

ORISSA HIGH COURT: CUTTACK

WRIT APPEAL No. 118 OF 2012

In the matter of an appeal under Article 4 of the Orissa High Court Order, 1948 read with Clause 10 of the Letter Patent Constituting the High Court of Judicature at Patna.

Pankajini Panda

..... Appellant

- versus -

State of Orissa and others

..... Respondents

For Appellant : M/s. A.R. Dash, S.K. Nanda-1,
B. Mohapatra, S.N. Sahoo, K.S. Sahoo,
L.D. Achari.

For Respondents: Mr. J.P. Pattnaik,
Addl. Government Advocate
(For Res.Nos.1 to 3)
M/s. S.K. Pattnaik, U.C. Mohanty, P.K.
Pattnaik, D. Pattnaik, S.P. Das,
(for Res. No.4)

P R E S E N T :

**THE HONOURABLE THE CHIEF JUSTICE SHRI AMITAVA ROY
AND**

THE HONOURABLE DR. JUSTICE B.R.SARANGI

Date of hearing: 20.08.2014 : Date of Judgment: 26.08.2014

Dr. B.R.Sarangi, J. Opposite party no.4 in W.P.(C) No. 22259 of 2010 being the appellant has filed the instant appeal challenging the order dated 02.03.2012 passed by the learned Single Judge, quashing the order dated 18.10.2010 passed by Sub-Collector, Khurda in Misc. Appeal No.9 of 2010 as not sustainable.

2. Respondent no.3- the Child Development Project Officer, Chilika I.C.D.S. Project issued notification No. 108 dated 11.02.1999 inviting applications from eligible candidates for appointment as Anganwadi Worker in respect of Baulabandha-4 Anganwadi Centre. As per the guidelines, the women candidates having minimum qualification of Matriculation and residing in the same village/Anganwadi Centre area alone would be eligible for such engagement. The appellant along with respondent no.4 and other applicants totaling eleven in all, submitted their applications and the selection was done on the basis of the marks secured in the Matriculation Examination. As per the advertisement, the candidates were required to produce their original certificates for scrutiny on 27.02.2009. But subsequently, the said date was shifted. Ultimately, the date of scrutiny was fixed to 30.11.2009 and it was found that the appellant had not submitted her mark-sheet of 10th class examination, instead she had enclosed the mark-sheet of her husband- Sri Bibhuti Bhusan Rath. So far as other applicants are concerned, one Smita Janhabi Nanda withdrew her candidature and the cases of six applicants were rejected as they belonged to area outside the Baulabandha-4 Anganwadi Centre area. Therefore, the cases of only three candidates were taken into consideration on the basis of their residential eligibility. However, since the appellant had not submitted her matriculation mark sheet, she was not eligible for consideration. Thus, only two applications were considered and the selection committee selected respondent no.4 as she secured highest total marks

of 46.6% as against the other valid candidate, Smt. Reena Behera, who secured 37.8% of marks. Consequent, engagement order was issued on 11.01.2010 in favour of respondent no.4 as Anganwadi worker in respect of Baulabandha-4 Anganwadi Centre. The present appellant preferred Misc. Appeal No. 9 of 2010 before the Sub-Collector, Khurdha challenging the selection of respondent no.4 as Anganwadi worker in respect of concerned center. After giving due opportunity of hearing, the Sub-Collector, Khurdha held that if at all the appellant had not submitted her mark sheet at the time of scrutiny, her name could not have been reflected in the scrutiny list. So it is clear that some mischief has been made to remove her mark sheet from the concerned selection file but she produced the original marks sheet from which it was found that she had secured 323 marks which is more than the marks secured by respondent no.4. Therefore, the Sub-Collector, Khurda allowed the appeal, cancelled the selection of respondent no.4 vide order dated 18.10.2010 under Annexure-13 in respect of Baulabandha-4 Anganwadi Centre and directed the C.D.P.O., Chilika to disengage her after observing due formalities and appoint another Anganwadi worker as per the Government guideline. Challenging the said appellate order, respondent no.4 preferred the writ petition and after hearing the learned counsel for the parties and going through the records, learned Single Judge quashed the order dated 18.10.2010 passed by the Sub-Collector, Khurdha in Misc. Appeal No. 9 of 2010 as not sustainable and allowed the writ petition, against which the present appeal has been

preferred by the present appellant, opposite party no.4 in the writ petition.

3. Mr. A.R. Dash, learned counsel for the appellant strenuously urged that the learned Single Judge without considering the discussion made by respondent no.2 in his order dated 18.10.2010 in Misc. Appeal No. 9 of 2010 and ignoring the most relevant documents, quashed the order of engagement issued. It is urged that the document vide Annexure-D dated 04.12.2009 filed by respondent no.4 had not been taken into consideration by the learned Single Judge. Relying upon the documents vide Annexure-B dated 07.01.2010, the impugned order had been passed. Therefore, it is urged that had the documents under Annexure-D been considered by the learned Single Judge then would not have passed the impugned order.

