

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 20823 of 2011

Sanatan Behera & Ors.

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Petitioners

Ms. S. Mohapatra, Advocate

Vs.

State of Odisha & Anr.

.....

Opposite parties

Mr. A.K. Mishra, A.G.A.

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

09.03.2022

Order No.

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This matter is taken up through hybrid mode.

2. Heard Ms. S. Mohapatra, learned counsel for the petitioners and Mr. A.K. Mishra, learned Additional Government Advocate.

3. The petitioners have filed this writ petition seeking to quash the order dated 25.04.2011 passed by the Odisha Administrative Tribunal in O.A. No.91(C) of 2011 and batch, as well as the order no.17311 dated 30.06.2010 passed by opposite party no.2 vide Annexure-3, and to issue direction to the Tribunal to decide the said O.A. in terms of the order dated 19.04.2010 passed by this Court in W.P.(C) No.17005 of 2009.

4. The factual matrix of the case, in brief, is that the petitioners were engaged as Home Guards and they were allowed to discharge their duty as Jail Warders for a period of five years. After completion of the said period, they

were reverted back to their original post of Home Guards. Challenging the same, they approached the Tribunal by filing O.A. No.657(C) of 2010 and batch, which were disposed of, vide order dated 22.07.2009, rejecting the claim of the petitioners. Against the said order of the Tribunal, the petitioners approached this Court by filing W.P.(C) No.17005, 17007 & 16881 of 2009. While considering the said writ petitions, this Court found that the petitioners were placing strong reliance upon Annexure-1 to W.P.(C) No.17005 of 2009, viz, the letter dated 05.10.2004 of the I.G. of Police, Home Guards & F.S., Orissa to the Commandant, Home Guards, Khurda and the circular order No.1/HGs. Dated 28.06.1995 whereunder the Government of Orissa have been pleased to reserve 10% of the vacancies in the rank of Warder in Jails in a particular year for the Home Guards. Pursuant to such letter, request was made by the Addl. D.G.P.-cum-I.G. of Prisons and Director Correctional Services, Orissa, Bhubaneswar, for deputation of 18 Home Guards for deployment in Special Jails, the I.G. of Police, Home Guards and F.S. Orissa, by letter dated 05.10.2004, to the Commandant, Home Guards, Khurda to select the Home Guards with reference to the selection criteria mentioned therein and to send the select list to him. The names of the petitioners having been sponsored after they passed through the selection procedure followed for regular recruitment and they having been deployed as warders, the recruitment and appointment cannot be called as temporary for the purpose to avail the

services of the persons on account of exigency that prevailed in the jails at that point of time. It was further found that learned counsel for the petitioners placed the resolution dated 13.11.2006 of the Government of Odisha, Home Department containing the criteria for recruitment of Warder of Jail Organization and referred to clause 18(e) of the aforesaid resolution to substantiate his case that reservation of 10% vacancies shall be made for Home Guards as per the decision of the Government in Home Department. Therefore, the petitioner were deployed in the jail Department following the procedure of regular recruitment and they were functioning as such for a period of five years as on the date the recruitment notification was published by the Department. Therefore, the post in which they were working could not have been advertised for the purpose of selection and appointment and therefore, their rights guaranteed under Articles 14, 16 read with Article 21 are affected. This Court also observed that the above fact was not taken into consideration by the Tribunal and therefore the recruitment notification has not been quashed and non-quashing of the order passed by the administration is vitiated in law.

5. While adjudicating the said writ petitions, this Court had come to a conclusion in paragraph-4, which reads as follows:

We have carefully examined each one of the contentions urged on behalf of the parties with reference the documents produced by the petitioners, namely, Annexure-1 and the Home Department resolution with a view to find out as to whether the order passed by the Tribunal is illegal and open to interference by this

Court? After careful perusal of the claim of the petitioners, the facts and the legal contentions, the findings of fact and reasons recorded by the Tribunal in the impugned order in answer to the contentions raised before it for consideration, we are of the considered view that the Tribunal was justified in not granting the relief, but justified in making certain relevant observations for consideration by the recruitment committee having regard to the undisputed fact the posts which were vacant in the Orissa Jails as on the date the petitioners were deployed by giving a requisition to the Commandant Home Guards and further as could be seen from Annexure -1, though it is not regular recruitment but the procedure of test required to be followed by the candidates sponsored by the Commandant of Home Guards has been prescribed, the post were categorized, educational qualification for different category of candidates, the physical standard and all other aspects have been followed by the petitioners when they were appointed on temporary basis but nonetheless those posts have been notified as a result of which they will not get the status of permanent Warder but they will be deployed as Home guards. At the same time, the Tribunal having regard to the undisputed fact that these persons have been deployed since the year 2004, they have been rendering services as Warder in the Jails of Orissa State made observation that the cases of the petitioners would be considered for subsequent recruitment after allowing them the age relaxation of the period they have worked as temporary warders in the jails in addition to the 30 years of age limit applicable to Home Guards. Having regard to the undisputed fact that the recruitment is already over pursuant to the impugned notification, the directions issued to the State government in Home Department in so far as the petitions are concerned are required to be taken into consideration for the purpose of examining their claim with a view to facilitate them to continue as Warders against the posts, which fell vacant after the notification was issued or otherwise. If at all posts are there and if the Government is satisfied having regard to the observation made by the Tribunal the selection process undergone by the petitioners is comparable and equal with that of regular recruitment and if the qualification required for Jail Warder is not distinctively and qualitatively different from the standard against which the petitioners were selected, the State Government may consider their case sympathetically and favourably on the ground that they have become over aged and prospect of any public employment will be closed for them and taking into

consideration their aspirations in the life and that family members are depending on them and they cannot be allowed to become destitute if their claims are not considered. All the relevant aspects shall be taken into consideration at the time of examining their case having regard to the observation made in the impugned order and take a decision in the matter if it is required to accommodate them in the jails and pass appropriate orders to give effect to the observation made by the Tribunal and this Court. This exercise must be completed within a period of eight weeks from the date of receipt of the copy of this order.

6. As a consequence thereof, the petitioners by filing representation moved the authority, i.e. Addl. D.G.P.-cum-I.G. of Prisons and Director, Correctional Services, Odisha, Bhubaneswar, who, on consideration of the same, rejected the claim of the petitioners stating that as all the vacancies are filled up by the regular recruits, the Home Guards have been returned to their organization as per instruction of Government. Challenging the same, the petitioners also approached the Odisha Administrative Tribunal by filing O.A. No.91(C) of 2011 and batch. While adjudicating the said O.As., the Tribunal took note of the submission of learned counsel for the petitioners that as and when any advertisement will be issued inviting applications for engagement of Jail Warders in different jails of the State, the petitioners may be allowed to apply for such posts subject to fulfilling all other terms and conditions except the prescribed age limit and applying the age relaxation Rules, their upper age be relaxed taking into account the number of years they have rendered services and Jail Warders on temporary basis over and above the prescribed age limit of 30 years for the Home Guards. Accordingly,

the Tribunal vide order dated 25.04.2011 disposed of O.A. No.91(C) of 2011 and batch with the following order:

“Considering the submission made by the learned Counsel for both the parties, as and when any advertisement is issued inviting applications for engagement of Jail Warder in different jails of the State on regular basis, the applicants are at liberty to apply for such engagement subject to fulfilling all other terms and conditions of the advertisement, except the prescribed age limit and their applications shall not be rejected on the ground of over age, by applying the age relaxation clause as per Rules, taking into account the number of years they have already rendered service as Jail Warders and if they come within the purview of selection, they shall be allowed to participate in the selection process.”

7. In view of such position, when the grievance of the petitioners have been considered in proper perspective by the order impugned dated 25.04.2011 passed by the Odisha Administrative Tribunal in O.A. No.91(C) of 2011 and batch, this Court does not find any cogent reason so as to cause interference in the said order. Accordingly, the writ petition merits no consideration and the same is dismissed.

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(DR. B.R. SARANGI)
JUDGE

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(SAVITRI RATHO)
JUDGE