

Ashok Kumar Sahoo Vs. Union of India (Uoi) and ors.

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Court : Orissa

Decided On : Feb-19-2003

Reported in : 2003(I)OLR410

Judge : B. Panigrahi and ;B.P. Das, JJ.

Appeal No. : O.J.C. No. 3020 of 2002

Appellant : Ashok Kumar Sahoo

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Tapan Ku. Mandal O.P. 3 and ;Madhumati Agarwal, Sr. Standing Counsel (Central), O.Ps 1 and 2

Advocate for Pet/Ap. : Ashok Mohanty, ;D.K. Dey, ;C.K. Dey, ;S.N. Biswal, ;C.R. Satpathy and ;A.K. Das

Disposition : Petition succeeds

Judgement :

B. Panigrahi, J.

1. In this writ petition the petitioner has questioned about the propriety of the order dated 8.8.2000 passed by the Central Administrative Tribunal. Cuttack Bench, Cuttack in O.A. No. 571 of 1999 filed by the opp.party No. 3 against the

opp.parties 1 and 2 without impleading the petitioner as a party therein whereby the Tribunal directed to consider the application of opp. party No. 3.

2. The opp.parties 1 and 2 issued an advertisement/ notification dated 29.7.1999 inviting application for the post of Extra Departmental Sub-Post Master which was designated as GRAMINA DAK SEVA SUB POST MASTER (hereinafter referred to as 'GDSSPM') at Tulasipur, Banki Sub-Post Office under Cuttack Division. The petitioner offered himself to be a candidate from O.B.C. community and claimed to have secured 64% of marks in Board of Secondary Examination. It appears that opp. party No. 3 filed a case before the Central Administrative Tribunal, being O.A. No. 571 of 1999 wherein he claimed that the post of GDSSPM should be filled up from the S.T. category. In the absence of any candidate from S.T. category, preference should have been given to the Scheduled Caste community. But the opp.parties 1 and 2 without giving any preference to opp. party No. 3 were about to give appointment order to the present petitioner. Thus, he has prayed against opp. party No. 2 to cancel the appointment, it given in favour of the petitioner. The opp.parties 1 and 2 before the Tribunal have submitted in their counter by stating that the petitioner was already given appointment as GDSSPM from O.B.C. category. The post of GDSSPM was not exclusively meant for the Scheduled Caste persons as stated by opp.parties 1 and 2. But, however, the Tribunal after rejecting the stand taken by them directed, that the application offered by the opp. party No. 3 was unreasonably and illegally rejected by the opp.parties 1 and 2. Therefore, his application deserved consideration and accordingly the order should be passed with regard to his appointment.

3. Pursuant to the said direction the opp.parties 1 and 2 have cancelled the petitioner's appointment and issued an order of appointment in favour of the opp.party No. 3 as GDSSPM.

4. Mr. Mohanty, the learned Advocate appearing for petitioner has strongly contended that the post of GDSSPM was never meant exclusively for Scheduled Tribe and Scheduled Caste people, but it was meant to be filled up from general candidates. But in the advertisement it was specified that preference shall be given to the Scheduled Tribe category. In the absence of suitable Scheduled Tribe

candidates, preference shall be given to Scheduled Caste and in its absence to O.B.C. candidates and in the absence of any suitable O. B. C. candidates to general candidates. The petitioner having secured maximum percentage of marks in the Board of Secondary Examination and his application having been found complete in all respect, he was given appointment as GDSSPM.

5. The learned counsel of opp.party No. 3 while repelling the petitioner's submission has contended that the opp.parties 1 and 2 have over-looked the income certificate though furnished by him. He has strongly relied upon the income certificate placed before the Tribunal. From the income certificate, it has been disclosed that he derived an income of Rs. 18,000/- per year from his business. The Tahasildar at a later stage rectified his mistake that the opp. party No. 3 had not derived Rs. 18.000/- from the business. But such income was from the rice business, as reported by the Revenue Inspector. The opp.parties 1 and 2, however, strongly denied that the petitioner was receiving income at the rate of Rs. 18,000/- from the landed properties.

6. First of all it is to be considered whether the post for which the petitioner vis-a-vis the opp. party No. 3 applied was meant to be filled up from the Scheduled Tribe category or from the general candidates. At the time of hearing, both the parties submitted that it was not meant for Scheduled Tribe, but it was meant for general category. In the advertisement it has been indicated that the Scheduled Tribe, in their absence Scheduled caste in their absence O.B.C. and in their absence General candidates shall be given preference. In between the relative merits of the petitioner vis-a-vis the opp. party No. 3 the petitioner secured more percentage of marks than opp. party No. 3 in the Board of Secondary Examination. Next it has to be considered whether the opp. party No. 3 submitted all the necessary requisites before the opp.parties 1 and 2 pursuant to the advertisement. The opp.parties 1 and 2 in their counter have submitted that since the application filed by the opp. party No. 3 was incomplete, therefore, his case was not considered. On a mere look to the order passed by the Tribunal it appears that the Tahasildar had issued income certificate mainly upon the submission made by the opp. party No. 3 that he purchased certain landed properties from which the income from the house might have been derived at the rate of Rs.

18,000/-. We are at a loss to understand how could the Tribunal abruptly jump to the conclusion without any basis that the opp. party No. 3 derived Rs. 18,000/- as rent from house, whereas the report of the Tahasildar on the basis of the Revenue Inspector has suggested that from rice business the opp. party No. 3 might have derived Rs. 18,000/-. Be that as it may, since all the particulars showing the properties owned by the opp. party No. 3 were not fully furnished before the opp. parties 1 and 2, they were justified in ignoring his claim and by giving appointment to the petitioner. Therefore, we are unable to agree with the observation of the learned Tribunal.

7. In the result the writ petition succeeds, the appointment of opp. party No. 3 and also the notice, vide Annexure-1 and the order, vide Annexure-8 are quashed and we direct opp. parties 1 and 2 to allow the petitioner to continue in the said post.

There shall be no order as to costs.

B.P. Das, J.

8. I agree.

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