

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.7245 of 2017

Jagannath Sahoo and others

.... Petitioners

Mr. S. Rath, Advocate

-versus-

State of Odisha and others

.... Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel
(Opposite Party Nos.1 to 3)

Mr. Bishal Baivab Behera, Advocate
(For Intervener)

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
22.12.2022**

Order No.

4. 1. This matter is taken up through Hybrid mode.
2. Counter affidavit filed by Opposite Party No.3 in Court is taken on record, copy of which said to have been served on learned counsel for the Petitioners.
3. Petitioners in this writ petition seek to assail the letter No.16385 dated 24th September, 2013 (Annexure-4) issued by Registrar, Cooperative Societies, Odisha, Bhubaneswar to all Divisional Deputy Registrars of Cooperative Societies throughout the State intimating the decision of the Government in Cooperation Department to fill up the vacant post of Secretaries and Managing Directors at the level of PACS/LAMPCS through direct recruitment after giving promotion to the eligible employees belonging to Grade-II category. Further direction was given in the said letter to make an effort for smooth completion of recruitment process within one month and maintain absolute transparency in the matter.

Petitioners also assail the advertisement dated 7th March, 2016 (Annexure-5) issued by the Barimunda Service Cooperative Society, Gop in the district of Puri pursuant to the aforesaid letter.

4. This Court, while issuing notice in the matter on 1st May, 2017, passed the following order:-

“Heard Mr. S. Patra, learned counsel for the petitioners and Mr. A.K. Mishra, learned Addl. Govt. Advocate for the State.

The petitioners have filed this application to quash the letter dated 24.09.2013 in Annexure-4 and the advertisement dated 07.03.2016 under Annexure-5 to fill up the post of the Secretary of Barimund, Service Cooperative Society Ltd.

Mr. S. Patra, learned counsel for the petitioners states that on 02.05.2003, the Registrar, Cooperative Society issued a circular stating therein that the nominated committee of management shall not take any decision regarding appointment of staff and matters which shall involve additional financial liability of the society in relation to cost of management, save and except, with the approval of the R.C.S., Orissa and in letter dated 18.12.2003, it is stated that the nominated Chairman/President and the Board of Directors shall manage the day to day affairs of the respective cooperative societies only and shall not take any policy decision. But, when the said circulars were in force, on 24.09.2013, Annexure-4 has been issued by the very same Registrar, stating that the government in Cooperation Department have emphasized to fill up the vacant post of Secretaries and Managing Director at the level of PACS/LAMPCS through direct recruitment after giving promotion to the eligible employees belonging to Grade-II category and further direction was given to make all efforts for smooth completion of recruitment process within one month and to maintain absolute transparency in the matter. In consonance with the said instruction issued on 24.09.2013, vide Annexure-5 advertisement was issued by the management incharge of Barimund Service Cooperative Society Ltd. to fill up the post of Secretary on 07.03.2016. It is contended that the letter dated 24.09.2013 was the subject matter of consideration in W.P.(C) No.26267 of 2013 and this Court vide order dated 12.12.2013 passed interim order to the extent that the same shall not be given

effect to or acted upon by the opposite parties so far as the society in question, till the next date. In view of such position, the advertisement in Annexure-5 dated 07.03.2016 could not be implemented.

Mr. A.K. Mishra, learned Addl. Govt. Advocate contended that in view of the circular issued in Annexures-1 and 2, the nominated committee management cannot go for fresh recruitment regarding appointment of staff and matters which are involved additional financial liability of the society in relation to cost of management save and except with the approval of the R.C.S., Orissa and, as such, the nominated management incharge only to manage the day to day affairs of the society and no recruitment process can be done by the management incharge. It is stated that since the advertisement was of 07.03.2016, what is the present position, he has no instruction. Therefore, he seeks time to obtain instruction in the matter by the next date.

Considering the contention raised by learned counsel for the parties and after going through the records, in view of the rival contention raised by the parties, the matter requires consideration.

Issue notice to the opposite parties.

Three extra copies of the writ petition be served on learned counsel for the State appearing for opposite party nos.1 to 3 within three days enabling him to obtain instruction in the matter by the next date.

Requisites for issuance of notice to opposite party nos.4 to 7 by speed post be filed within three days. Office shall send notice to the said opposite parties fixing an early returnable date.

As an interim measure, any action taken pursuant to Annexure-5 dated 07.03.2016 for selection to the post of Secretary of Barimund, Service Cooperative Society Ltd., shall abide by the result of the writ petition."

5. Referring to counter affidavit filed by Opposite Party No.3, Mr. Mishra, learned ASC submits that no selection has yet been made pursuant to advertisement under Annexure-5. He further submits that in view of amendment of Section 28 (2)(g) (i) and (ii) of the Odisha Cooperative Societies (Amendment) Act, 2011, the letter dated 2nd May, 2003 issued by Registrar, Cooperative Societies has become infructuous.

6. Since no recruitment process has been made pursuant to advertisement dated 7th March, 2016 under Annexure-5, no fruitful purpose would be served in delving into the case in view of the fact that in the meantime more than six years have elapsed from the date of appointment and an elected body has taken over the charge of the Society. In that view of the matter, the writ petition is disposed of with an observation that fresh recruitment process should be undertaken by the Society in accordance with law.

7. Interim order dated 1st May, 2017 passed in Misc. Case No.6534 of 2017 stands vacated.

(K.R. Mohapatra)
Judge

s.s.satapathy

