

A

CHARULATA BEHERA

v.

PRAVATI PARIDA & ORS.

(Civil Appeal No. 1322 of 2015)

B

JANUARY 30, 2015

**[ANIL R. DAVE AND SHIVA KIRTI SINGH, JJ.]**

*Service Law:*

C

*Appointment – As Anganwadi Worker – Of the appellant – Set aside by appellate authority vide order dated 26.12.2009 – High court in the writ petition filed by respondent No. 1 passed direction to implement the order dated 26.12.2009 – Writ petition challenging the decision of*

D

*Selection Committee dismissed on the ground that there was no illegality in the selection process of the appellant – Writ appeal – Appointment of appellant set aside on the ground that the order dated 26.12.2009 was not complied with – As a result respondent No. 1 appointed – On appeal, held: The*

E

*High Court order was passed without looking into the relevant facts – Jurisdiction u/Art. 226 should not be exercised on mere technicalities especially if the result of such exercise amounted to perpetuation of illegality – Appointment of respondent No. 1 was illegal as she did not have the eligibility*

F

*qualification for appointment to the post – Appellant's appointment revived – Constitution of India, 1950 – Art. 226.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No(s). 1322 of 2015.

G

From the judgment and Order dated 18.07.2011 of the High Court of Orissa at Cuttack in W. A. No. 430 of 2010.

Shwetaketu Mishra, S. K. Das (For V. K. Monga) for the Appellant.

H

Avijit Patnaik, S. Mohanty (For Amarjit Singh Bedi),  
shibashish Misra for the Respondents. A

The Judgment of the Court was delivered by.

**SHIVA KIRTI SINGH, J.** 1. Heard the parties. Leave  
granted. B

2. The appellant as well as respondent no.1 applied in  
response to an advertisement dated 02.02.2009 for  
engagement as Anganwadi Worker for Urumukhi-3 Anganwadi  
Center, Bhushandpur, Tangi, Odisha. She is aggrieved by the  
judgment under appeal dated 18.07.2011 whereby the Division  
Bench of Orissa High Court set aside the order of a learned  
Single Judge of the High Court dated 09.08.2010. The effect  
of the impugned order/judgment is to allow the writ petition  
preferred by respondent no.1 and as a result selection and  
appointment of the appellant stands set aside and instead  
respondent no.1 has been appointed as Anganwadi Worker for  
the concerned centre. C D

3. The moot question to be answered in this appeal is  
whether the Division Bench should have allowed the writ appeal  
only on technicalities and on the basis of certain orders passed  
earlier when on facts there was no ambiguity that respondent  
no.1 was not a resident of the concerned centre and hence  
lacked the basic eligibility for engagement as Anganwadi  
Worker for the centre. E F

4. Learned counsel for the appellant has taken us through  
the relevant orders and enquiry reports which show that even  
before the appellant was engaged, as soon as respondent no.1  
came to know that in the selection process appellant had  
secured highest marks and was likely to be engaged, she  
approached appellate/higher authority – respondent no.3, the  
Sub-Collector, Khurda. By order dated 26.12.2009, respondent  
no.3 noticed that appellant's sister was engaged as Anganwadi  
Worker in another centre and, therefore, without waiting for the  
H

- A order of engagement, as appellate authority – respondent no.3 set aside the orders selecting the appellant and the matter was remanded back to the Child Development Project Officer – respondent no.4 to reconsider the case of the respondent no.1 as per the Government guidelines. The Selection Committee
- B reconsidered the relevant facts in a meeting held on 04.06.2010 attended by five members of the Selection Committee including the Sub-Collector, Khurda who had remanded the matter for reconsideration. The minutes of the proceedings of Selection Committee dated 04.06.2010 have
- C also been signed by Sub-Collector, Khurda and they disclose that appellant was found to be the most eligible candidate for appointment. In the meantime, respondent no.1 had preferred a writ petition bearing W.P.(C)No.9300 of 2010 in which her simple grievance was that order of Sub-Collector, Khurda dated
- D 26.12.2009 was not being implemented. That writ petition was disposed of on 20.05.2010 with a direction to implement the order of Sub-Collector within four weeks.

