

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.233 of 2016

In the matter of an application under Section 19 of the
Administrative Tribunal's Act, 1985.

.....

Smrutiranjana Mishra

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

For Petitioner : M/s. Umakanta Sahoo and
Dr. Goura Gopal Mohanty

For Opp. Parties : Standing Counsel
Mr. N.K. Praharaj

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 31.03.2022 and Date of Order: 20.04.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. Umakanta Sahoo, learned counsel for the Petitioner and Mr. N.K. Praharaj, learned Standing Counsel for the Opposite Parties.
3. This writ Petition has been filed with a prayer to quash the appointment of Opp. Party No.5 so issued under Annexure-9 and to appoint the

Petitioner in his place and with a further prayer to direct the Respondent No.2 to provide appointment to the Petitioner as Multipurpose Health Worker (Male). It is submitted by Mr. Sahoo, learned counsel for the Petitioner that pursuant to the advertisement issued by the Opp. Party No.2 on 10.08.2012 under Annexure-1 for the post of MPHWM on contractual basis, the Petitioner not only made his application but also his application was accepted by the said Opp. Party while publishing the provisional list for the said post on 18.09.2012.

4. It is also argued that the Petitioner vide letter dtd.27.11.2012 under Annexure-5 was requested to appear before the Committee on 03.12.2012 for verification his certificates and documents. It is submitted that pursuant to the said letter under Annexure-5, the Petitioner appeared before the Committee on 03.12.2012 and got his documents verified.

5. Mr. Sahoo further submitted that after such verification, when persons similarly placed were issued with the order of appointment on different dates starting from 22.01.2013 vide annexures-7 to 9, the Petitioner was left out of the same. It is also submitted that the Petitioner on verification when came to know that vide order dtd.27.05.2014, the Petitioner has been provided with the appointment, he submitted his joining report before the Medical Officer, CHC, Madhyakhanda on 28.05.2014 under Annexure-10. It is submitted that his joining was not accepted by the concerned Medical Officer in absence of the order of appointment issued in favour of the Petitioner.

6. Since the Petitioner was illegally deprived from joining in his post even though he was duly selected & appointed, the Petitioner moved the Director of Health and Family Welfare and Collector, Nayagarh on different dates and lastly on 14.10.2015. It is submitted that as no action was taken in considering his genuine grievance he filed the present writ Petition. Accordingly, Mr. Sahoo prayed for interference of this Court in the matter.

7. Mr. Balabantaray, learned counsel for the State-Opp. Parties relying on the stand taken in the counter affidavit filed by Opp. Party No.2 argued that since the Petitioner pursuant to the initial order issued on 06.07.2013 under Annexure-A and subsequent order issued on 27.05.2014 under Annexure-B never joined in his post, his prayer as made in the writ Petition is not maintainable. Accordingly, Mr. Balabantaray requested this Court not to interfere with the prayer made in the writ Petition.

8. Having heard learned counsel for the Parties at length, this Court found that after filing of the counter affidavit, this Court vide order dtd.07.09.2021 passed the following order:-

- “1. This matter is taken up through hybrid mode.*
- 2. Heard Mr. Umakanta Sahoo, learned counsel for the petitioner, Mr. H.K. Panigrahi, learned Addl. Standing Counsel for the State and Mr. M.K. Dash, learned counsel for Opposite Party No.4.*
- 3. Mr. M.K. Dash, learned counsel for opposite party no.4 that though offer of appointment has been given to the petitioner he has not carried out the same by joining at the place of posting, as he is rendering service in Sum Hospital, Bhubaneswar.*
- 4. Mr. Sahoo, learned counsel for the petitioner disputes such position stating that the petitioner received appointment letter only when he sought for information under RTI Act, 2005 and pursuant to the same when the petitioner went to join in his place of posting he was not allowed.*
- 5. Mr. H.K. Panigrahi, learned Addl. Standing Counsel for the State is directed to obtain instructions as to why there was delay in issuance of appointment letter in favour of the petitioner.*
- 6. Call this matter after two weeks. In the meantime, instructions shall be obtained.”*

9. Pursuant to the said order of this Court dtd.07.09.2021, when a compliance affidavit was filed by the Opp. Party No.2, this Court vide order dtd.03.12.2021 passed the following order:-

“1. This matter is taken up through hybrid mode.

2. Heard.

3. In compliance to the order dated 07.09.2021, counter affidavit has been filed by opposite party no.2 and in paragraph-3 of thereof, it has been stated as follows:-

“That, so far as the instruction sought for by the Hon’ble Court in the order dated 7.9.2021, it is humbly submitted that as per Office Order No.2862 dated 6.7.2013, the petitioner was given engagement as MPHWS (M) on schematic basis under the project called national Vector Borne Disease Control Programme (NVBDCP). Subsequently he was given appointment on contractual basis under the General Health Care System as MPHWS (M) against a regular post and accordingly a contractual appointment order was issued to him vide Office Order No.3431 dated 27.5.2014. The petitioner has chosen not to join as per the said appointment orders dated 6.7.2013 and 27.5.2014.”

4. Mr. U.K. Sahoo, learned counsel for the petitioner contended that on perusal of such paragraph, the mode of dispatch of letter has not been reflected and to cover up the lacuna of the opposite parties, such stand has been taken in the counter affidavit.

5. In that view of the matter, Mr. M. Balabantaray, learned Standing Counsel called upon to produce the materials to indicate the mode of service of the appointment letter on the petitioner.

6. Call this matter two weeks after.”

10. Pursuant to the order passed by this Court dtd.03.12.2021, a further affidavit was filed by the Opp. Party No.2. In the said affidavit and more particularly in Para 3, Opp. Party No.2 stated as follows:-

“It is also humbly submitted that both the orders were issued to the petitioner in ordinary post.”

11. This Court taking note of the materials available on record more particularly the stand taken by the Opp. Party No.2 that both the orders dtd.06.07.2013 as well as 27.05.2014 were issued by ordinary post, is of the considered view that Petitioner never received such orders issued on dtd.06.07.2013 under Annexure-A/2 and order dtd.27.05.2014 under Annexure-B/2.

12. Both the orders as reflected under Annexure-C/2, since were sent by ordinary post, the stand taken by the Petitioner that the said orders were never received by him cannot be disbelieved. Therefore, this Court is of the view that because of the illegal action of the Opp. Party No.2 in sending both the orders under Annexure-A/2 & B/2 by ordinary post, the Petitioner could not join in his post.

13. The fact remains that on coming to know that he has been selected vide order dtd.27.05.2014, the Petitioner though submitted his joining report before the Medical Officer, CHC, Madhyakhanda under Annexure-10, but the same was not accepted in absence of the formal order of appointed issued by Opp. Party No.2.

14. Having heard learned counsel for the Parties and taking into consideration the materials available on record, this Court is of the considered view that the Petitioner could not join in his post pursuant to order dtd.06.09.2013 and subsequent order dtd.27.05.2014, because of the illegal action of the Opp. Party No.2 in sending both the orders by ordinary post. Accordingly, while interfering with the matter and without disturbing the order of appointment issued in favour of Opp. Party No.4, this Court directs the Opp. Party No.2 to accept the joining report of the Petitioner as MPHWS (M) in terms of order issued on 27.05.2014 under Annexure-B/2 forthwith. Opp. Party No.2 is directed to act on the direction of this court on production of the certified copy of the order.

15. With the aforesaid observation and direction, the Writ Petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 20th of April, 2022/Sneha

