

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.950 of 2013

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

.....

Premanjali Behura

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.J.K.Mohapatra.

For Opp. Parties : Standing Counsel
Mr. N.K.Praharaj.
Mr. Achary
Adv. for Opp.Party No.4.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

संक्षिप्त न्याय

Date of Hearing:11.05.2022 and Date of Order:13.07.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. J.K.Mohapatra, learned counsel for the Petitioner, Mr. Praharaj, learned Standing Counsel for the State-Opposite Parties and Mr. Achary, learned counsel appearing for private Opposite Party No.4.
3. The Petitioner filed the Present Writ Petition with the following prayer:-

- (i) Quash the order of appointment under Annexure-7 in respect of Respondent No.4.
- (ii) Direct the Respondents to absorb the Applicant in the post of Vocational Counselor in the created post under Annexure-5 from the date, the Respondent No.4 has been selected and absorbed under Annexure-7.
- (iii) Direct the Respondents not to absorb the Respondent No.3 in the post of Vocational Counselor in terms of the Annexure-5.
- (iv) And / or to pass such order / orders as this Hon'ble Tribunal deems just equitable and proper in the facts and circumstances of the present case".

4. It is submitted that pursuant to the advertisement issued on 21.05.2001 under Annexure-1 to fill up different posts on contractual basis by the Opposite Party No.2, the Petitioner as well as Opposite Party No.4 duly participated in the said interview for the post of Vocational Counselor.

5. It is submitted that though the prescribed qualification for the post of Vocational Counselor was indicated as graduate with P.G. Diploma in Social Sciences from Tata Institute of Social Sciences, but the Opposite Party No.2 initially appointed Opposite Party No.4 as a contractual Vocational Counselor w.e.f. 25.05.2001 basing on the decision of the selection board held in its proceeding dated 25.05.2001. The Petitioner was subsequently engaged vide order dated 01.03.2002 under Annexure-3.

6. It is submitted that while continuing as a contractual Vocational Counselor, Government-Opposite Party No.1 vide its communication dated 25.10.2012 was pleased to create 41 nos. of posts in the establishment of Director,

Regional Spinal, Injury Centre, S.C.B., Medical College & Hospital Campus, Cuttack and in the said communication, one post of Vocational Counselor was created on regular basis. In the said communication dated 25.10.2012 under Annexure-5, it was clearly indicated that the post are to be filled up in a transparent manner by following the relevant recruitment rules/procedure and the provisions of ORV Act whenever applicable. It is also indicated in the said communication that the post so created except the post of Ward Attendant shall be filled up by following the relevant criteria and regularization of the Government.

7. Mr. Mohapatray, learned counsel for the Petitioner submitted that on the face of the stipulation contained in the communication dated 25.10.2012 under Annexure-5 when the Opposite Party No.2 proceeded to fill up the post of Vocational Counselor by appointing Opposite Party No.5 on regular basis, the Petitioner challenging such action of the Opposite Party No.2 approached the learned Tribunal in O.A. No.347(C) of 2013. Learned Tribunal vide order dated 29.01.2013 under Annexure-6 disposed of the said O.A. with the order that no recruitment shall be taken in contravention of Para-3 of the order dated 25.10.2012 taking into account the submission of the learned State Counsel.

8. It is submitted that in spite of the stipulation contained in Annexure-5 and the order passed by the learned Tribunal under Annexure-6, the Opposite Party No.2 when appointed Opposite Party No.4 as against the regular post of Vocational Counselor vide order dated

02.04.2013 under Annexure-7, the present writ petition was filed with the aforesaid prayer.

9. It is submitted that the said Opposite Party No.4 since does not possess the prescribed qualification as indicated in Annexure-1, she should not have been engaged either as a contractual Vocational Counselor or subsequently as a regular appointee as against the said post vide order under Annexure-7. Accordingly, it is submitted that either the order issued in favour of Opposite Party No.4 be quashed or the Petitioner be absorbed in the regular post from the date the said Opposite Party No.4 was appointed.

10. Mr. Praharaj, learned Standing Counsel for the State made his submission relying on the stand taken in the counter. In the counter affidavit filed by Opposite Party No.2, a stand was taken that the Opposite Party No.4 since possesses the required qualification, she was duly selected as a contractual Vocational Counselor basing on the selection made pursuant to Annexure-1 and subsequently she was regularly appointed vide order under Annexure-7.

11. It is further submitted that since the Opposite Party No.4 so possessed the required qualification no illegality has been committed by the Opposite Party No.2 either by appointing her as a contractual Vocational Counselor w.e.f. 25.05.2001 or by regularly appointing her as against the said post vide order dated 07.04.2013 under Annexure-7. Accordingly, it is prayed that the prayer made by the Petitioner is not entertainable and liable to be rejected.

12. Mr. Achary, learned counsel appearing for the Private Opposite Party No.4 also made his submission basing on

the counter filed by her. It is submitted that since the Opposite Party No.4 possesses the required qualification, she was duly appointed as a contractual Vocational Counselor in the year 2001 and was regularly appointed as against the said post vide order under Annexure-7.

13. It is also submitted that since the present petitioner was appointed as a contractual Vocational Counselor subsequent to the Opposite Party No.4, the Petitioner has no right as against the regular post created vide order dated 25.10.2012 under Annexure-5. But the Opposite Party No.4 in her counter never enclosed any document showing that she possesses the required qualification as indicated in Annexure-1 i.e. P.G. Diploma in Social Science from Tata Institute of Social Sciences.

14. A rejoinder was also filed to the counter filed by the Opposite Party No.2 by the Petitioner. In the said rejoinder the information provided by the Tata Institute of Social Sciences under the RTI was annexed as Annexure-8. In the said information it was clearly indicated that the qualification possessed by the Opposite Party No.4 i.e. certificate in Rehabilitation Counseling, enclosed to the counter filed by Opposite Party No.2, is not equivalent to the qualification of P.G. Diploma. Neither the Opposite Party No.2 nor the Opposite Party No.4 filed any documents disputing the information so annexed vide Annexure-8. On being confronted by this Court with the said fact, Mr.Achary, learned counsel appearing for the Opposite Party No.4 as well as learned State Counsel appearing for the Opposite Party No.2, failed to show any documents disputing the information annexed vide Annexure-8.

15. Since in the information provided by the Tata Institute of Social Sciences under Annexure-8, it has been clearly indicated that the qualification possessed by the Opposite Party No.4 is not equivalent to P.G. Diploma, which is the prescribed qualification for such appointment as Vocational Counselor as indicated in Annexure-1, the very engagement of the Opposite Party No.1 as a contractual Vocational Counselor pursuant to Annexure-1 and subsequent absorption in the regular post vide order dated 02.04.2013 under Annexure-7 as per the considered view of this Court is not legal and proper. But the fact remain that the Petitioner as revealed from the document annexed as Annexure-2-Series possess the higher qualification and experience than that of the Opposite Party No.4.

16. Since the Opposite Party No.4 does not possess the required qualification, her appointment as against the regular post of Vocational Counselor so issued vide order dated 02.04.2013 under Annexure-7 is held to be illegal and accordingly set aside. While setting aside the same, the Opposite Party No.2 is directed to take a fresh decision on the same taking into account the qualification possessed by the Petitioner vis-à-vis Opposite Party No.4. The entire exercise shall be completed within a period of three months from the date of receipt of this order.

17. With the aforesaid observations and directions, the WPC(OAC) stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 13th of July, 2022/Subrat