5. Respondent no.1 challenged the decision of the Selection Committee dated 04.06.2010 directly through a writ
- E petition bearing W.P.(C)No.11960 of 2010. The writ petition was dismissed on 09.08.2010 on the ground that appellant had secured more marks in the selection and there was no illegality in the selection process. A liberty, however, was granted to the respondent no.1 that as per Government guidelines, she may
- F prefer an appeal before the Additional District Magistrate against the selection of the appellant. The respondent no.1 did not prefer any appeal before the Additional District Magistrate or any other authority and instead preferred Writ Appeal No.430 of 2010 which was allowed on 18.07.2011 by the order
- G under appeal.

6. The Division Bench has interfered with the appointment of the appellant only on the basis of appellate authority's order dated 26.12.2009 and the order dated 20.05.2010 passed in
- H W.P.(C)No.9300 of 2010 in which the simple direction was to

CHARULATA BEHERA v. PRAVATI PARIDA & ORS. 847  
[SHIVA KIRTI SINGH, J.]

implement the remand order passed by Sub-Collector, Khurda on 26.12.2009. According to the Division Bench, the aforesaid two orders had not been, and therefore ought to be complied, particularly when nobody had objected to those orders by preferring any review or appeal. A

7. In our considered view, the Division Bench erred in ignoring the fact that order dated 26.12.2009 was an order whereby the Selection Committee was required only to reconsider the relevant matters and hence by completion of necessary exercise on 04.06.2010, the order of remand dated 26.12.2009 stood complied even in terms of directions of the learned Single Judge made on 20.05.2010 in W.P.(C)No.9300 of 2010. The Division Bench erred in presuming that the remand order required rejection of appellant's case and appointment of respondent no.1. The Division Bench also failed to notice that the Sub-Collector, Khurda who passed the order dated 26.12.2009 was a member of the Selection Committee and party to the decision taken in favour of appellant on 04.06.2010. The Division Bench further erred in ignoring the case of the official respondents that respondent no.1 lacked the eligibility qualification for selection and engagement because she was not a resident of the centre in question. B C D E

8. In the aforesaid facts and circumstances, we have no option but to accept the contention advanced on behalf of the appellant that the order under appeal has been passed without looking into the relevant facts and ignoring the well settled principle in respect of exercise of writ jurisdiction under Article 226 of the Constitution of India that such jurisdiction should not be exercised on mere technicalities especially if the result of such exercise will amount to perpetuation of illegality. In the present case the appointment of respondent no.1 made pursuant to order under appeal is clearly illegal as she did not have the eligibility qualification. This is also the stand of official respondents even in the counter affidavit filed before this Court. F G

9. As a result, the appeal is allowed. The impugned H

- A judgment and order of the Division Bench dated 18.07.2011 is set aside and as ordered by learned Single Judge, the writ petition preferred by the respondent no.1 shall stand dismissed. Consequently, the appellant's engagement would revive. The appellant shall be permitted to resume her work on the post of Anganwadi Worker at the concerned centre forthwith so that she may not suffer further loss of remuneration etc. unnecessarily.
- B In the facts of the case, there shall be no order as to costs.

Kalpana K. Tripathy

Appeal allowed.

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**[2015] 1 S.C.R. (Part-IV)**

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***Admission to Post-graduate medical courses to be strictly  
on basis of inter-se academic merit.***

Sudhir N. & Ors. v. State of Kerala ...884

***Solatium and interest on compensation amount can be granted  
on equitable grounds.***

Defence Estate Officer v. Syed Abdul Saleem and Ors. ...964

***r. 159 of Jharkhand High Court Rules is constitutional.***

Vivek Rai & Anr. v. High Court of Jharkhand through Registrar General & Ors. ...1014  
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