

IN THE HIGH COURT OF ORISSA AT CUTTACK
WA No. 541 of 2022

Smt. Bishnupriya Routray

....

Appellant

Mr. Ramakant Mohanty, Sr. Advocate
with Ms. Sumitra Mohanty, Advocate

-versus-

State of Odisha & Others

....

Respondents

Mr. M.K. Khuntia, AGA

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER

05.05.2022

Order No.

- 02.**
- 1.** This matter is taken up by virtual/physical mode.
 - 2.** In the writ appeal directed against the Order dated 30th March, 2022 passed by learned Single Judge in W.P.(C) No. 23181 of 2015, the appellant, worker in the Anganwadi Centre, Jodabara in the district of Jajpur (arrayed as Opposite Party No.4 in the writ petition), is aggrieved by the issue of writ of *mandamus* under Article 226 of the Constitution of India whereby the case of the respondent No.4 (petitioner in writ petition) has been directed to be considered and appointed as worker of Jodabara Anganwadi Centre in the district of Jajpur. The Appellant has also preferred the appeal pointing out that the learned Single Judge should have considered the petition being I.A No. 4819 of 2022 seeking recall of the order dated 30th March, 2022 passed in afore-noted writ petition.
 - 3.** The factual matrix as reflected in the impugned Order dated 30th March, 2022 of the learned Single Judge has not been disputed.

For convenience the germane fact as culled out by the learned Single Judge is reproduced hereunder:-

“i). The Petitioner had applied for the post of worker Jodabara Anganwadi Centre on 11.02.2014 within the stipulated period enclosing all the documents.

ii). Inter alia, it was submitted that she has passed Matriculation conducted by Board of Secondary Education in the year 1987 and placed in 2nd division secure 335 marks out of total of 700 without additional of any marks on account of extra option subjects. When the Opposite Party No.4 was appointed in preference to the Petitioner as worker of the said Anganwadi Centre, she moved the authorities that is ADM Jajpur by filing statutory Appeal numbered as Anganwadi Appeal No.07 of 2015.

iii). The Opposite Party No.4 was arrayed as respondent No.1 before the appellate authority. On being noticed the opposite party No.4-respondent No.1 filed a counter affidavit in the Anganwadi Appeal and defended her selection and sought dismissal of the petitioner's appeal. On considering the rival contentions Appellate Authority by order dated 16.09.2015 at Annexure-7 dismissed the Appeal. Hence this application assailing the said order at annexure-7.”

4. This Court has had the opportunity to peruse the writ petition. Annexure-3 to the writ petition relates to information supplied under the Right to Information Act, 2005 by the Board of Secondary Education, Odisha, Cuttack. Said document indicates full marks set for High School Certificate Examination from the year 1983 to 2015. Scrutiny of said document shows that during the period 1983 to 1988 maximum marks set for High School Certificate Examination was 700 and the marks for Extra Optional

did not form part of the maximum marks. However, from 1993-2007 the maximum marks were set at 750.

5. Annexure-5 which is Provisional Certificate-cum-Memorandum of Marks issued by the Board of Secondary Education, Odisha, Cuttack in respect of Kalpana Baral (Respondent No.4) shows that she has passed the High School Certificate Examination in the year 1987 and secured total 335 marks out of maximum marks of 700. So the percentage comes to 47.85%. It is stated at the Bar that excess of 30 marks out of 100 marks in Extra Optional subject is added to the marks obtained to arrive at aggregate marks in order to ascertain First/Second/Third Division, but full mark of Extra Optional subject is not added to total Full Marks for the purpose of computing aggregate. In other words, though marks secured in excess of 30 marks out of 100 Full Marks in respect of Extra Optional is added to the total marks secured out of Full Marks of 700, the aggregate is calculated by not taking into consideration Full Marks as 800, but as 700.

To further clarify the position, it is appreciated that as the respondent No.4 (petitioner in the writ petition, namely Kalpana Baral) has secured only 7 marks out of 100 Full Marks in Extra Optional subject. Therefore, nothing is added to the total marks of 335 secured out Full Marks of 700. Thus, the percentage of marks secured by Kalpana Baral is taken at 47.85%.

