

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No.11212 of 2012

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

Smt. Sukanti Jena,
W/o Suratha Kar, AT: Pakamundi,
PO: Badas, Via: Pratappur,
Dist: Balasore

... Petitioner

-Versus-

State of Odisha & others

... Opp. Parties

For Petitioner : M/s. S.S.Patra, G.M.Padhi,
B.K.Sahoo & S.K.Mishra

For Opp. Parties : Mr.Somanath Mishra,
Additional Government Advocate

P R E S E N T:

THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA

Date of Judgment: 21.12.2012

B.N. Mahapatra, J. This writ petition has been filed with a prayer for issuance of a direction to opposite party No.3-Sub-Collector, Balasore and opposite party No.4-Child Development Project Officer (CDPO), Baliapal, Dist: Balasore to issue order of engagement as Anganwadi Worker in favour of the petitioner within a stipulated period.

2. Case of the petitioner in a nutshell is that the petitioner along with four others including one Sasmita Behera applied to be engaged as Anganwadi Worker in Pakamundi-II Anganwadi Centre, under Baliapal ICDS Project in the district of Balasore pursuant to

Advertisement dated 21.01.2010. On 25th March, 2010, CDPO, Baliapal published Select List (Annexure-1) of five candidates in which Sasmita Behera was declared selected as Anganwadi Worker in the Anganwadi Centre in question whereas the petitioner secured second highest mark in that selection. Accordingly, letter of engagement dated 27.03.2010 was issued by opposite party No.4 in favour of Sasmita Behera. Pursuant to the said engagement letter, Sasmita Behera joined in the post of Anganwadi Worker and continued as such. In the meantime, petitioner came to know that Sasmita Behera was undergoing CT training in Government Secondary Training School, Langaleswar, in the district of Balasore as regular candidate. She did not take permission from the competent authority at the time of filing her application pursuant to advertisement dated 21.01.2010 to be engaged as Anganwadi Worker. Further, she has attended CT training without any absence. In support of her contention, the petitioner attached a copy of letter No.74 dated 23.07.2010 issued by Government C.T. School, Langeleswar, Balasore to the writ petition as Annexure-2. Petitioner has also obtained copy of the attendance register under the R.T.I. Act. The above fact was communicated to opposite party No.4 by way of filing representation with request to disengage Sasmita Behera and to give engagement to the petitioner as Anganwadi Worker as she has secured second highest mark. Since opposite party Nos. 3 and 4 did not interfere with the matter, the petitioner filed Misc. Appeal No.69 of 2010 before the Additional District Magistrate, Balasore in April, 2010 with a prayer to disengage Sasmita Behera and to engage the

petitioner. Since the Appeal was not disposed of till October, 2010, petitioner approached this Court in W.P. (C) No.18363 of 2010, which was disposed of on 08.11.2010 with a direction to opposite party No.2-Additional District Magistrate, Balasore to dispose of the Appeal within a period of two months. Pursuant to said order of this Court, opposite party No.2-ADM disposed of the Appeal on 04.08.2011 after perusing the record maintained by opposite party No.4-CDPO, Baliapal by disengaging Sasmita Behera and remanding the case to Selection Committee for taking further course of action as per Government Guidelines. Since Selection Committee did not take any action as directed by the ADM and did not issue order of engagement in favour of the petitioner despite several approaches, petitioner filed the present Writ Petition.

3. Mr. S. Patra, learned counsel for the petitioner submitted that the petitioner having secured second highest mark in the selection, the Selection Committee should have issued engagement order in favour of the petitioner. The welfare Scheme of the Government is not properly implemented due to inaction of opposite parties without any rhyme or reason. Petitioner is deprived of her legitimate right. Learned counsel Mr.Patra in support of his case, placed reliance on the judgment of this Court in *Renubala Jena Vs. State of Orissa & 3 Ors.*, 2008 (II) CLR 556.

4. Mr.Somanatha Mishra, learned Additional Government Advocate appearing for State-opposite parties submitted that the Selection Committee in case of disengagement of Anganwadi Worker has to go for fresh selection in which the petitioner may participate.

5. On the rival contentions advanced by the parties, the following questions fall for consideration by this Court:

- (i) Whether in view of disengagement of Smt. Sasmita Behera the petitioner is entitled to be issued with the order of engagement as Anganwadi Worker in Pakamundi-II Anganwadi Centre, under Baliapal ICDS Project in the district of Balasore having secured second highest mark in the selection process?
- (ii) Whether pursuant to disengagement of Smt. Sasmita Behera as the Anganwadi Worker, the CDPO, Baliapal shall go for a fresh advertisement inviting applications from the intending candidates to be engaged as Anganwadi Worker in the Anganwadi Centre in question?

