

IN THE HIGH COURT OF ORISSA AT CUTTACK

WA No. 513 of 2017

Jyoshnamai Ray

....

Appellant

Mr. Arijeet Mishra, Advocate

-versus-

Manjulata Mallick @ Das and others

....

Respondents

Mr. Prafulla Kumar Rath, Advocate for Respondent No.1

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

Order No.

ORDER
20.10.2022

08. 1. The challenge in the present appeal is to the judgment dated 14th November, 2017 passed by the learned Single Judge allowing W.P.(C) No.11794 of 2015 filed by Respondent No.1 and setting aside the order dated 9th June, 2015 passed by the Additional District Magistrate (ADM), Jaipur in A.W.W. Misc. Appeal No.10 of 2015.
2. By the said order dated 9th June 2015, the ADM had set aside the appointment of Respondent No.1 as Anganwadi Worker (AWW) at the Kachahudi Sahi Anganwadi Centre (AWC) under the Vyasagar Municipality.
3. By the impugned judgment, the engagement of Respondent No.1 as AWW to the above AWC was restored.
4. It must be noticed at the outset that while the present appeal was admitted on 6th November 2019, there was no interim order in favour of the present Appellant.

5. The background facts are that pursuant to an advertisement published on 11th February 2014, the present Appellant, Respondent No.1 and others applied. The Selection Committee found Respondent No.1 had secured 59.4% while the Appellant secured 52.46% marks. The Appellant filed W.P.(C) No.12353 of 2014 for a direction to the Respondents-State Authorities to engage her as AWW. A learned Single Judge of this Court by an order dated 5th November, 2014 directed the Sub-Collector, Jajpur to decide the Appellant's representation within a period of four weeks. The said representation was converted into Misc. Case (AWW) No.23 of 2015 and was disposed of by an order dated 21st January, 2015 whereby the Sub-Collector found no illegality in the selection process adopted by the Child Development Project Officer (CDPO), Korei. The Sub-Collector directed that the selection procedure should be finalized with immediate effect based on merit. Pursuant to the above order of the Sub-Collector, Respondent No.1 was engaged as AWW by an order dated 28th January, 2015.

6. The Appellant again approached this Court in W.P.(C) No.2672 of 2015 questioning both the order of engagement dated 28th January, 2015 as well as the Residential Certificate in favour of Respondent No.1. This time, a learned Single Judge disposed of the writ petition by an order dated 19th March, 2015 directing the ADM, Jajpur to conduct an enquiry and dispose of the Appellant's representation after giving an opportunity of hearing to all concerned.

7. Pursuant thereto, on 9th June 2015, the ADM, Jajpur allowed A.W.W. Misc. Appeal No.10 of 2015 finding Respondent No.1 to be illegally engaged. He ordered her disengagement and the engagement of Appellant as AWW.

8. Questioning the above order, Respondent No.1 filed W.P.(C) No.11794 of 2015, which came to be allowed by the impugned order of the learned Single Judge. In the impugned order, learned Single Judge came to the following conclusions:

i. The Appellant who suffered the order dated 21st January, 2015 of the Sub-Collector pursuant to the order passed by the High Court in W.P.(C) No.12353 of 2014 allowed the said order to attain finality. Unless that order was challenged, the engagement of Respondent No.1 could not be questioned;

ii. The Appellant never brought to the notice of the High Court in W.P.(C) No.2672 of 2015 about the order dated 21st January, 2015 of the Sub-Collector. She also did not inform the ADM, Jajpur of the said order. There was therefore a suppression of material fact by the Appellant;

iii. The Appellant did not challenge the residential certificate issued by the Tahasildar under Rule 6 of the Orissa Miscellaneous Certificates Rules, 1984 (OMC Rules) in favour of Respondent No.1 before the Competent Authority in an appeal under Rules 8 of OMC Rules. Instead the Appellant merely questioned the engagement of Respondent No.1 based on that instrument. Unless

the residential certificate was set aside in the manner provided for under the Rules, it was binding on all;

iv. The ADM perused two affidavits filed by Respondent No.1. One was the affidavit dated 6th February, 2010 where she disclosed her address at Sobara and the subsequent affidavit dated 22nd February, 2014 where the address was that of her in-laws even while giving the present address. As an Anganwadi Helper (AWH), Respondent No.1 was working in the AWC in question satisfying the eligibility condition of residence for more than five years. After getting married in 2010, she obtained a residential certificate showing her to be a permanent resident of village Sobara by indicating her in-laws house at Ahamadpur in Kendrapara District. The Competent Authority, who conducted an enquiry, found Respondent No.1, even after marriage, to be residing within the area of AWC. The Competent Authority on the basis of the report dated 20th January, 2014 of the Revenue Inspector (RI) issued the residential certificate showing Respondent No.1 to be a permanent resident of village Sobara of District Jajpur. It was on that basis she was engaged as AWW. As long as the said residential certificate was valid and had not been annulled or cancelled by a Competent Authority or a Court of Law, it had to be given credence by the ADM, Jajpur. The issue could not have been decided merely on the basis of two affidavits.

