

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 10389 OF 2013

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

Arun Kumar Shasani Petitioner

-Versus-

State of Orissa and others Opp. Parties

For Petitioner : M/s. S. D. Routray,
P.K. Sahoo, S. Das and
S. Jena, Advocates.

For Opp. Parties : Mr. S.N. Nayak,
Addl. Standing Counsel
(O.Ps.1 & 3)
Mr. Sanjib Swain, Advocate
(O.P.2)

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HON'BLE MISS JUSTICE SAVITRI RATHO**

Date of hearing & judgment : 05.05.2022

DR. B.R. SARANGI, J. The petitioner, by means of this writ, seeks to quash the order dated 09.11.2012 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 334 (C) of 2012, and to issue direction to the

opposite parties to give him appointment in the post of Junior Assistant under unreserved Physically Handicapped category.

2. The factual matrix of the case, in brief, is that Orissa Staff Selection Commission issued an advertisement through its Secretary on 12.03.2010 for recruitment to the posts of Junior Assistant for the offices of the Heads of the Department. In the said advertisement, out of total number of 218 posts, 69 were reserved for women. The advertisement also contemplated that vacancies for ex-servicemen, sports persons and physically handicapped category shall be filled up as per rule in force. The number of vacancies shown above and the category-wise reservation position were tentative and subject to change as per rules as would be in force at the time of publication of result/issuance of appointment order.

2.1 Under clause 3 of the advertisement, the educational qualification was prescribed. According to said clause, the candidates must be an Intermediate/+2

Arts/ Science/ Commerce or equivalent from a recognized University/Board and must have passed Oriya equivalent to M.E. standard. The age limit was prescribed under clause 4 that the candidates should not be less than 18 years and more than 32 years of age as on 01.01.1997. However, a candidate completing 18 years of age, as on 01.01.2010, would also be eligible to apply. The upper age limit was relaxable by 5 years in case of SC/ST and women candidates, 3 years in case of SEBC candidates, 10 years in case of physically handicapped candidates, and the period of entire admissible service rendered as per rules in case of ex-servicemen, and only one type of relaxation in age was permissible. Clause 5 of the advertisement prescribes eligibility.

2.2. Pursuant to the said advertisement, the petitioner submitted his application under Physically Handicapped category against the vacancy made available as per the rules. Clause 13 of the advertisement prescribes the documents to be attached and Clause 13 (h) prescribes that in case of Physically Handicapped persons, attested copies of certificates/identity cards

issued by competent authority are to be attached to justify that he is physically handicapped. The petitioner was an unemployed graduate belonging to unreserved category and was also physically handicapped. His application having been found in order, he was called upon to appear both in “preliminary” as well as “main written” examinations for the post of Junior Assistant.

2.3 Needless to say that when the petitioner appeared the examination, in the OMR application form he mentioned that he belongs to physically handicapped category ‘ORTHO’. The said OMR application, which was received by the petitioner under RTI Act, has been annexed as Annexure-3. Though select list was prepared indicating the names of 295 candidates, the name of petitioner did not find place in the said select list. Therefore, the petitioner sought information under Right to Information Act. In compliance to the same, he was supplied with the mark sheet vide letter dated 17.08.2011 under Annexure-5, showing to have secured 171.75 marks, which was the highest mark in the PH category. In spite of securing highest mark under PH category, his

name did not find place in the merit list. Therefore, the petitioner sought information, by way of filing a representation, as to under what circumstances his name was not reflected in the select list. On consideration of his representation, he was supplied with the information on 09.09.2011 under Annexure-7, that his representation dated 16.08.2011 was verified and found that he had not submitted P.H. Certificate from the competent authority for which he was not considered eligible in the said category. Hence, the petitioner approached the tribunal by filing O.A. No. 334 (C) of 2012.

2.4. In the counter affidavit filed by the opposite parties before the tribunal, it was indicated that the examination had comprised two stages, one was “preliminary” and the other was “main” examination. The preliminary examination was only the screening test and qualifying in nature. The select list was prepared basing on sum total of marks in all subjects in the “main written” examination in order of merit category-wise. The petitioner applied in OMR application form, pursuant to the advertisement, whereby he had claimed reservation

under Physically Handicapped category indicating “ORTHO”. It was mentioned in clause 13 (h) of the advertisement under the heading “Documents to be attached”, that in case of physically handicapped candidates, attested copies of the certificates/ identity card issued by competent authority were to be attached along with application form. But the petitioner had not actually attached the disability certificate while submitting his application form. The applicant had submitted a xerox copy of the registration card issued by Government of India, Ministry of Labour & Employment, DGE&T, Vocational Rehabilitation ★ Centre for Handicapped, SIRD Campus, Bhubaneswar, which was enclosed as Annexure-A to the counter affidavit filed by the opposite parties before the tribunal. The disability certificate issued by the district medical board, which had been enclosed as Annexure-3 to the Original Application and said to be have been attached with the OMR application form, was not actually submitted while submitting the application form. Therefore, the Joint Secretary, Orissa Staff Selection Commission, while

verifying the documents, recorded on the application folder on 30.06.2011 “No P.H. certificate (Medical Board) available” with her signature. Therefore, even if the petitioner had secured higher mark, his case was not considered due to non-compliance of the conditions stipulated in the advertisement itself. The tribunal accordingly dismissed the original application filed by the petitioner, vide order dated 09.11.2012. Challenging such order of the tribunal, the petitioner has filed this writ petition.