6. Since both the questions are interlinked, they are dealt with together.

Undisputed facts are that pursuant to Advertisement dated 21.01.2010 inviting applications from the eligible candidates to be engaged as Anganwadi Worker in Pakamundi-II Anganwadi Centre, under Baliapal ICDS Project in the district of Balasore, petitioner along with four others, including Sasmita Behera, applied for the same and the Selection Committee prepared the Select list and as per the said list Sasmita Behera secured highest mark and the petitioner Sukanti Jena secured second highest mark. The Additional District Magistrate, Balasore, after hearing the Advocate for the appellant-Sukanti Jena, CDPO, Baliapal and A.G.P. and perusing the documents available on record from which it reveals that the CDPO has issued disengagement letter to respondent No.3-Sasmita Behera, who did not appear before the

ADM, Balasore, passed order dated 04.08.2011 in Anganwadi Appeal No. 69 of 2010 by remanding the matter to Selection Committee for taking further action as per the Government Guidelines.

7. For better appreciation, relevant portion of the order of the ADM, Balasore dated 04.08.11 passed in Anganwadi Appeal No.69 of 2010 is extracted hereunder:-

“Heard Learned Advocate for Appellant, C.D.P.O., Baliapal and A.G.P. Respondent no.3 did not appear court to participate in hearing of the case.

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The C.D.P.O., Baliapal has submitted written statement and stated that the Respondent No.3 been disengaged with effect from 31.3.11.

Perused the record as well as documents available on the record. It is revealed that the C.D.P.O., Baliapal has issued disengagement letter to the Respondent no.3. The Respondent no.3 neither appear in the court not submitted any reply.

In view of the above, the case is remanded to the Selection Committee for taking further course action as per Government Guidelines.”

8. At this juncture, it is necessary to know what is provided in the revised Government Guidelines dated 02.05.2007 issued by Commissioner-cum-Secretary to Government, Women & Child Development Department, Government of Odisha, with regard to disengagement of Anganwadi Workers. The relevant portion of said Guidelines is reproduced hereunder for ready reference.

“IV. Disengagement of Anganwadi Workers:-

- A candidate once selected and engaged to work as Anganwadi worker will ordinarily continue to work till satisfactory discharge of duties;
- An Anganwadi worker can be disengaged by the Sub-Collector if any serious or persistent lapse

is noticed in her work. The Anganwadi Worker will be given an opportunity to show cause against the action proposed to be taken against her and personal hearing by the Sub-Collector.

- If any Anganwadi Worker is elected as a representative of any local body, she shall be disengaged immediately and the vacancy shall be filled up forthwith.
- Every year Sub-Collector will review the functioning of Anganwadi Workers who are 55 years or more than 55 years of age. Anganwadi Worker who is not able to discharge the duties satisfactorily will be disengaged after being given due opportunity of being heard.

Collector shall be the appellate authority in the hearing of disengagement of Anganwadi Worker.”

9. In the instant case, while Sasmita Behera was undergoing C.T. training, she made an application pursuant to Advertisement dated 21.01.2010 to be engaged as Anganwadi Worker in the Anganwadi Centre in question and also attended the C.T. training regularly, for which she has been disengaged. Therefore, on disengagement of Sasmita Behera as per Guidelines the vacancy should be filled up immediately. The order of A.D.M. does not show that any appeal or petition has been filed before any higher Forum by smt. Sasmita Behera challenging her order of disengagement with effect from 31.03.2011. On disengagement of Sasmita Behera right accrues in favour of Sukanti Jena, the petitioner, who has secured second highest mark in the selection, held for giving engagement as Anganwadi Worker in the Anganwadi Centre in question.

10. This Court in the case of Renubala Jena (supra) held as follows:-

“21. In view of the above, in an appropriate case as the other persons were satisfied with the

result of the selection process though may be manipulated, and did not approach the Court or any other Forum, the matter could have been restricted between the appellant and Respondent No.4. However, in view of the fact that the entire selection process stood vitiated because of the manipulation, such an order cannot be issued and all the four candidates who were called for the interview should be recalled again and fresh selection may be held from the stage of interview and the same should be completed within a period of six weeks from the date of production of certified copy of this order before the learned District Collector, Bhadrak.”

11. In view of the above, there is no question of issuing fresh advertisement inviting applications for giving engagement in the Anganwadi Centre in question. The selection now is confined to remaining four candidates, as engagement of Sasmita Behera has been held invalid and order of disengagement has been issued to her. Among the remaining four candidates, as per the Select List, petitioner-Sukanti Jena has secured the second highest mark and the rest three candidates have not challenged the Select List prepared by the Selection Committee. Therefore, in the present case, petitioner is entitled to be issued with the order of engagement as Anganwadi Worker in Pakamundi-II Anganwadi Centre, under Baliapal ICDS Project in the district of Balasore.

12. In view of the above, this Court directs opposite party No.4- CDPO to issue the order of engagement to the petitioner as Anganwadi Worker within two weeks from the date of production of certified copy of this judgment.

13. Before parting with the case, this Court observes that for the upliftment and welfare of the children, women and downtrodden section

of the society Government both in Centre and State have been taking various welfare measures and have been spending huge amount for the said purpose. If the said welfare Scheme/Project will not be implemented in letter and spirit, the very purpose of achieving the avowed goal shall be frustrated. Therefore, the State Government should take necessary steps to ensure that the beneficial statutes/Schemes should be implemented in its proper perspective.

14. In the result, the Writ Petition is allowed with the aforesaid observation and direction.

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B.N. Mahapatra,J.

Orissa High Court, Cuttack
The 21st December, 2012/ss.