6. Annexure-6 which is Provisional Certificate-cum-Memorandum of Marks issued by the Board of Secondary Education, Odisha, Cuttack in respect of Bishnupriya Routray (Appellant) shows that she has passed the High School Certificate

Examination in the year 1996 and obtained total marks of 356 out of maximum marks of 750. So the percentage of aggregate comes to 47.47%.

7. For better appreciation, the position with respect to Full Marks during the relevant periods are given hereunder:

Subjects	Full Marks during 1983-1988	Full Marks during 1993-2007
First Language	100	100
Second Language	100	100
Third Language	100	100
Mathematics	100	150 (two papers of 75 each)
General Science	100	150 (two papers of 75 each)
Social Science	100	150 (two papers of 75 each)
Optional	100	
Total	700	750
Extra Optional	100	---- --
	Note: 3 rd Division = 33%, 2 nd Division = 45%, 1 st Division = 60%	Note: 3 rd Division = 33%, 2 nd Division = 45%, 1 st Division = 60%

Bare comparison of both the mark sheets of Kalpana Baral and Bishnupriya Routray would go to show that Kalpana Baral (Petitioner in the writ petition) secured more marks than Bishnupriya Routray (Appellant in the writ appeal).

8. Before the learned Single Judge Kalpana Baral (Respondent No. 4 herein) challenged the Order dated 16th September, 2015 passed by Additional District Magistrate, Jajpur, wherein it has been recorded as follows:

“Gone through the case record and submission of both the parties. Perused aggregate marks of H.S.C Examination for the year 1987 submitted by the D.E.O, Jajpur at that time. It is revealed that, the aggregate mark of H.S.C Examination of the year-1987 is 750. The tabulated sheet of marks of all the applicants makes it amply clear that the appellant had agreed to the same at that time & had signed in token of perusal of the sheet prepared by the committee.

In view of the facts discussed above, this court is inclined to hold, that the subsequent documents produced have confused the scenario. No apparent irregularity has been committed by the selection committee in selecting the Respondent No.01 as the Anganwadi Worker of that center as the selection was made relying upon the report of District Education Officer, Jajpur as the aggregate marks of H.S.C. Examination of 1987 is 750. Hence, the engagement order in favour of Respondent No.01 is not illegal. Why should one suffer for the alleged incoherent reports submitted after one year. It is also not understood, why the appellant did not raise objection to the tabulation sheet at that time, rather accepted the same and signed thereon, Hence the appeal is not sustainable & fails. Accordingly the case is closed.”

9. Apparently the finding as recorded by the Additional District Magistrate, Jajpur cannot be countenanced since he has proceeded under a notion that in the year 1987 when Kalpana Baral qualified the High School Certificate Examination the maximum marks were set at 750. To assert proper facts, the learned Single Judge had taken pains to delve deep into the matter which is reflected at paragraph 10 of his Order. His endeavour has been reflected as follows:

“10. This Court by Order dated 26.02.2020 by way of abundant caution had asked Shri S.S. Rao, learned counsel who usually appears on behalf of Board of Secondary Education, Odisha (BSE, Odisha), to submit the instructions whether the total marks of the HSE Examination in 1987 was 700 or 750, to verify authenticity of Annexure-3 giving the details of the full marks as adverted to above.”

10. The learned Single Judge has also made the following observation in his order dated 30th March, 2022:

“7. On perusal of the pleadings it is seen that the petitioner has annexed as Annexure-1, the High School certificate in which it is shown that she has secured 335 marks whereas Annexure-2 indicates that Opposite Party No.2 had secured 356 marks. While disposing of the appeal it is noted by the appellate authority that the petitioner has secured 335 marks out of total marks of 750 and as such she is less meritorious than Opposite Party No.4.

8. Learned counsel for the Petitioner draws the attention of the Court to Annexure-3, which was received on the basis of an RTI application indicating the full marks of High School certificate examination conducted by the board of Secondary Education from the year 1983 to 2015.

