

HIGH COURT OF ORISSA AT CUTTACK

W.A No.180 of 2010

(Arising out of W.P.(C) No.7900 of 2009 passed by the
Learned Single Judge on 18.05.2010)

Sagarika Swain

.... **Appellant**

Mr. Dinesh Ku. Panda, Advocate

-versus-

State of Odisha and Others

.... **Respondents**

Mr. L. Samantaray, AGA
(for Respondent Nos.1,2&3)

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. SAHOO

ORDER
16.11.2022

(Hybrid Mode)

Order No.

06. **1.** The present intra-court appeal has been preferred by the appellant against the order dated 18.05.2010 passed by the Hon'ble Single Judge in W.P.(C) NO.7900 of 2009.

2. The brief facts of the case are that Opposite Party No.1 i.e. State of Odisha, represented through its Secretary to the Govt. Women and Child Development Department, Bhubaneswar (herein after "State Govt.") published a revised guideline dated 02.05.2007 for appointment/selection of Anganwadi Workers. One of the guidelines relevant to this case is mentioned below:-

“1. Applications for selection of Volunteers to work as Anganwadi Workers will be invited for each village/Anganwadi Center area from women residing in the said village/Anganwadi Center area.”

3. Further, on 13.08.2007, the State Govt. by an advertisement notified the creation of an additional Anganwadi in the revenue village of Saharadiha. Hence, the two Anganwadis are named as Saharadiha (Ka) & Saharadiha (Kha). The advertisement dated 13.08.2007 further advertised vacancy/post for recruitment to the newly created Saharadiha (Kha) Anganwadi Centre.

4. It is also relevant to note that on 18.12.2007 to clear out any confusion a clarification was issued by the State Govt. that in case in the village with more than one Anganwadi Centres are opened, the candidate should specify Anganwadi Centre area in which she is a resident and ***specify in an affidavit that she belongs to the Anganwadi Centre area of the said village.*** It was further pointed out if that is found incorrect/false, she should be disengaged forthwith and suitable criminal action should be taken against her.

Hence, a candidate can only apply to the Anganwadi Centre if she resides in the same service area.

5. The appellant i.e. Sagarika Swain applied for the post of Anganwadi Worker to the centre of Saharadiha (Kha) as per the advertisement dated 13.08.2007. It is the claim of the appellant that she was selected and her

name was reflected at Serial No.1 in the selection/merit list.

6. It transpires that the O.P. No.4 i.e. Sumitra Mallick filed a representation before the Collector/O.P. No.2 contending that the selection of the appellant must be quashed as she is a resident of Saharadiha (Ka) and therefore ineligible to be selected under the advertisement dated 13.08.2007. The O.P. No.2/Collector by order dated 24.01.2008 quashed the selection of the appellant.

Aggrieved by the order dated 24.01.2008, the appellant preferred a Writ Petition before this Court numbered W.P.(C) No.2493 of 2008. This Court by order dated 29.08.2008 quashed the order dated 24.01.2008 passed by the O.P. No.2/Collector and remitted the matter back to OP No. 2 for *de novo* disposal.

7. The O.P. No.2/Collector conducted a fresh hearing and by an order dated 19.03.2009 decided not to interfere with its previous order of cancellation of appointment of the appellant on the basis that the appellant resided under the operational area of Saharadiha (Ka) and not Saharadiha (Kha) and therefore is ineligible to apply for the post of Anganwadi Worker in Anganwadi Centre at Saharadiha (Kha). The relevant part of the order dated 19.03.2009 is reproduced below:-

“It is understood from the report of CDPO, Kujanga that the house of Sagarika Swain does not fall under the operational area of Saharadiha (Kha) A.W.C. Her house actually falls under the jurisdiction of Saharadiha (Ka) A.W.C.”

8. Aggrieved by the order dated 19.03.2009, the appellant preferred the aforementioned Writ Petition before this Court on two grounds. Firstly, that the Collector/Opposite Party No.2 exceeded the directions given to it by this Court and Secondly, that selection cannot be made on the basis of residence to the post of Anganwadi Workers.

9. The learned Single Judge relied upon the case of ***State of Karnataka and Others Vrs. Ameerbi and Others, (2007) 11 SCC 681*** to hold that Anganwadi posts are not statutory posts and are based on a scheme of the Government. They are not the functionaries of the State and also not a government servant. The relevant portion of the order of the learned Single Judge of this Court dated 18.05.2010 is reproduced below:-

“10. It is observed here that an Anganwadi Worker is not a Civil Post but rather is a volunteer. The Supreme Court in State of Karnataka and Others Vs. Ameerbi and Others, (2007) 11 SCC 681, has held that the post of Anganwadi Workers are not statutory posts. They have been created in terms of the scheme. It is one thing to say that there exists a relationship between employer and employee and between the State and the Anganwadi Workers. But it is another thing to say that they are holders of civil posts. The Supreme Court took note of the fact that the presence of the Anganwadi Worker in their respective villages is extremely important. They are supposed to make significant contribution to the society. They are required to carryout a large number of activities

primarily for well being and welfare of the children. Further, it is noted that Anganwadi Workers do not carry out any functions of the State. They do not hold post under any statute. Their posts are not created. The Supreme Court further held that the recruitment rules ordinarily applicable to the employees of the State are not applicable in their case. The State is not required to comply with the Constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. No process of selection for the purpose of their appointment within the constitutional scheme existed.

