

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 30782 of 2011

Jayanti Bhakta.

....

Petitioner

Mr. B. Pattnaik, Advocate

-versus-

***C.D.P.O., Athagarh, CTC and
others***

....

Opposite Parties

Mr. M. Mishra, ASC

Mr. S.S. Das, Advocate

CORAM: JUSTICE V. NARASINGH

**ORDER
15.07.2022**

Order No.

08.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and Mr. Mishra, Additional Standing Counsel for the State.
3. Petitioner was one of the applicants for the Additional Anganwadi Centre of Tainla Sahi under the administrative control of C.D.P.O Athagarh. Being aggrieved by her non-selection as Additional Anganwadi Worker and the selection of Opposite Party no. 2 as such the petitioner approached the statutory Appellate Authority by filing Anganwadi Appeal No. 20 of 2010.
- 3(A). Being aggrieved by the order dated 23.11.2010 (Annexure-12) passed by the Appellate Authority dismissing the appeal, present Writ Petition has been filed.
4. At this stage it is apt to note here that learned counsel appearing for Opposite Party No. 2 filed a memo in court indicating

that he has no instructions in the matter. The memo is kept on record.

5. The advertisement in question was issued on 08.01.2010. The Serial No. 2 of the said advertisement relates to the Anganwadi Centre in question where it has been clearly stated that the number of Ward is 'Ward No. 8' and the service area is Tainla Sahi, Kalu Basti and Ward No. 8, under the heading "Residence and Eligibility" (mentioned in Odia as "Gharabari and Jogyata"). It has been mentioned that the applicant should belong to the service area and proof of the same should be obtained from the Tahasildar and such certificate should be of six months duration prior to the date of selection.

6. Appellate Authority while considering the appeal has taken note of the objections raised by the present petitioner-appellant that the Opposite Party No. 2 does not belong to the service area in as much as in the voter list, her name appears against Ward No. 7 but rejected the contention of the appellant relying on the stand of the CDPO that service area of an AWC is not identified according to the voter list or "earmark of the Wards". It is based on population and the name of the village or area.

7. The Appellate Authority has also treated as sacrosanct the certificate of the councilor submitted by the Respondent No. 2 towards her proof of residence.

7(i). The certificate of the Councilor relied on by the Appellate Authority towards proof of residence at Annexure-4 is extracted hereunder;

*"This is to certify that, Subhashree
Bhanja D/o-Santosh Kumar Bhanja, At-*

Ward No.8, PO/PS-Athgarh, Dist-Cuttack is well known to me since last 10 years. She is dynamic and energetic social worker and painstaking for the greater interest of the general public. She is bearing a good moral character.

I wish her every successful in her life.

Sd/-”

7(ii). And on relying on the said certificate and the affidavit the Appellate authority arrived at the conclusion that the petitioner-appellant challenge to proof of residence of Opposite Party No.2 fails and accordingly rejected the appeal.

8. Learned counsel for the petitioner submits that the Appellate Authority adopted a procedure which is against the stipulation of the advertisement and on that score alone the case at hand merits the intervention of this court.

9. The State Authorities have filed counter affidavit and relying on the same the learned counsel for the State submits that there is no irregularity in the order passed by the Appellate Authority so as to warrant interference.

10. The counter affidavit in the case at hand has been filed by in-charge C.D.P.O Athagarh. Para-7 of the counter affidavit which has a direct bearing on the point at issue is quoted hereunder;

x x x x x “7. That in reply to the averments made in paragraph-8 of the writ petition it is humbly submitted that as per the advertisement No.59 dated 08.01.2010. Affidavit showing the residence of applicant is invited. Certificate from councilor is not necessary, the Opp. Party No.2 selected as she

belongs to Angawadi Center Service area so her appointment is not illegal.” x x x x x

11. On a bare perusal of the stand taken by the Opposite Party-State Authority it is manifestly clear that certificate issued by the councilor cannot be treated as proof of residence in as much as it is specifically stipulated in the advertisement that the same should be issued by the Tahasildar.

12. The Appellate Authority having taken such certificate into account in arriving at a conclusion that Opposite Party No.2 belongs to the service area (Ward No.8) have acted with material irregularity which is outcome of non-application of mind. Such consideration is contrary to the stipulations in the advertisement relating to the standard of proof of residence and therefore the appellate order based on such perverse appreciation is liable to be set aside.

It goes without showing that the inter se merit as discussed by the Appellate authority is of no significance since the Opposite Party No.2 is not eligible to be considered as she has not submitted any proof of residence as per the requirement of the advertisement.

13. Accordingly, the Appellate Order dated 23.11.2010 at Annexure-12 passed by the Court of Additional District Magistrate, Cuttack is accordingly set-aside and the appointment in favour of Opposite Party no. 2 stands quashed and the Authority are called upon to allow the petitioner to join as Anganwadi Worker at Additional Anganwadi Centre, Tainla Sahi within a period of two months from the date of receipt/production of certified copy of this order, subject to any legal impediment.

14. The Writ Petition is accordingly stands disposed of.

15. Urgent certified copy of this order be granted as per rules.

(V. NARASINGH)
Judge

Santoshi