9. *From a bare perusal of Annexure-3 can be seen that the total marks of the year 1983 to 1988 covering the year 1987 in which the petitioner had appeared her Board of Secondary Education Examination is 700 and the total marks from the period 1993 to 2007 is 750. Since admittedly the Opposite Party No.4 had appeared the examination in 1996, total marks in respect of which her merit is to be evaluated is 750.*

10. *This Court by order dated 26.02.2020 by way of abundant caution had asked Shri. S. S. Rao, learned counsel who usually appears on behalf of Board of Secondary Education, Odisha (BSE, Odisha), to submit the instructions whether the total marks of the HSE examination in 1987 was 700 or 750, to verify the authenticity of Annexure-3 giving the details of the full marks as adverted to above.*

11. *By order dated 09.11.2021, this Court took note of the submission of the learned Counsel Mr. Rao for the Board of Secondary Education, that the total marks of HSE examination in the year 1987, which is relevant for adjudication in the case at hand was 700.”*

11. The learned Single Judge also had noted that the State filed counter affidavit, wherein it has admitted the fact that the writ Petitioner (Kalpana Baral) had secured 335 marks out of total marks 750 and evaluated the merit *vis-à-vis* Bishnupriya Routray (Appellant herein) accordingly. At paragraph 5 of the counter-affidavit filed by the Child Development Project Officer, ICDS Project available in the record of writ petition, it is revealed as follows:

“That in reply to the averments made in paragraph-5 of the writ petition, it is a fact that the petitioner has secured 335 marks out of 700 marks in her HSC Examination held in the year 1987. But as per Letter No.3269 dated 05.07.2014 of the District Education Officer, Jajpur addressed to the Sub-Collector, Jajpur it is revealed that during the year 1987 Full Marks of matriculation was

750 and out of 750 the petitioner has secured total marks 335.”

Apparently said fact as asserted by the opposite parties in the counter-affidavit has no legs to stand.

12. The learned Single Judge has very lucidly evaluated the merit of Kalpana Baral against Bishnupriya Routray and recorded a finding that Kalpana Baral was more meritorious than Bishnupriya Routray. He has come to the following conclusion:

“14. Since the consideration which is the basis of rejection of the petitioner’s candidature is ex-facie untenable, this Court quashes the selection of Opposite Party No.4 as worker of Jodabara Anganwadi Centre at serial No.3 of Annexure-4 and the appellate order passed by the Opposite Party No.2 dated 16.09.2015 at Annexure-7 rejecting the claim of the Petitioner.

15. The Authorities are directed to consider and appoint the petitioner as Anganwadi worker of Jodabara Anganwadi center in the District of Jajpur within a period of four weeks from date of receipt/production of copy of this order.”

13. This Court while in seisin of the subject matter of writ petition in appeal found that the learned Single Judge had arrived at just conclusion as Additional District Magistrate, Jajpur had proceeded under a mistaken notion that at the relevant point of time *i.e.*, 1987 the maximum marks set by the Board of Secondary Education for High School Certificate Examination was 750 but not 700. Having held so, this Court finds no infirmity in the Judgment rendered by the learned Single Judge in the petition being W.P.(C) No. 23181 of 2015.

14. Even though, the counsel for the Petitioner remained absent on 30th March, 2022, the learned Single Judge had correctly

analyzed the factual situation on the basis of documentary evidence available on record. There arose no necessity to recall the Order dated 30th March, 2022, while considering I.A. No. 4819 of 2022 arising out of W.P.(C) No. 23181 of 2015. This Court is satisfied that had the learned Single Judge recalled the Order dated 30th March, 2022 passed in aforesaid writ petition, the result on the merit would remain the same inasmuch as the Additional District Magistrate, Jajpur had committed glaring error of fact under the impression that during the year 1987 the Full Marks were set at 750. Such perversity of fact having been rectified by the learned Single Judge, this Court does not deem it proper to show any indulgence to the appellant herein.

15. Hence, the writ appeal is dismissed.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge