

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No.3000 of 2009

In the matter of an application under Articles 226 & 227 of the
Constitution of India.

Satyabrata Das **Petitioner**

Versus

State of Orissa & Ors. **Opposite Parties**

For Petitioner ... Mr. J.K.Mishra 2, Advocate

For Opposite Parties ... Mr. S.Mishra, Additional Standing
Counsel

J U D G M E N T

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 13.12.2022

Biswanath Rath, J. The Writ Petition involves the following prayer:-

“The petitioner therefore most respectfully prays that, your Lordships may be graciously pleased to admit this writ petition and issue notice to the Opposite Parties to show cause and further issue writ of mandamus directing as to why the petitioner shall not be appointed as “Grama Rozagar Sevak (GRS) under Jatiya Gramina Nitschita Karma Nirjukti Jojana (NREG Act and NREG Scheme) as per 1st selection panel list issued by Opp. Party no.3 dtd.11.6.08 and on their

failing to show cause or showing insufficient cause, this Hon'ble Court quash the impugned order of appointment of 'GRC' post in Dangamal G.P. and issue on writ of mandamus by directing to the Opposite Parties no.2 & 3 to issue appointment order in favour of Petitioner as Grama Razagar Sevak (GRS) in Dangamal G.P. within a stipulated period as per 1st selection Penal list as per law;

And/ or pass such further order/orders or direction as deemed fit and proper in the facts and circumstances of the case;

And for this act of kindness the Petitioner as in duty bound shall ever pray."

2. Plea of the Petitioner as reiterated in course of argument is that Petitioner was an applicant pursuant to the advertisement vide notification dated 28.12.2007 to fill-up the post of Gram Rozagar Sevak (GRS) for appointing them in each Grama Panchayat in Rajnagar Block of Kendrapara district. Petitioner being a permanent residence and having requisite qualification applied pursuant to such advertisement. It is claimed that Petitioner has bonafide qualification and he has passed +2 Science securing good marks and also having the optional P.G.D.C.A. course in computer science. Petitioner claims to have possessed extra technical qualifications. Petitioner claims on verification of the application, Petitioner secured highest marks. Through Annexure-4 the selection list was also brought to the consideration fold.

It is alleged that this selection process was suddenly stopped and in the meantime Petitioner has come to know from reliable source that in place of Petitioner, Opposite Party No.5 has been considered. It is on illegal selection of Opposite Party

No.5 in ignoring the case of the Petitioner who was already in selection panel, Petitioner engaged himself with the competent authority for some time. Petitioner filed complaint to Opposite Party No.2 vide Annexure-6, there is no pleading as to what happened to the application. However Writ Petition is brought challenging the appointment of Opposite Party No.5 as against the Petitioner.

3. Taking this Court to the documents appended to Annexure-2 more particularly reading through the documents vide Annexure-B/2, at the same time reading through the response of Petitioner through rejoinder affidavit, a plea has been advanced by Mr.Mishra, learned counsel that there is in fact no involvement of further advertisement so as to include the Opposite Party No.5 in the fold of consideration. It is on these premises and reading some of the portion through document Annexure-B/2, Mr.Mishra, learned counsel contended that once the Petitioner was shown in the select list, clearly there being no second advertisement involved, there was no question of engagement of Opposite Party No.5 in place of the Petitioner.

4. This Court here from the counter affidavit and the submission of the learned State Counsel being based on paragraph-4 of the counter affidavit finds the contesting Opposite Parties having a clear plea that for the reason of not finding any qualified person through the first advertisement, Department has entered into second advertisement and in the process of consideration involving the second advertisement, there has been selection of the Opposite Party No.5.

5. In course of argument there is however admission of learned State Counsel based on material available on record that Petitioner was found suitable in the process involving the first advertisement but, however for a further decision of the competent authority there is reconsideration of the action through second advertisement. It is claimed for there is no challenge to the second advertisement, there is no room for interfering in the action of the competent authority impugned herein. Mr.Mishra, learned Additional Standing Counsel however on instruction submits that Opposite Party No.5 is still continuing in his position pursuant to advertisement vide Annexure-B/2.