4. Mr. J.P. Pattnaik, learned Addl. Government Advocate for the State submitted that the records of the selection procedure of Anganwadi worker had been called for by the learned Single Judge and on perusing the materials available on record and after hearing the learned counsel for the parties, he passed the impugned order. He further submitted that the allegation of non-availability of Annexure-D on record is not correct and all the documents were available on record itself and on perusing the same, the impugned order has been passed and therefore, no illegality or irregularity has been committed by the

learned Single Judge while disposing of the writ petition on the basis of the materials available on record.

5. Mr. S.K. Pattnaik, learned Senior Counsel appearing for respondent no.4 submitted that the selection committee comprising of Child Development Project Officer, Chilika, I.C.D.S. Project, Medical Officer-in-charge, CHC-II, Balugaon, Block Development Officer, Chilika and Vice Chairman, Chilika Block found at the time of selection that the appellant had not submitted her mark sheet of HSC/Class-X examination instead she had submitted the mark sheet of her husband-Sri Bibhuti Bhusan Rath and for that reason her case was not considered for selection. To substantiate the said fact, he had referred to application form (Annexure-A), wherein an endorsement has been made that "not submitted mark-sheet. She had submitted her husband's mark-sheet". In the check-sheet of the ten applicants prepared by the selection committee held on 07.01.2010, vide Annexure-B, percentage of marks secured in H.S.C. examination was not entered in Column-8 against the name of the appellant at Sl. No.4 and in the remarks Column-17 also it is mentioned as "Class-X marks-sheet not submitted". In Annexure-C, the selection committee has recorded the following observation in its proceedings dated 07.01.2010:

"Pankajini Panda, wife of Bibhuti Bhusan Rath had not submitted her matriculation mark-sheet, but she had submitted the Xerox copy of the matriculation mark-sheet of her husband. So no marks could be awarded to her by the Selection Committee".

Therefore, there is no question of any manipulation of records of the selection and after verifying the records of the selection committee, learned Single Judge upheld the selection process and set aside the order dated 18.10.2010 passed by Sub-Collector, Khurdha in Misc. Appeal No.9 of 2010.

6. Considering the above pleadings of the parties and after hearing the learned counsel for the parties and perusing the records, it appears that the appellant is one of the applicants, who submitted her application form for selection to the post of Anganwadi worker in respect Baulabandha-4 Anganwadi Centre. The Selection Committee, which has been constituted in accordance with the guidelines, scrutinized the application forms of eleven candidates out of which it appears that six candidates were found to have not satisfied the conditions of being resident of the locality which is as per the check list dated 07.01.2010 in Annexure- C.

7. It is urged by Mr. A.R. Dash, learned counsel for the appellant that the learned Single Judge could not have come to such finding, which is absolutely misconceived one, in view of the fact that the said document contains the name of Panchyat, name of the Addl. Anganwadi Center, name of Village, name and address of applicant, Educational Qualification, permanent resident, caste and remarks would have been provided in the application form submitted by the respective candidates. The appellant had stated specifically that she had passed +3 Examination. But as it appears from the document in Annexure-E, the

mark-sheet of three years degree course examination issued by Utkal University in favour of the appellant, obtained by the respondent no.4 under the Right to Information Act, the appellant had failed in the said examination. But Annexure-B, which relates to the scrutiny of documents for selection of Anganwadi worker under third phase examination in respect of Mandiameru Sahi (Baulabandha-4) Anganwadi Centre of Baulabandha Gram Panchyat the petitioner is shown as +3 pass. In the application form under Annexure-A, the appellant has mentioned that she has passed +3 Examination in the year 2001 and has secured 753 marks out of total marks of 1600, i.e. 49%. Once the appellant has failed in +3 Examination, the marks obtained in the said examination should not have been taken into consideration while making scrutiny of the documents. The basic qualification prescribed in the advertisement was Matriculation. The said document has not been produced by the appellant rather the appellant had produced the Matriculation mark sheet of her husband which was filed along with her application, as observed by the Selection Committee. So far as the claim with regard to awarding of marks as physical handicapped category is concerned no extra mark has been awarded to the respondent no.4 and learned Single Judge has come to such finding in paragraph-11 of the impugned order. Thus, the authorities are justified in rejecting the application of the appellant for non-submission of the mark sheet of matriculation examination. Further, with regard to the allegation of substitution of any mark sheet by any outsider, we are of the view that

when there is no material available on record, no presumption can be drawn on mere allegation.

8. For the foregoing discussions, the writ appeal fails and is dismissed.

Amitava Roy, C.J. I agree.

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Dr. B.R.Sarangi, J.

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Amitava Roy, C.J.

Orissa High Court, Cuttack
The 26th August, 2014/**PKSahoo**