

IN THE HIGH COURT OF ORISSA AT CUTTACK

WA No. 154, 155, 156, 157 and 158 of 2012

WA No.154 of 2012

Ramakanta Parhi

....

Appellant

-versus-

State of Odisha and Others

...

Respondents

WA No.155 of 2012

Pradip Kumar Das

....

Appellant

-versus-

State of Odisha and Others

...

Respondents

WA No.156 of 2012

Prativa Mishra

....

Appellant

-versus-

State of Odisha and Others

...

Respondents

WA No.157 of 2012

Anakar Sahu

....

Appellant

-versus-

State of Odisha and Others

...

Respondents

WA No.158 of 2012

Anata Charan Barik

....

Appellant

-versus-

State of Odisha and Others

...

Respondents

Advocates appeared in this case:

For Petitioner(s)

:

**Mr. Sameer Kumar Das
Advocate**

For Opposite Parties

:

**Mr. D.R. Mohapatra
Senior Standing Counsel**

Mr. Susanta Ku. Mishra, Advocate
Mr. Kali Prasan Mishra, Senior Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH

Order No.

ORDER
14.09.2022

09. 1. On 1st August, 2022 the following order was passed:

“1.The challenge in the present appeals is to a common order dated 29th March, 2012 of the learned Single Judge dismissing the Appellants’ Writ Petition (Civil) Nos. 29573, 29575, 29578, 31382 and 32248 of 2011.

2. The Appellants’ were originally selected for the post of Sikshya Sahayaks (SS) in the category of physically handicapped (PH) pursuant to an advertisement issued on 14th October, 2006. Although they appeared before the authorities and also signed the agreement, no engagement letter was issued to them on the plea that the select list was to be revised on account of the provisions of the Orissa Reservation of Vacancies Act (ORV Act). After two rounds of litigation, when the matters were remanded to the authorities to examine it afresh, the Collector again rejected the plea of the Petitioners. Thereafter, writ petitions were filed in the third round which came up for hearing before the learned Single Judge and which came to be dismissed on two grounds:

(i) That the affected parties who had been selected, had not been impleaded as parties in the writ petitions.

(ii) The writ petitions were barred by laches as the selection took place in 2008 whereas the writ petitions were filed only in 2011.

3. The above grounds for rejection of the writ petitions were set out in the impugned order, where the learned Single Judge observed in para 6 as under:

“6. It transpires in course of hearing of the case that while reserving post of SS for the physically handicapped category persons, the authorities have reserved post within that category for scheduled caste and scheduled tribe and socially and economically backward classes categories, which is in complete violation of the rule of law propounded by the Supreme Court of India in ***Mahesh Gupta v. Yashwant Kumar Ahirwar (supra)***. The Supreme Court in clear terms laid down that the authorities cannot create categories within categories and reserve seats in the physically handicapped category for scheduled caste and scheduled tribe and other backward classes. The action of the opposite parties is definitely not in consonance with the ratio decided by the Supreme Court.”

4. In other words, the learned Single Judge agreed with the present Appellants that they could not have been denied appointment under the PH category and that in the light of the judgment of the Supreme Court of India in ***Mahesh Gupta v. Yashwant Kumar Ahirwar (2007) 8 SCC 621*** within the quota of PH, there cannot be a further reservation for SC, ST and SEBC. In other words, the reservation for the PH category was a horizontal reservation which was unaffected by the reservation in vertical mode for SCs, STs and SEBCs.

5. As far as the plea of the petitions being barred by laches, the Court is satisfied that there were earlier rounds of litigation which was initiated by the

Petitioners in 2008 and thereafter in 2010 and therefore, it was not as if the Petitioners waited for over three years to agitate their rights.

6. As far as the first ground of rejection regarding non-impleading of the selected candidates, it is seen that in the present writ appeals pursuant to an application filed by the original writ Petitioners, the selected candidates have been impleaded as Respondents. One of them i.e. Respondent No.5 is represented by Mr. Kali Prasanna Mishra, learned Senior Advocate.

7. In the writ petition originally filed as well as in the writ appeals, there is no prayer for removal of the selected candidates. The prayer is only that the PH category candidates i.e. the Appellants who were duly selected ought to be accommodated against the vacancies available for them.

8. Mr. Mishra, learned Senior Counsel appearing for Respondent No.5 also points out that there is no prayer as such in the writ appeal regarding removal of the selected candidates. On their behalf, Mr. Mishra, states that they would have no objection if the Appellants could be accommodated as PH candidates against any vacancy that might still be available.

9. At this juncture, learned counsel appearing for the State seeks time for instructions on whether there are vacancies in PH quota against which the present Appellants can be accommodated. An affidavit specific to that query should be filed by the Respondent-State within four weeks.

10. List on 14th September, 2022.”

2. Pursuant to the above order, an affidavit has been filed on 13th September, 2022 by the District Education Officer, Bhadrak in which in Para-5, it is stated as under:

“5. That, it is respectfully submitted that, Sri Ramakanta Parhi, the petitioner in W.A. No.154/2012 has applied under PH, Visual Impaired category for which 13 posts earmarked for the purpose and all 13 posts were filled up. There is no vacancy under PH, Visual Impaired category.

Sri Pradip Kumar Das, the petitioner in W.A. NO.155/2012 and Sri Ananta Charan Barik, the petitioner in W.A. No.158/2012 had applied under PH, Orthopaedic Handicapped category for which 12 posts earmarked for the purpose. Out of said 12 posts, 8 posts were filled up remaining 04 posts are lying vacant.

Smt. Prativa Mishra, the petitioner in W.A. No.156/2012, and Sri Anakar Sahu, the petitioner in W.A. No.157/2012 had applied under PH, Hearing Impaired category for which 13 posts earmarked for the purpose. Out of said 13 posts of Hearing Impaired category 6 posts were filled up remaining 7 posts are lying vacant.”

3. Therefore, as regards the Appellants i.e. Sri Pradip Kumar Das, Sri Ananta Charan Barik, Smt. Prativa Mishra and Sri Anakar Sahu, they may be accommodated against the vacant posts as mentioned without any claim for back-dated seniority. The necessary orders in their favour in the above terms be issued within a period of eight weeks from today.

4. As regards Sri Ramakanta Parhi, if any post earmarked for visually impaired category is vacant at present, he be

accommodated there against again without any claim as to seniority from a back date. If at present there is no vacancy, then he be given priority in being accommodated against the first available vacancy in the visually impaired category hereafter.

5. The writ appeals are disposed of in the above terms. An urgent certified copy of this order be issued as per rules.

S.K. Jena/Secy.



(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge