

Sanjukta Devi Vs. State of Odisha and Others

Sanjukta Devi Vs. State of Odisha and Others

SooperKanoon Citation : sooperkanoon.com/1163071

Court : Orissa

Decided On : Aug-19-2014

Appellant : Sanjukta Devi

Respondent : State of Odisha and Others

Advocate for Pet/Ap. : Mr. A.R. Dash

Judgement :

ORISSA HIGH COURT: CUTTACK Writ Appeal (Civil) No.86 of 2014 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. -----
Sanjukta Devi Appellant -versus State of Odisha and others For Appellant
Respondents : M/s. A.R. Dash, P.K. Nayak, H.B. Dash, A.C.R. Das, B.Mohapatra, S.K.Nanda-1. For Respondents: Mr. P.K. Muduli, Addl. Standing Counsel (for Res.Nos.1 to

4) M/s. Gautam Kumar Routray (for Res.No.5) PRESENT: HONOURABLE THE CHIEF JUSTICE SHRI AMITAVA ROY AND THE HONOURABLE DR. JUSTICE B.R.SARANGI Date of hearing: 13.08.2014| Date of judgment : 19.08.2014 Dr. B.R.Sarangi, J.Opposite party no.6 in W.P.(C) No.20754 of 2010 has filed this appeal challenging the order dated 7.3.2014 passed by the learned Single Judge in the said 2 W.P.(C) and for quashing of the order dated 19.10.2010 passed by the Sub-Collector, Cuttack, respondent no.2 in the Writ Appeal selecting respondent No.5-Ranjulata Mallik as Anganwadi Worker in respect of Mundasahi

Addl. Anganwadi Centre under Mahanga Block in the district of Cuttack and seeking a further direction to respondent nos. 1 to 4 to proceed with the selection process considering the candidature of the appellant vis-a-vis respondent no.5 along with other eligible candidates.

2. Pursuant to an advertisement bearing Notification No.1328 dated 05.12.2009 issued by respondent no.4-C.D.P.O., Mahanga for selection of Anganwadi Worker in respect of Sl.No.43 of the advertisement, which related to Mundasahi Additional Anganwadi Centre, Mundasahi under Kuhunda Gram Panchayat of Mahanga Block in the district of Cuttack, the appellant had applied for selection along with others candidates. The said Mundasahi Additional Anganwadi Centre has been created taking some area of Hansadia and Kuhunda-1 Anganwadi centre, which is within the Kuhunda Gram Panchayat. As it appears, seventeen candidates had applied for the said post including the appellant out of whom, candidature of three candidates remained valid and that of 3 fourteen candidates were rejected on scrutiny. From among three candidates, the appellant was selected by the Selection Committee placing her at Sl.No.1 and she joined the post.

3. It is stated in this Writ Appeal that the candidature of respondent no.5 was rejected on the ground that she had No.filed copy of the order of the learned Family Judge to prove that she was a divorcee vide notification dated 15.12.2009. Respondent No.5 filed a representation before the C.D.P.O., Mahanga on 21.12.2009 in support of her claim that she belonged to Schedule Caste category and had furnished all the required documents, but the same were No.considered.

4. Being aggrieved by the selection of present appellant, respondent no.5 filed W.P.(C) No.893 of 2010 before this Court, which was disposed of with direction to respondent no.5 to file an appeal before the Sub-Collector, Cuttack-respondent no.2 within a period of fifteen days from the date of passing of the order, which shall be disposed of within a period of two months. Accordingly, respondent no.5 filed an appeal before respondent no.2 with a new plea that she had lost her parents, she was a destitute lady and due to family dispute, she had been residing in her native village at Mulabasanta since 1996. It is further alleged that the 4 C.D.P.O., Mahanga without verifying the documents of nativity certificate, rejected

her application and arbitrarily selected the present appellant for engagement as Anganwadi Worker. The Sub-Collector-respondent no.2 dismissed the appeal filed by respondent no.5 vide order dated 19.10.2010 in Misc. Case No.28 of 2010, which was the subject matter of challenge before this Court in W.P.(C) No.20754 of 2010 on the ground that respondent no.5 had stated in her application that she was a divorcee and was a resident of the Anganwadi centre area, but she had not submitted any certificate in support of her claim. Therefore, otherwise she was not eligible to be considered for engagement as Anganwadi Worker.

5. The learned Single Judge found that admittedly the case of respondent no.5 was that her husband had deserted her and she had taken shelter in the house of her parents. The fact of respondent no.5s residing in her parental house was found to be correct as per report submitted by the Tahasildar and held that the Sub-Collector ought to have confined the appeal to the contention regarding the requirement of filing proof in support of claim of divorcee. Instead of doing so, the Sub-Collector added a new ground regarding unacceptability of the candidature of respondent no.5 showing her father's address. Finding that rejection of candidature of respondent no.5 not sustainable in law the learned Single Judge quashed the order dated 19.10.2010 passed by the Sub-Collector selecting the appellant as Anganwadi Worker and directed the respondent nos. 1 to 4 to proceed with the selection process afresh by considering the candidature of the appellant vis--vis respondent no.5 as well as other eligible candidates.

6. Mr. A.R. Dash, learned counsel for the appellant strenuously urged that the learned Single Judge while deciding the matter did not consider the materials available on record and proceeded with the assumption that respondent no.5 was a resident of the Anganwadi area relying upon a residential certificate granted by the Tahasildar without taking into consideration the solemn declaration made by the respondent no.5 in her application vis--vis the condition stipulated in the advertisement.

7. Per contra, Mr. Gautam Kumar Routray, learned counsel appearing for respondent no.5 supports the finding arrived at by the learned Single Judge.

8. Mr. P.K. Muduli, learned Addl. Standing Counsel appearing for the State supports the finding arrived at by the 6 Sub-Collector while considering the appeal filed by respondent no.5 in Misc. Case No.28 of 2010 dated 19.10.2010.

9. After hearing learned counsel for the parties and on perusing the materials available on record, it appears from Annexure-19 series to the Writ Petition that respondent no.5 in her application admitted herself that she had produced only the following certificates, namely,

1) H.S.C. Certificate (2) Copy of the mark sheets, (3) Caste Certificate, (4) Certificate obtained from Sarapanch indicating the permanent resident (5) Certificate of Tahasildar regarding permanent resident.

10. So far as the candidature of respondent no.5 was concerned, she stressed on clause-10 of the application form which was applicable for married/ unmarried/ orphan/ distress/ widow/ destitute and stated whatever is applicable that has to be incorporated and attached in proof of the same.. It appears that no document was filed along with the application by respondent no.5 that she was a divorcee. In clause-10 of the application form, she described herself that she was married and had No.made any declaration as required under the said clause that she was a divorcee. 7 11. As per the conditions stipulated in the advertisement in clause-1, it was specifically mentioned that a candidate must be a permanent resident of the Anganwadi Centre area. Clause-3 prescribed qualification of such advertisement. Clause-5 of said advertisement prescribed that physically handicapped/orphan girl/helpless and divorcee/ widow/ deserted women could make the application. It appears that respondent no.5 had No.made any application incorporating the qualification as prescribed under clause-5 of the advertisement. As per the said advertisement, a candidate had to incorporate the documents supporting the proof of qualification as mentioned the clause 1 to 12 in the advertisement. So far as the case of a divorcee is concerned, clause-10 prescribes that the candidate had to produce a certificate granted by the Family Court. Admittedly, no certificate of Family Court indicating that respondent no.5 was a divorcee had been incorporated in the application form submitted by her. Respondent no.5 herself described in the application form vide Annexure-19 series to the writ petition that

she was married.

12. Since the application did not contain a certificate granted by a competent Family Court indicating that respondent no.5 was a divorcee, she cannot claim benefit as a preferential candidate for selection as Anganwadi Worker. In addition to that, the claim of respondent no.5 is that she being a resident of Anganwadi centre area, as per clause-1 of advertisement, her candidature should have been taken into consideration which was rejected by the Sub-Collector and reversed by the learned Single Judge on an erroneous consideration. The learned Single Judge only relied upon the residential certificate granted by the Tahasildar in Miscellaneous Certificate Case No.878 of 2009, wherein it is stated that respondent no.5 is the daughter of Bimbadhar Mallik native of district Cuttack in the State of Orissa and he/his family ordinarily resides in Village/Mouza-Mulabasanta, PO-Mulabasanta, PS-Mahanga, Tahasil-Mahanga.