9. Mr. Arijeet Mishra, learned counsel for the Appellant submitted that it was obvious that after her marriage, Respondent No.1 could not have continued to be a permanent resident of village Sobara, Jajpur. On her own showing, she had begun residing at her in-laws place in Kendrapara District. In fact, in her affidavit dated 22nd

February 2014, she indicated her name as Manjulata Das instead of Manjulata Mallick thereby admitting her marriage to one Sri Dillip Mallick of Ahamadpur of Kendrapara District. Therefore, the certificate of residence issued showing her residence to be Sobara, Jajpur is no longer valid.

10. Mr. Mishra further submitted that the learned Single Judge did not take into consideration the guidelines dated 2nd May, 2007 as well as the Notification, which made it mandatory for a candidate to be considered for the post of AWW, to be a permanent resident in the area of the AWC. The statement of Respondent No.1 that she continued living in her parents' house even after marriage was not believable and could not have been accepted by the learned Single Judge.

11. Mr. Prafulla Kumar Rath, learned counsel for Respondent No.1, on the other hand, pointed out that this was a case of deliberate suppression of material facts by the Appellant while filing the second writ petition being W.P.(C) No.2672 of 2015 in which the learned Single Judge passed the order dated 19th March, 2015 directing the ADM to enquire into the matter. The fact of the earlier order dated 28th January, 2015 passed by the Sub-Collector, which had become final and which had negated the very same plea of the Appellant, was not brought to the notice of either the learned Single Judge in W.P.(C) No.2672 of 2015 or the ADM, Jajpur, who disposed of the consequential A.W.W. Misc. Appeal No.10 of 2015. This was rightly viewed adversely by the learned Single Judge.

12. Mr. Rath further submitted that the report dated 20th January, 2014 of the RI revealed that even after her marriage, Respondent No.1 continued to be a permanent resident of village Sobara in district Jajpur. This report was not challenged by anyone. In fact, the certificate of permanent residence also was not challenged. The ADM was therefore required to go by the statutory documents and not by just the affidavits filed by Respondent No.1.

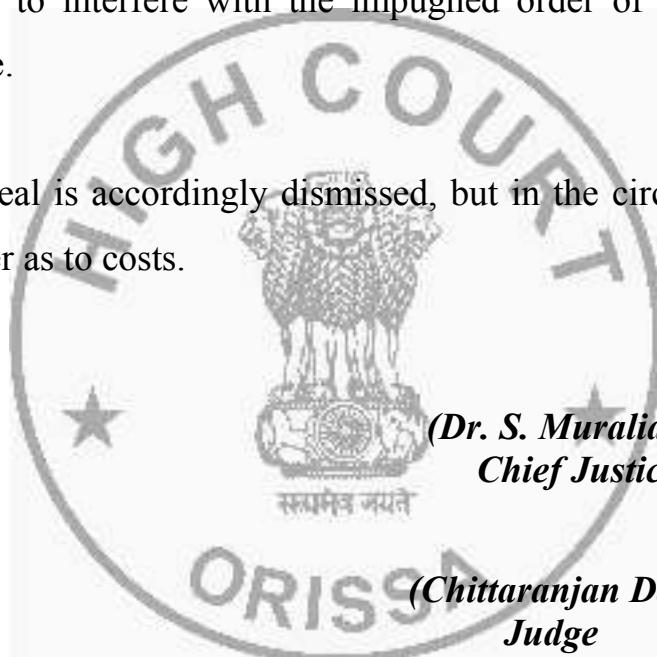
13. The above submissions have been considered. The Appellant has no answer to the finding of the learned Single Judge that there has been deliberate suppression of material facts by the Appellant by not disclosing the fact of the order dated 28th January, 2015 of the Sub-Collector, Jajpur, which had become final with the Appellant not challenging it. That order, which was passed pursuant to the order dated 5th November, 2014 of the learned Single Judge of this Court in W.P.(C) No.12353 of 2014 filed by the Appellant, negated the very same plea of the Appellant questioning the selection of Respondent No.1 as AWW. There could have been absolutely no excuse for the Appellant not to have disclosed this material fact in the second round of litigation in W.P.(C) No.2672 of 2015 and subsequently before the ADM, who disposed of A.W.W. Misc. Appeal No.10 of 2015. This was too serious a suppression fact to be ignored and the consequences had to flow as a result of such suppression of material facts.

14. The learned Single Judge has rightly noted that the certificate of permanent residence was issued by the Tahasildar under Rule 6 of the OMC Rules. Any person aggrieved by the said order of the Tahasildar could go in appeal under Rule 8 of the said Rules. The

Appellant did not choose to challenge the certificate of permanent residence issued to Respondent No.1. The said certificate therefore could not have been ignored by the ADM. Equally, the report of the RI dated 20th January, 2014 stating that Respondent No.1 continued to be a permanent resident of Sobara in Jajpur District also was not challenged by anyone and, therefore, could not have been ignored by the ADM.

15. For all of the aforementioned reasons, the Court finds no ground is made out to interfere with the impugned order of the learned Single Judge.

16. The appeal is accordingly dismissed, but in the circumstances, with no order as to costs.



(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

M. Panda