11.The Supreme Court further held that the protection available under Article 311 of the Constitution of India also is not attracted in case of Anganwadi Workers and thus, the Supreme Court held that the Anganwadi Workers are not holders of civil posts.”

10. On the issue of the dispute raised regarding the application of clarification dated 18.12.2007, the learned Single Judge held as follows:-

“14. This policy of the Government has a rationale behind it. It is noted earlier that the Anganwadi Worker is not a civil servant rather is a volunteer. She is expected to render a very important function of providing pre-natal and post-natal early childhood care service of her community. Her continuing presence in the community is essential for that reason. If a person is not a resident in the community which is target area of the Anganwadi Centre, then it may not be always possible for the volunteer to attend to the needs of the expectant mothers and children. Secondly, it is noted that Anganwadi Worker is always paid a paltry sum as honorarium. It is not possible to her to take a house on rent in the service area of the Anganwadi Centre to reside there. Thus, on these two grounds, the Court is of the opinion that the policy decision taken by the State Government is correct. As already pointed out, the selection of Anganwadi Worker cannot be challenged for violating Articles 14 and 16 of the Constitution of India. This Court comes to the finding that there is no justifying reason to hold that the conditions stipulated in the revised guidelines by the State Government to the effect that the applicants should be a resident of the

service area of the Anganwadi Centre requires any interference.

15. Petitioner does not dispute that she is not a resident of the service area of Saharadiha (Kha) Anganwadi Centre. It is admitted that the petitioner is a resident of Saharadiha (Ka) Anganwadi Centre area. Therefore, she is not eligible to apply for being selected as the Anganwadi Worker of Saharadiha (Kha) Anganwadi Centre.

In view of the aforesaid discussion, this Court is of the opinion that there is no necessity for interfering the order passed by the learner collector, Jagatsinghpur and hence, the writ petition is not admitted.”

[Emphasis supplied]

11. In the present intra-Court appeal, a challenge is laid to the aforementioned order of the learned Single Judge dated 18.05.2010. It is the case of the appellant that as she was selected under the advertisement dated 13.08.2007 and hence a clarification dated 18.12.2007 cannot be applied retrospectively to govern her case.

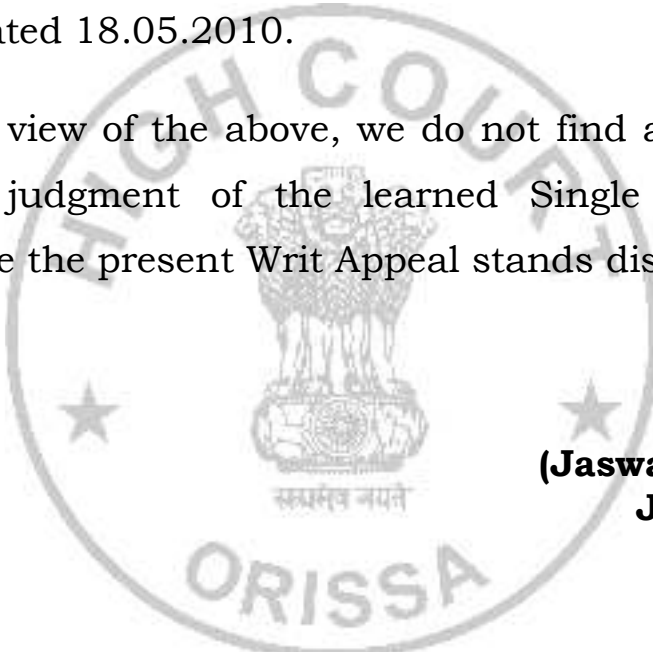
12. Heard the learned counsel for both the parties at length.

13. It is an undisputed fact that the appellant resides in Saharadiha (Ka) and therefore would be ineligible to apply for the post of Anganwadi Workers in Anganwadi Centre located at Saharadiha (Kha) as per the clarification dated 18.12.2007. A dispute is raised to the application of the said clarification dated 18.12.2007 to the appellant who was selected under the advertisement dated 13.08.2007. We find that the arguments made by the appellant are completely

misplaced as firstly, it is well settled that any clarificatory order/notification should always be applied retrospectively, secondly, mere selection did not vest upon the appellant any indefeasible right to seek appointment.

14. Based on the above points, it is clear that the clarification dated 18.12.2007 can be applied to the appellant. Further, the reason for such application has also been elucidated by the learned single judge in its order dated 18.05.2010.

15. In view of the above, we do not find any infirmity in the judgment of the learned Single Judge and therefore the present Writ Appeal stands dismissed.



(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge