

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 49 of 2016

Meena Suna

....

Appellant

Mr. Bhabani Sankar Das, Advocate

-versus-

***The Sub-Collector, Padampur and
others***

....

Respondents

Mr. M.K. Khuntia

Additional Government Advocate for the State

**CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

**ORDER
10.11.2022**

Order No.

04. 1. This writ appeal is directed against the judgment dated 8th December, 2015 passed by the learned Single Judge in W.P.(C) No.17910 of 2010, setting aside an order dated 5th November, 2009 passed by the Sub-Collector, Padampur which allowed the appeal filed by the present Appellant thereby setting aside the selection of Respondent No.5 (the writ Petitioner) as Anganwadi Worker (AWW) for the Brahmanipalli Anganwadi Center (AWC).
2. On 8th February, 2016 while issuing notice in the present writ appeal, this Court directed status quo to be maintained by the parties. The Court has been informed that the present Appellant has been continuing as AWW at the above mentioned AWC till date.

3. It must be noted at the outset that despite service of notice upon Respondent No.5, none has appeared on her behalf.

4. The background facts are that the Child Development Project Officer (CDPO), Bijepur invited applications for appointment of 15 AWWs at various AWCs of Bijepur ICDS by an Advertisement dated 8th September, 2008. The Brahmanipali AWC was one among the 15 Centers. The last date for receipt of applications was 23rd September, 2008. The date of verification of the application forms was 24th September, 2008.

5. On that date of verification, it was found that the mark sheet of the present Appellant was not attached with her application. According to her, this was intentionally pulled out by someone. Since the mark sheet was not there with the application, the Appellant submitted a Xerox attested copy of her mark sheet to the CDPO, Bijepur. He, however, did not accept it. Since the Appellant belongs to the 'GANDA' caste, i.e., the Scheduled Caste community, the Appellant would have got 10% additional marks in addition to the mark secured by her in the Matriculation examination as per the guidelines dated 2nd May, 2007 prescribed for appointment of AWWs.

6. On 25th September, 2008 the CDPO, Bijepur published a notice inviting objections regarding residence, education qualification, caste etc., to be submitted by 3rd October, 2008. The Appellant submitted her mark sheet on 3rd October, 2008 along with an application which was received by a Lady Supervisor. On 22nd

October, 2008 the CDPO, Bijepur and the Chairman of the Selection Committee rejected the Appellant's application.

7. The Appellant then filed a petition before the Additional District Magistrate (ADM), Bargarh which was sent to the BDO, Bijepur for taking necessary action. On 25th October, 2008 during selection of AWW for Brahmanipali AWC, the BDO, Bijepur submitted a note with his signature on the final selection list stating 'Chairman of the selection committee and CDPO is requested to seek clarification regarding the grievance petition before issuing appointment order'. Nevertheless, the CDPO, Bijepur issued the appointment order in favour of Respondent No.5.

8. Aggrieved by the above selection of Respondent No.5, the Appellant filed an appeal before the Sub-Collector, Padampur being Case No.2 of 2009.

9. The Sub-Collector, Padampur found that the selection committee ought to have sought a clarification in terms of the opinion of the BDO, Bijepur. It was opined that the mark sheet received on 3rd October, 2008 ought to have been included with the application of the Appellant. There was an absence of clear guidelines to redress such problems and the selection committee should not have acted rigidly. Accordingly, the appeal was allowed by the order dated 5th November, 2009 of the Sub-Collector, Padampur.

10. Aggrieved by the order of the Sub-Collector, W.P.(C) No.17910 of 2010 was filed by Respondent No.5 in this Court. The learned

Single Judge posed the question whether the entire selection process could have been stalled only because one of its members, viz., the BDO sought a clarification from the CDPO? The learned Single Judge answered the question in the negative. It was held as under:

“The B.D.O being a member of the Selection Committee cannot take different decision from the decision taken by the Selection Committee because of the reason that if anything is to be decided by the Committee the decision of individual member of the Committee will not prevail over and above the decision of the Selection Committee who has already rejected the candidature of the opposite party no.5 on the ground of non-submission of application Form as required in the guideline and in the advertisement.”

11. It was further held that:

“There is no dispute that selection process cannot be stalled if once is being started and the selection process can only be stalled if there is any infirmity in the process of selection but rejecting the candidature of any candidate it cannot be said to be an illegal procedure if a candidate is herself at fault.”

12. Accordingly, the order dated 5th November, 2009 passed by the Sub-Collector, Padampur was set aside. It may be noted here that the Sub-Collector had asked the CDPO to go in for a fresh selection of AWWs after giving opportunity to all the candidates.

13. This Court has heard the submissions of Mr. Bhabani Sankar Das, learned counsel appearing for the Appellant and Mr. M.K. Khuntia, learned Additional Government Advocate for the State.

14. In the present case, it is seen that the advertisement itself did not mandate that the mark sheet should be enclosed with the application form. The qualification criterion was 'Matric Pass'. The guidelines dated 2nd May, 2007 do not hold that non-submission of mark sheet along with the application form would disqualify the candidate altogether particularly, when it was not one of the mandatory documents required to be enclosed with the application form. In the present case, while the applicant did not enclose the mark sheet by the last date for submission of the application, i.e., 24th September, 2008, she did submit it on 3rd October, 2008. The BDO had posed a relevant query to the CDPO whether the said mark sheet could be accepted? While the matriculation certificate and residence certificate etc. were mandatorily required, there was no such language used as regards submission of the mark sheet. Indeed, the Selection Committee ought to have addressed this issue before proceeding to select Respondent No.5. The prejudice to the Appellant was grave since she belonged to the SC community and if 10% marks were added on that score, she would definitely be selected.

15. The Court is therefore unable to agree with the learned Single Judge that the order dated 5th November, 2009 of the Sub-Collector, Padampur suffered from any legal infirmity and was required to be interfered with. Accordingly, the impugned judgment of the learned Single Judge is hereby set aside. The order dated 5th November, 2009 of the Sub-Collector, Padampur is restored to file.

16. The writ appeal is allowed in the above terms.

17. An urgent copy of this order be issued as per Rules.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S. Behera

