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ORISSA HIGH COURT: CUTTACK

W.P.(C) No.12264 of 2019

In the matter of an application under Articles 226 and 227 of the Constitution of India

Alok Kumar Pradhan Petitioner

-Versus-

State of Orissa and others Opp. Parties

For Petitioner : Mr. S.K. Pradhan-3, Adv.

For Opp. Parties : Mr. S.K. Samal, A.G.A.

P R E S E N T:

THE HONOURABLE MR. JUSTICE SANJAY KUMAR MISHRA

Date of Hearing: 26.09.2022 & Judgment: 07.12.2022

S.K. Mishra, J. In the present Writ Petition, a prayer has been made to quash the letter dated 24.05.2019, as at Annexure-6, vide which the Opposite Party No.2 rejected the proposal submitted by the Project Director, DRDA, Nayagarh-Opposite Party No.4, to treat the vacancy of the post of Computer Programmer in Khandapara Block as filled up and release allotment towards remuneration of Computer Programmer in the said Block in favour of the Petitioner.

2. The factual matrix leading to filing of the present Writ Petition is that the Petitioner passed HSC in the year, 1990, BCA in the year, 2006 and MCA in the year, 2014. While he was serving as Computer Programmer in Khandapara Block in the District of Nayagarh since 26.12.2006, the Opposite Party No.4 published an advertisement on 21.04.2008 inviting applications from eligible candidates for appointment of Computer Programmer in the said Block i.e. the post in which the present Petitioner is serving.

3. Being aggrieved by such advertisement dated 21.04.2008, the Petitioner approached this Court in W.P.(C) No.6512/2008 praying therein to quash the said advertisement issued by the Opposite Party No.4. The Writ Petition was disposed of on 20.02.2014 by quashing the advertisement dated 21.04.2008, with an observation that since the Petitioner is continuing in the post of Computer Programmer in Khandapara Block and there was no vacancy to issue 2nd advertisement dated 21.04.2008, the same is liable to be quashed and accordingly, the said advertisement was quashed. It was further observed vide the said Order that it is open to the Authority to take consequential action, if the appointment Order issued in favour of the Petitioner is without following the selection process.

4. In pursuance of the said observation of this Court, a clarification was sought for from Panchayati Raj Department vide DRDA letter dated 13.11.2014 for compliance of the Order of this Court. In response to said communication, the Director, Special Projects, P.R. Department, Government of Odisha, vide letter dated 08.12.2015 instructed the Opposite Party No.3 to take action at District level, he being the appointing Authority of Computer Programmers, with an observation that the report with regard to action taken may be sent for further action. In response to the said communication dated 08.12.2015 of the Opposite Party No.1, the Opposite Party No.3, vide Order dated 06.04.2018 in Misc. Case No.18/2016, confirmed the Order passed by the Project Director, DRDA, Nayagarh, and directed the Petitioner to continue as Computer Programmer in Khandapara Block in the District of Nayagarh as before.

5. Pursuant to the Order passed in Misc. Case No.18/2016, the Project Director, DRDA, Nayagarh, vide letter dated 02.08.2018, enclosing thereto the Order of the Collector, Nayagarh, dated 06.04.2018, wrote a letter to the Director, Special Projects, PR & DW Department, Government of Odisha, Bhubaneswar, with a request to the effect that in view of the Order passed by the Collector, Nayagarh, dated 06.04.2018,

vacancy of the post of Computer Programmer in Khandapara Block may be treated as filled up and the allotment towards remuneration of the Computer Programmer in the said Block may be released.

6. However, the said proposal submitted by the Opposite Party No.4 was rejected by the Opposite Party No.2, vide communication dated 24.05.2019, as at Annexure-6, on the plea that the same does not merit for consideration, which is impugned in the present Writ Petition.

7. It is further case of the Petitioner that the decision of the Opposite Party No.2 to reject the proposal of Opposite Party No.4 dated 02.08.2018 regarding the acceptance of the post of Computer Programmer in Khandapara Block to be filled up and release of allotment for paying remuneration to Computer Programmer is illegal, arbitrary and product of non-application of mind, and is liable to be set aside as the said impugned communication indicates no reason in refusing the proposal, except stating therein that the said proposal bears no merit and is a non-speaking one.

