, it is argued by Mr. Mohanty that the name of the petitioner does not find place in any of the

voter lists beginning from 2014 which falsifies her claim of being a resident of Udayaganj Patna. The survey report relied upon by the CDPO cannot be considered because the same does not bear any date nor the signature of the lady supervisor. Therefore, the impugned order must be held to have been passed rightly by quashing the appointment of the petitioner and therefore, the same does not warrant any interference whatsoever.

8. Since the question of locus standi has been raised it would be apposite to decide the same at the outset. It is argued by Mr. Khuntia that the opposite party no.4 was held to be not eligible for selection and her candidature was rejected on the ground that she did not possess the requisite educational qualification i.e., matriculate. Therefore, as per the settled position of law she has no locus standi to challenge the select list. Mr. Mohanty, on the other hand, has contended that the advertisement though stipulates that the candidate must have educational qualification as matriculate but it also provides that in case a matriculate candidate is not available within the service area a candidate having passed Class-VIII can also apply.

9. Law is well settled that only those who are eligible or in the zone of consideration can question the legality or otherwise of the select list as held by the Apex Court in the case Dr. **Umakanta Saran Vs. State of Bihar**, reported in 1973 (1) SCC 485. This was also followed by the Apex Court subsequently in the case of **K.H. Siraj vs. High Court of Kerala** and others reported in 2006 (6) SCC 395, wherein it was held that a candidate who is ineligible for appointment no relief in any case can be afforded to him in any event. There seems to be no dispute that the petitioner possesses matric qualification while the opposite party no.4 does not. It is claimed by opposite party no.4 that the petitioner is not a resident of the service area and hence, her educational qualification is of no consequence. The above argument is fallacious and hence, not acceptable for the reason that the advertisement provides for matriculation qualification as the basic requirement. The fact that even a Class-VIII pass candidate can apply is only by way of a default clause in the event a matriculate candidate is not available within the service area. The opposite party no.4 therefore, stakes her claim by submitting that the petitioner does not belong to

the service area. Even assuming that the opposite party No.4 has raised a valid point for consideration, it is to be seen that there was another candidate, namely, Anjali Das who had matric qualification. Therefore, leaving out the petitioner for a moment also, it cannot be said that there was no candidate having matriculation qualification within the service area for the default clause to be invoked. Therefore, the claim of opposite party No.4 cannot be considered. It must therefore be held that the opposite party No.4 did not have the locus standi to challenge the select list or the appointment of the petitioner. On such score alone, the Anganwadi Appeal filed by the opposite party No.4 deserves to be rejected as not maintainable in the eye of law. Nevertheless, a factual question having a bearing on the eligibility of the petitioner for the post having been raised, this Court also deems it proper to examine the same to test the correctness of the order passed by the ADM.

10. As it appears, the sole dispute revolves around the question whether the petitioner belongs to the service area or not. As has already been stated hereinbefore, the petitioner's house, according to her, and as supported by

the survey report is at serial No. 110, which is the house of her father-in-law. It is claimed that the petitioner, her husband and her father-in-law reside in the said house. The survey report prepared by the Anganwadi Worker of Udayaganj Patna clearly shows the above fact. The CDPO has accepted such report and has also referred to the same in his para-wise comments submitted before the ADM in the appeal as also in the Counter Affidavit filed before this Court. The ADM has held the same to be not authentic only on the ground that it does not bear the signature of the lady supervisor. This is a hyper technical ground which cannot be considered valid for being accepted. In the advertisement it is clearly mentioned that the residence of the candidate has to be reckoned with reference to the survey report as also the Nativity certificate issued by the Tahasildar. In the instant case, apart from the survey report as referred above, a resident certificate has been issued by the Tahasildar. Though Mr. Mohanty questions the same on the ground that it does not mention whether the petitioner is a permanent resident but simply mentions that she is 'ordinarily' a resident of Udayaganj Patna, this Court finds no reason to

disbelieve the same. The word 'ordinarily', according to Chambers 21st Century Dictionary means, 'in the normal course of events; usually; normally.' In other words, use of the word 'ordinarily' in the Resident Certificate implies that the petitioner usually resides there rather than anywhere else and hence, it must be treated as the place of her permanent residence. The above is also quite plausible having regard to the fact that the house is of her father-in-law. Learned ADM has not taken this fact into consideration. The ADM has also held that the CDPO has adopted a pick and choose method without in the least indicating as to why such finding was rendered and on what basis. That apart, it is positively held by him that the petitioner is not a resident of Udayaganj Patna. Firstly, on what basis or evidence the ADM came to such conclusion is not known nor stated in the impugned order. Secondly, if the ADM had a bonafide doubt as regards the authenticity of the survey report, it could have relied upon the report of the Tahasildar which, in turn, is based upon enquiry by the field functionaries working under him. It is to be noted that as per clarification issued by the Govt. in W & CD Deptt. in

their letter No. IV.ICDS.I-154/07-7161/WCD, dtd.1.3.2008, the residential certificate issued by the Tahasildar should be entertained. Even otherwise, the ADM could have directed the authorities to conduct an enquiry to determine the issue once and for all. However, the ADM appears to have acted arbitrarily and rather whimsically in allowing the appeal and rejecting the selection and appointment of the petitioner. For the above reasons therefore, the impugned order cannot be sustained in the eye of law.

11. In the result, the writ petition succeeds and is therefore, allowed. The impugned order dated 21.11.2017 passed by the ADM, Balasore is hereby quashed.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 6th September, 2022/ A.K. Rana, P.A.