

SUPREME COURT OF INDIA

Charulata Behera

Vs.

Pravati Parida

C.A.No.1322 of 2015

(Anil R.Dave and Shiva Kirti Singh JJ.)

30.01.2015

JUDGMENT

SHIVA KIRTI SINGH, J.

1. Heard the parties. Leave granted.

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.

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.

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 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 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 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 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. Respondent no.1 challenged the decision of the Selection Committee dated 04.06.2010 directly through a writ 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 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 under appeal.

5. 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 W.P.(C)No.9300 of 2010 in which the simple direction was to 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. 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.

6. 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.

7. As a result, the appeal is allowed. The impugned 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. In the facts of the case, there shall be no order as to costs.