8. It is further stated that the Collector, Nayagarh, is the appointing Authority of Computer Programmer of Khandapara Block and after quashing of the 2nd advertisement published by

the Opposite Party No.4 dated 21.04.2008, as at Annexure-2, by this Court, vide Order dated 20.02.2014, passed in W.P.(C) No.6512/2008, there is no hurdle for the Petitioner to continue as Computer Programmer in the said Block and the impugned communication of the Opposite Party No.2 dated 24.05.2019 being issued without any valid reason, is totally unsustainable in the eye of law and therefore, is liable to be set aside.

9. It has also been contended that the Collector, Nayagarh- Opposite Party No.3, looking into urgency of Computer Programmer for Khandapara Block, has confirmed the said post. Therefore, there is no justification on the part of the Opposite Party No.2 to reject the proposal submitted by the Opposite Party No.4 for acceptance of post of Computer Programmer for said Block and release the allotment towards remuneration of Computer Programmer.

10. In response to the averments made in the Writ Petition, a Counter Affidavit has been filed by the Opposite Party Nos. 3 and 4 stating therein that an advertisement was published by the Project Director, DRDA, Nayagarh, on 31.07.2006 inviting applications from eligible candidates for the post of Computer Programmer for Khandapara Block of Nayagarh District for E-Governance to be engaged on contractual basis with

consolidated remuneration of Rs.5,000/- per month. As per the said advertisement, a panel of suitable candidates was maintained at DRDA, Nayagarh, to fill up the further vacancies. In the said advertisement, it was further stipulated that the candidates so selected on the basis of the scrutiny will be invited to appear before the Selection Committee and engagement as Computer Programmer is purely temporary in nature and made for one year. The candidates can be disengaged at any time without any notice and assigning any reasons thereof.

11. In response to the said advertisement, the Petitioner, along with others, submitted application in the prescribed format. The Selection Committee comprising of the Collector-Cum-District Magistrate, Nayagarh, as Chairman and the Members such as Project Director, DRDA, Nayagarh, Block Development Officer, Khandapara, Assistant Project Director (MIS), DRDA, Nayagarh & NIC, Nayagarh, conducted an interview and Computer Test was conducted by the Committee with the assistance of Computer Specialist, O/o the CDMO, Nayagarh and Computer Programmer, DRDA, Nayagarh. The Committee members awarded marks on the performance of the candidates and on the basis of overall performance of the

candidates, two candidates were selected, namely, Prasanta Kumar Mohapatra, at Serial No.1 and Alok Kumar Pradhan, at Serial No.2, who is the present Petitioner.

12. It is the stand of the Opposite Party Nos. 3 and 4 that since name of Prasanta Kumar Mohapatra placed in Serial No.1, he ought to have been issued with the Order of appointment and, in case of non-joining of Prasanta Kumar Mohapatra, the case of the present Petitioner, whose name was at Serial No.2 of the selection list, should have been considered for engagement. The said proceeding of the Selection Committee was signed by the Collector, Nayagarh, he being the Chairman of the Committee. He never authorized any of the Authority at the relevant time to issue engagement Order to the selected candidate.

It has further been stated in the Counter Affidavit that no record is available in the O/o the Project Director, DRDA, Nayagarh, as to whether any Order of engagement is issued in favour of Prasanta Kumar Mohapatra, whose name was found at Serial No.1 of the merit list, so also as to whether Mr. Mohapatra did not join in response to the issuance of Order of engagement and under what circumstances, the present Petitioner, whose name was at Serial No.2 of the merit list, was

issued with the Order of engagement by the then Project Director, DRDA, Nayagarh, who is not competent Authority to issue such Order of engagement. Even though the candidate at Serial No.1 was not issued with the Order of engagement, it throws a cloud of suspicion in the manner in which the present Petitioner, being at Serial No.2 of the merit list, was issued with the Order of engagement by the then Project Director, DRDA, Nayagarh, without any authorization issued in his favour by the Collector, Nayagarh, who is the competent Authority to issue such Order of engagement. Since the very issuance of engagement Order was by an incompetent Authority, such engagement of the Petitioner is void *abinitio* and does not confer any right on the Petitioner. It is also stated in the Counter Affidavit that it is revealed from the Order of engagement dated 23.12.2006, issued by the then Project Director, DRDA, Nayagarh, which was annexed to W.P.(C) No.6512/2008 as Annexure-4, in the said engagement Order the number of Office Order has been mentioned as “2768”, dated 23.12.2006 but on verification of the Issue Register in the O/o the DRDA, Nayagarh, it is found that the said Order No.2768, dated 23.12.2006 refers to some other document and not the Order of engagement of the present Petitioner. There was no record in