6. In spite of notice, there is no appearance on behalf of the Opposite Party No.5.

7. Considering the rival contentions of the parties, this Court finds the Writ Petition involves a challenge to the selection process pursuant to Annexure-1. From the counter affidavit para-4, this Court finds, the response of the State as follows:-

4) That in reply to the averment made in Para-1 it is submitted that advertisement for the post of GRS was made at 1st phase inviting applications from 01.01.2008 to 15.01.2008. Xerox copy of advertisement is filed here with as Annexure-A/2. Since the candidates with requisites qualification were not available, the Govt. in P.R. Dept. issued re-advertisement for the post of GRS inviting applications from 25.04.2008 to 09.05.2008. Xerox copy of re-advertisement is filed here with as Annexure-B/2. The applicants applied as per both the advertisement were considered,

provisional merit list is filed here with as Annexure-C/2.

It is further submitted here that as per authorization vide office Letter No.1114 dtd.11.05.08 BDO, Rajnagar had opened the sealed envelopes of applications received upto 09.05.08 as per re-advertisement. Xerox copy of letter No 1114 dtd.11.05.08 is filed here with as Annexure-D/2. BDO has put his dtd. signature on the applications received as per re-advertisement and prepared list of applicants applied as per re-advertisement. Xerox copy of list of applicants is filed here with as Annexure-E/2/ The Opp. Party No.3 sorted the application forms prepared the list of applicants with details relating to their candidature applied in both the advertisements. Sri Muktipada Mandal S/o- Ashok Mandal At- Rajendranarayanpur Po- Nilitapatia Dist-Kendrapara O.P. No.5 had applied for the post of GRS of Dangamala GP under Rajnagar Block as per re-advertisement. But due to clerical mistake the BDO Rajnagar during preparation of list relating to details of candidature of applicants could not enlisted the name of O.P. No.5. Accordingly in the provisional merit list which was prepared on the basis of list prepared by BDO the name of O.P. No.5 was not enlisted. Xerox copy of list relating to details of applicants prepared and submitted by Opp. Party No.3 is filed herewith as Annexure-F/2 and Xerox copy of application of Mukti Pada Mandal (O.P. No.5) dtd.6.5.2008 is filed here with as Annexure-G/2.

The merit list was sent to BDO vide Letter No.1470 dtd.23.06.08 for publication at Block and GP level inviting objections Advertisement was also made in daily newspaper "The Sambad", "The Dharitri" & "The Pragatibadi" regarding publication of merit list and inviting objection by 28.08.08 vide Letter No.1486 dtd.24.06.08. Xerox copy of letter No 1470 dtd.23.06.08 & Letter No 1486 Dtd.24.06.08 are filed here with as Annexure-H/2 & J/2.

For the material disclosure and on perusal of the records being produced, this Court finds records undisputedly involved a second advertisement as claimed in the counter affidavit and also in course of argument by the contesting Opposite Party. This counter affidavit was filed on 11.11.2010. This Court here finds even though the rejoinder has been filed in response to the counter affidavit immediately after service of the counter affidavit, unfortunately there is no involvement of challenge to second advertisement. In the meantime almost ten years have passed and the Opposite Party No.5 is already in engagement for nearly eleven years.

8. In the process and for no involvement of challenge to the second advertisement. Opposite Party No.5 since was selected in undertaking the exercise involving second advertisement, this Court finds difficulty in entertaining the request of the Petitioner involved herein only on the basis of development through the first advertisement. In the process this Court finds the Writ Petition suffers for having no merits which is dismissed accordingly. However, there is no order as to cost.

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BISWANATH RATH, J.

*Orissa High Court, Cuttack.
Dated the 13th December, 2022/Swarna, Junior Stenographer*