13. In State of Andhra Pradesh Vrs. V. Sharma Rao, AIR 2007 SC 137, the word ordinarily has been considered by the apex Court. Similarly, in Kailash Chandra v. Union of India, (1962) 1 SCR 374: AIR 1961 SC 1346 and Krishan Gopal v. Shri Prakash Chandra, (1974) 1 SCC 128 the same has been considered that the word ordinarily means normally. 9 14. In Eicher Tractors Ltd. v. Commissioner of Customs, (2001) 1 SCC 315: AIR 2001 SC 196 (198), the word ordinarily necessarily implies the exclusion of extraordinary or special circumstances.

15. The expression Ordinarily resides., came up for consideration before apex Court in Morgina Begum v. Managing Director Hanuman Plantation Ltd., (2007) 10 SCR 372 : J.2007 (12) SC 134 wherein it has been held that the expression ordinarily resides. occurring in section 21(1)(b) of the Workmen's Compensation Act means where the person claiming compensation normally resides at the time of filing the claims petition.

16. The expression Ordinarily residing. with reference to Section 20 (1), 20 (1-A) and 20 (7) of Representation of the People's Act, 1950, the apex Court in Union of India v. Dudh Nath Prasad, AIR 2000 SC 525 (paragraph-13, held as follows: Section 20 which is part of the law enacted for purposes of election to Parliament or the State Legislature contemplates many categories of persons including those

who are in service. It lays down as to when they would be treated to be ordinarily residing. in a particular constituency. Sub-section (1) and Sub-section (1-A) of Section 20 are couched in a negative language. Sub-section (1) of Section 20 provides that if a person holds or is in 10 possession of a dwelling house in a particular constituency, he would not, merely on that ground, be deemed to be ordinarily resident. in that constituency. Sub-section (1-A) provides that temporary absence of a person from the place of his ordinary residence. would be ineffective and a person would No. cease to be an ordinary resident. in that constituency merely for that reason.

.

17. Considering the meaning attached to the expression ordinarily resides., in view of the residential certificate granted by the Tahasildar in Miscellaneous Certificate Case No.878 of 2009, it can only be construed that respondent no.5 normally resides at village Mulabasanta. Therefore, as per clause-1 of the advertisement it canNo.be construed that she is a permanent resident of Anganwadi centre. In addition to that, when a consideration was made with regard to residential status of respondent no.5 with reference to Miscellaneous Certificate Case No.878 of 2009, it was found that the Tahasildar, Mahanga had submitted a report as per the letter of the Sub-Collector, Cuttack stating therein that respondent no.5 was residing in the house of her father. It has been categorically reflected in the said report that respondent no.5 was married on 21.6.1994 and due to dispute between the members of her in-law family, she was staying in village Mulabasanta and she had been issued certificate as per the residential status of her husband and 11 admittedly the residence of her husband was beyond the Anganwadi centre area for which the advertisement had been issued by the authority.

18. In the counter affidavit to the Writ Petition filed by the present appellant, it was specifically urged that respondent no.5 had No.mentioned her husbands name in her residential certificate and it is further stated that she was No.a resident of the area of Mundasahi Addl. Anganwadi centre which consisted of Mundasahi, Sabarsahi, Brahmansahi of Kuhunda village and Alarpur a hamlet village of Mulabasanta.

19. It appears that the learned Single Judge has No.appreciated the above facts which were already on record while quashing the order passed by the Sub-Collectorrespondent no.2 and directing for fresh selection, which is No.in conformity with the provisions of law.

20. The finding arrived at by the learned Single Judge rejecting the application of respondent no.5 on the ground of non-submission of copy of an order of the Family Court to show that she was a divorcee, is also No.in conformity with the conditions stipulated in the advertisement. Therefore, the learned Single Judge has failed to appreciate 12 the conditions stipulated in the advertisement while coming to a conclusion that in absence of any document the statement of respondent no.5 that she had been deserted by her husband could No.be sustained, more so her candidature could No.be considered on merit along with that of other candidates, who did No.claim to be so.

21. For the foregoing discussions, the direction of the learned Single Judge that the application of respondent no.5 should be considered along with that of others for selection of Anganwadi Worker in respect of Mundasahi Addl. Anganwadi Centre being sustainable, is hereby set aside. The Writ appeal is accordingly allowed. No cost. .. Dr.B.R.Sarangi, J.Amitava Roy, C. J.I agree. .. Amitava Roy, C. J.Orissa High Court, Cuttack The 19th August, 2014/Jagdev

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com