the O/o the DRDA, Nayagarh, for which the post of Computer Programmer in the said Block was reported to be vacant. Accordingly, an advertisement was issued on 21.04.2008 by the Project Director, DRDA, Nayagarh, inviting applications from eligible candidates for engagement of Computer Programmer for the said vacant post of the Block for E-Governance, to be engaged on contractual basis with consolidated remuneration of Rs.5,000/- per month. Being aggrieved by the said advertisement, the Petitioner preferred W.P.(C) No.6512/2008, which was disposed of on 20.02.2014 by quashing the said Advertisement dated 21.04.2008 giving liberty to the Authority concerned to take consequential action, in case the appointment Order issued in favour of the Petitioner is found to be without following the selection process.

It is further stated in the Counter Affidavit that as per the observation made by this Court in W.P.(C) No.6512/2008, a Misc. Case, bearing No.18/2016 was instituted before the Collector, Nayagarh. Although the Collector in Misc. Case No.18/2016 came to a finding that the appointment Order issued in favour of the Petitioner is created by the then Project Director, DRDA, Nayagarh, under his signature ignoring all the official procedure, even the issue number etc. in the said Order

is manipulated and the Collector is the appointing Authority of Computer Programmer, being the Chairman of the Selection Committee, but in the peculiar case, it is not understood, as to why office became silent to take follow up action after selection process was over, for which the selection procedure has been completely violated. The integrity of the then Project Director, DRDA, Nayagarh, is doubtful as he misused his official capacity, for which he has been proceeded against by the Department. Although the Collector, Nayagarh, vide Order dated 06.04.2018 came to a finding that the engagement of the Petitioner is illegal and has been done without following due procedure, but on the other hand, held that the Petitioner is continuing as Computer Programmer in Khandapara Block since 23.12.2006 and getting remuneration by virtue of an undertaking to the effect that if his engagement Order is found to be a forged one, he shall refund the amount. Accordingly, the Collector, Nayagarh, held that there is no justification to debar the Petitioner from his legitimate claim and by the said Order, the previous Order under the signature of Project Director, DRDA, Nayagarh, was confirmed by the Collector, Nayagarh, and it was ordered that the Petitioner will continue as such.

13. It has further been reiterated in the Counter Affidavit that as a consequence to the said Order dated 06.04.2018 of the Collector, Nayagarh, the Project Director, DRDA, Nayagarh, vide Order dated 02.08.2018 made a correspondence to the Director, Special Projects, PR & D.W., Government of Odisha Bhubaneswar, indicating therein that the Collector, Nayagarh, has been pleased to allow the Petitioner as Computer Programmer of Khandapara Block to continue as such and confirm the appointment Order passed previously under the signature of the then Project Director, DRDA, Nayagarh, and to treat the vacancy post of Computer Programmer in Khandapara Block to be filled up and to release the allotment towards remuneration of Computer Programmer in Khandapara Block. The Government in Panchayati Raj Department, after considering the said proposal dated 02.08.2018 submitted by the Project Director, DRDA, Nayagarh, regretted the same vide letter dated 24.05.2019, as at Annexure-6 and such communication was based on the finding of the Collector, Nayagarh dated 06.04.2018, wherein it was observed that the Petitioner was given engagement by the then Project Director, DRDA, Nayagarh, who is not the competent Authority for issuing such Order of engagement and further, no official

procedure was followed and issue number in the Order is manipulated. Since the very initial engagement of the Petitioner has been made by an incompetent Authority and in a manipulating/fraudulent manner, the same cannot be treated to be regular subsequently. So far as unpaid/arrear salary of the Petitioner, it has been stated in the Counter Affidavit that the Petitioner has been paid arrear salary till the month of July, 2022, vide Challan No. 188, dated 02.08.2022 of the B.D.O., Khandapara, for an amount of Rs.6,34,500/- and the said amount has been credited to the account of the Petitioner.

