

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 8053 of 2012

Sasmita Sahu

.....

Petitioner

Mr. A. Mishra, Adv.

Vs.

D.I.G., S&W Range and another

.....

Opposite Parties

Mr. S. Rath, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

27.06.2022

Order No.

07.

This matter is taken up through hybrid mode.

2. Heard Mr. A. Mishra, learned counsel for the Petitioner and Mr. S. Rath, learned Addl. Standing Counsel appearing for the State- Opposite Parties.

3. The Petitioner has filed this Writ Petition seeking to quash the order dated 08.01.2012 passed in O.A. No. 1815 of 2006, by which Orissa Administrative Tribunal, Cuttack Bench, Cuttack has disallowed the original application by holding that the petitioner was underage by the time she was considered for selection to the post of Lady Constable.

4. Mr. A. Mishra, learned counsel for the Petitioner contended that the Petitioner was selected as a Lady Constable in Nuapada District and joined in the said post on 03.12.2012. While she was so continuing, by order dated 24.05.2003, she was discharged from duty on the ground that she has produced fake H.S.C. certificate showing her age as 18 years. Consequentially, a criminal case was instituted against her on the selfsame allegation for producing forged H.S.C. certificate under Sections 468/471/420 IPC and the same was registered as G.R. Case No.131 of 2003 (Trial No.118 of 2004) of the Court of Chief Judicial Magistrate, Nuapada. The said criminal case reached its finality by judgment dated 24.05.2005 and, as such, the petitioner was acquitted of all the charges. Therefore, it is

contended that since the Petitioner has been acquitted from the criminal case, she should be reinstated in service. But the Opposite Parties did not do so. Though the Petitioner filed representation ventilating her grievance, but no action has been taken by the authority till date. Therefore, the Petitioner approached the tribunal by filing O.A. No. 1815 of 2006, which was dismissed vide order dated 08.01.2012. It is contended that the tribunal has not applied its mind in proper perspective, while interpreting P.M.R. 813 (a), to discharge the petitioner. Therefore, the order so passed by the tribunal should be quashed.

5. Mr. S. Rath, learned counsel for appearing for the State-Opposite Parties contended that admittedly by the time the case of the Petitioner was considered for selection to the post of Lady Constable, she was underage, and by producing fraudulent document of H.S.C. certificate, she got employment on 03.12.2002. But subsequently she was discharged from the post on 24.05.2003. Even though criminal case was instituted against the Petitioner, she was acquitted and, as such, that ipso facto cannot cure the defect to participate in the process of selection. As a result of which, the tribunal is well justified in passing the order impugned, which does not require any interference of this Court.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that pursuant to an advertisement, the Petitioner participated in the process of selection for the post of Lady Constable. In the said examination, the Petitioner produced H.S.C. certificate, according to which her date of birth was 13.07.1983 and she was placed in 2nd Division, though actually she had passed the H.S.C. examination in the year 2002 compartmentally. The certificate issued by the authority shows her date of birth as 13.07.1985 having Roll No. MA 01066 and having passed supplementary examination compartmentally in 2002. As

such, she was admitted in Police High School in Bhawanipatna in Class-X, on being transferred from Government Girls' High School, Unit-IV, Bhubaneswar, and even in her Transfer Certificate No.1234050 dated 21.06.2000 issued by the Head Master, Govt. Girls' High School, Bhubaneswar, vide letter dated 06.06.2006, her date of birth has been recorded as 13.07.1985. If this date of birth of the Petitioner is taken into consideration, she will fall short of six months to be eligible for participating in the process of selection. Thereby, by showing a wrong H.S.C. certificate, the Petitioner has got an advantage where her date of birth has been written as 13.07.1983 and, as such, got an employment and continued in the job. Subsequently, when the documents were verified, it was found that actually the date of birth of the Petitioner is 13.07.1985 and, as such, she is not eligible to be selected and appointed as a Lady Constable, as per PMR-663 (a) and, therefore, she was discharged from service as per PMR-663 (a). Though against the order passed under PMR-663 (a), no appeal lies, the Petitioner approached the tribunal challenging the order passed by the authority. But in the meantime, for producing forged H.S.C. certificate, where date of birth of the Petitioner has been indicated as 13.07.1983, a criminal case was instituted. But even if the Petitioner is acquitted in the criminal case by the Chief Judicial Magistrate, Nuapada in G.R. case No.131 of 2003, that ipso fact cannot entitle the Petitioner to get the benefit of continuity in service, as by the time she was selected was underage. As such, the Petitioner has tried to take advantage of the situation by applying fraud on the authority by giving fraudulent document where she was lacking six months to be eligible to participate in the process of selection. Therefore, even if she was acquitted from the criminal case, the same cannot give a right in her favour to give appointment in the post. As such, she was discharged from service because of production of fake document.

7. In *Andhra Pradesh Social Welfare Residential Educational Institution v. Pindiga Sridhar*, 2008 (2) SC (L&S) 656, the apex Court held that fraud cloaks everything. Therefore, as the Petitioner was ineligible for appointment being under-aged, the Petitioner cannot be reinstated at this stage after being discharged from service under the probation Rules, i.e., PMR-668. Therefore, the tribunal is well justified in passing the order impugned which does not require any interference at this stage.

8. Mr. A. Mishra, learned counsel for the Petitioner contended that now the Petitioner is eligible and, as such, in the meantime so many years have been passed. Therefore, if the authority can consider her case for appointment even on contractual basis, the Petitioner will be highly obliged. Needless to say, since law does not permit to show any sympathy and, as such, sympathy itself meets the entire situation, this Court is not inclined to issue any direction to the Opposite Parties to give appointment to the Petitioner. It is open to the Petitioner to approach the authority, if she is so advised in accordance with law. In the event the Petitioner approaches the authority by filing representation, the same shall be considered and decided by passing a reasoned and speaking order, as expeditiously as possible, preferably within a period of three months from the date of production of certified copy of this order.

9. The Writ Petition is accordingly disposed of.

Issue urgent certified copy as per Rules.

(DR. B.R. SARANGI)
JUDGE

Ashok/PCD

(S.K. MISHRA)
JUDGE