14. In response to the Counter Affidavit filed by the Opposite Party Nos. 3 and 4, Petitioner has filed Rejoinder Affidavit stating therein that pursuant to advertisement dated 31.07.2006, one Prasanta Kumar Mohapatra and the present Petitioner were selected. On verification, it was found that Prasanta Kumar Mohapatra, who was selected as Serial No.1, does not belong to Khandapara Block, which is the prime requirement as per the said advertisement. Hence, as the Petitioner, who has fulfilled all the requirements as per the said advertisement, was selected and appointment Order has been issued in his favour. It is further stated in the Rejoinder Affidavit that in pursuance of the Order dated 20.02.2014 of

this Court passed in W.P.(C) No.6512/2008, the said issue has already been decided and, as per the direction of this Court, the Collector, Nayagarh, made an enquiry and passed the Order confirming the appointment of the Petitioner, vide Order dated 06.04.2018, as at Annexure-4, which is not challenged till date. Hence, at this juncture, if the said issue is re-opened, the same will amount to abuse of the process of law. It is further stated that the appointment of the Petitioner in the post of Computer Programmer be accepted to be genuine and confirmed.

15. Learned Counsel for the Petitioner submitted that this Court, while deciding W.P.(C) No.6512/2008, referring to the earlier advertisement dated 31.07.2006 published in the daily (Dharitri) on 03.08.2006, issued by the Project Director, DRDA, Nayagarh, rightly entertained the Writ Petition and set aside the fresh advertisement dated 21.04.2008 with an observation that since the Petitioner is continuing in the post of Computer Programmer in Khandapara Block and there was no vacancy to issue a 2nd advertisement dated 21.04.2008, the same is liable to quashed. Accordingly, the said advertisement was set aside by this Court. In view of such observation of this Court, the Collector, Nayagarh, who is the Chairperson of the Selection Committee, initiated a proceeding, which was registered as

Misc. Case No.18/2016 and vide a reasoned Order dated 06.04.2018, allowed the said Misc. Case. The said Order passed by the Collector, Nayagarh, not being challenged before the appropriate forum, has attained finality and in view of the admitted facts on record, the impugned communication dated 24.05.2019, as at Annexure-6, deserves to be set aside.

Learned Counsel for the Petitioner further submitted that it is well revealed from the proceeding of the Selection Committee interview for the post of Computer Programmer of Khandapara Block held on 28.09.2006, as at Annexure-B/4 to the Counter Affidavit of the Opposite Party Nos. 3 and 4, the Petitioner stood 2nd and his name was at Serial No.2 of the selection list and such selection list prepared by the Selection Committee bear the signature of the Collector, Nayagarh, who is the Chairperson of the Selection Committee, Project Director, DRDA, Nayagarh, and BDO, Nayagarh and the Selection Committee took such decision following due procedure.

16. It is submitted that since Prasanta Kumar Mohapatra did not join in the Post of Computer Programmer of Khandapara Block and he does not belong to said Block, which is the prime requirement as per the advertisement dated 31.07.2006, the Petitioner was rightly appointed in the said post. There being no

infirmity/illegality in the selection process, and in view of the observation made by this Court vide its earlier Order dated 20.02.2014 passed in W.P.(C) No.6512/2008, wherein it was observed that “it is open to the authority to take consequential action in case the appointment order was issued without following the selection process”, since due process of selection was followed before the proceeding dated 28.09.2006 was drawn, the scope being limited and in view of the Order of the Collector, Nayagarh, dated 06.04.2018, passed in Misc. Case No.18/2016, it was no more open to the Opposite Party No.2 to reject the proposal submitted by the Project Director, DRDA, Nayagarh, vide communication dated 24.05.2019, as at Annexure-6, and same being illegal, arbitrary, unreasonable and product of non-application of mind, deserves to be set aside.

17. Learned Counsel for the State-Opposite Parties submitted that the very appointment of the Petitioner made by the then Project Director, DRDA, Nayagarh, is illegal as he is incompetent to issue such an Order of appointment. Also, there being manipulation with regard to issuance of Order of appointment in favour of the Petitioner by the then Project Director, DRDA, Khandapara Block, against whom also action

was taken in terms of the memorandum of charges dated 28.08.2011, as at Annexure-E/4, the Opposite Party No.2 was justified to reject the Proposal submitted by the Project Director, DRDA, Nayagarh, vide impugned communication dated 24.05.2019. Hence, the said communication does not need any kind of judicial interference, there being no illegality or infirmity in it.

18. Admittedly, in view of the observation of this Court, vide Order dated 20.02.2014, passed in W.P.(C) No.6512/2008, as at Annexure-3, the said Order being communicated to the Collector, Nayagarh, the Collector initiated Misc. Case No.18/2016 *suo motu* and as it reveals from the said Order dated 06.04.2018, as at Annexure-4, the Opposite Party was found absent during hearing of the said proceeding and finally, a reasoned and speaking Order was passed by the Opposite Party No.3, the relevant portion of which reads as follows:

“ In view of the facts & circumstances stated above it is opined that the appointment order issued in favour of the petitioner is created by the P.D.,D.R.D.A, Nayagarh under his signature ignoring all the official procedure. Even the issue number etc. mentioned in the order is manipulated. Collector is the appointing authority of the C.Ps. and Chairman of the selection committee. In this peculiar case it is not understood why the office became silent to follow up action after selection process is over for which the selection procedure has been completely violated. The integrity of the then P.D. Sri A.N.

Nayak, O.A.S.(S) is doubtful as he has misused his official capacity for which he has been proceeded against by the Department.

On the other hand the petitioner is continuing as C.P. in Khandapada Block since 23.12.06 and getting his remuneration by virtue of one undertaking stating that if engagement order is found to be a forged one he shall refund the amount. There is no question on the performance of the appellant as regards his official duty is concerned. The appellant has also performed his duties peacefully and completed about 12 years. The age limit for appointment of the appellant has already been barred. It is also not out of place to say that if proper procedure upto preparation of selection list has been made under the signature of Collector, Nayagarh, why appointment order was not issued at that time. Had it been issued at that time no complications would have been arisen. It is to be admitted that selection process was completed at that time. If the person who stood first is otherwise eligible then the appellant (2nd in the merit list) should get the chance. It is not wise on the part of the authority to remain silent after completion of merit list. Cancellation of the merit list has also not been done. Most interesting thing is that the person stood first in the selection has never tried for his engagement as seen from the file. He might have engaged somewhere else. Further as it is ascertained from the voter list of the village which he had submitted in his residence certificate that he is not a permanent resident of Khandapada Block area, rather his name find place in Bhaga No.109 Kalika Prasad 1 in Sl. No.101 of voter list 2007 in Nayagarh Block, for which he did not claim for his engagement for such a long time. So for the lapses of the authority the person engaged should not be penalized.

In view of this I do not find any justification to debar the appellant from his legitimate claim. Hence the order passed previously under the signature of the P.D., D.R.D.A., Nayagarh is hereby confirmed. The appellant will continue as such."

19. In view of such finding of the Collector, Nayagarh, vide Order dated 06.04.2018 in Misc. Case No.18/2016, who is the competent person to appoint the Computer Programmer, being the Chairperson of the Selection Committee, which Order has attained finality, not being challenged before the appropriate forum, this Court is of the view that the impugned communication of the Opposite Party No.2 dated 24.05.2019, as at Annexure-6, being a non-speaking and non-reasoned communication, is illegal and deserves interference.

20. Accordingly, the impugned communication dated 24.05.2019 of the Joint Secretary to Government of Odisha, Panchayati Raj and Drinking Water Department, is hereby set aside and the Opposite Party No.2 is directed to accept the proposal submitted by the Project Director, DRDA, Khandapara Block in terms of his communication dated 02.08.2018, as at Annexure-5, and do the needful.

21. So far as prayer of the Petitioner for release of necessary allotment towards his remuneration, in view of the averments made in Paragraph-20 of the Counter Affidavit filed by the Opposite Party Nos. 3 and 4, vide which there is a specific averment that arrear salary of the Petitioner till the month of July to the tune of Rs.6,34,500/- has already been credited to

the account of the Petitioner, which is not controverted in the Rejoinder Affidavit filed by the Petitioner on 04.09.2022, the Opposite Party Nos. 1 and 2 are directed to pay the arrear/unpaid salary of the Petitioner beyond July, 2022 till date within a period of two months from the date of communication/production of the certified copy of this Order.

22. Accordingly, the Writ Petition stands disposed of. No Order as to costs.



*Orissa High Court, Cuttack
The 7th December, 2022/PCD*