3. Mr. S.D. Routrary, learned counsel appearing for the petitioner vehemently contended that the petitioner had complied with the conditions stipulated in Clause 13 (h) of the advertisement by providing Physically Handicapped certificate, along with the registration card, for the purpose of granting benefit of appointment under PH category. But without taking the same into consideration, the claim of the petitioner has been rejected by the impugned order passed by the tribunal. In support of his claim, learned counsel for the petitioner has relied upon the decision of this Court in the case of

Amarjeet Jena v. Council of Higher Secondary Education, Orissa, AIR 1990 Ori 129.

4. Mr. S.N. Nayak, learned Additional Standing Counsel appearing for the State-opposite parties contended that it was stipulated in clause 13 (h) that the physically handicapped persons had to attach the attested copies of the certificates/ identity card issued by competent authority along with application form. As such, the petitioner had not provided such document, but stated in course of argument that he had supplied the registration certificate. But that registration certificate itself was not the requirement under the advertisement. Thereby, the authority was well justified in not giving him appointment under PH category, even if he had secured higher mark in the said category, as stated by learned counsel for the petitioner. It is further contended that the petitioner had to adhere to the terms and conditions of the advertisement itself and since the same was not complied, the relief sought should not have been granted in his favour. Therefore, the tribunal is well justified in

passing the order impugned, which does not warrant interference at this stage.

5. Mr. S. Swain, learned counsel appearing for the Orissa Staff Selection Commission-opposite party no.2 specifically contended that the petitioner had not complied with the clauses of the advertisement, more particularly clause 8, which deals with reservation. As per such clause, the candidate claiming reservation under any category as per clause-2 should furnish relevant certificate issued by the competent authority in support of their claim. It is also contended that clause 13 (h) of the advertisement requires that in case of physically handicapped persons, attested copies of the certificates/identity card issued by competent authority was to be attached along with application form. Moreover the contention that such disability certificate issued by the Medical Board was lost in transit or in Orissa Staff Selection Commission does not stand to reason, in view of the endorsement of the Joint Secretary, Orissa Staff Selection Commission on 30.11.2011 at the time of verification. The requirement was that the petitioner was

to provide the attested copies of certificate/identity cards issued by competent authority. The petitioner had not provided the same. As such, the Staff Selection Commission, while scrutinizing the documents, took note of the said fact and indicated that the benefit of reservation under PH category cannot be extended to the petitioner, as he had not complied the requirement of clause 13 (h) of the advertisement issued by the Commission. Thereby, he contended that the tribunal is well justified in passing the order impugned, which does not call for any interference by this Court at this stage.

6. This Court heard Mr. S.D. Routray, learned counsel appearing for the petitioner; Mr. S.N. Nayak, learned Additional Standing Counsel appearing for the State-opposite parties; and Mr. S. Swain, learned counsel appearing for the Orissa Staff Selection Commission by hybrid mode, and perused the record. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

7. From the factual matrix, as has been delineated above, it emerges that undisputedly the petitioner had claimed for reservation under PH category in the recruitment to the post of Junior Assistant, pursuant to the advertisement under Annxure-1. Therefore, he had to comply the requirement of clause 13 (h) of the advertisement by attaching the attested copies of the certificates/ identity card issued by competent authority to the application form. But fact remains, the petitioner had not provided such documents, as required under the advertisement itself. It is contended by Mr. S.D. Routray, learned counsel for the petitioner that he had supplied copy of the registration certificate, but this was not the requirement of the advertisement. On one hand, Mr. Routray submitted that the petitioner had provided the certificate issued by the competent authority indicating physically handicapped category, whereas, on the other hand, the opposite parties are disputing submission such certificate. In a case involving disputed question of fact, this Court does not interfere, being not a fact finding Court.

8. Reliance was placed by the learned counsel appearing for the petitioner on a judgment of this Court in **Amarjeet Jena** (supra). In the said case, the issue for consideration before the Court was that whether Council of Higher Secondary Education was justified in withholding the result of the petitioner therein. This Court, considering the rival submissions of the parties, held that a student of Arts or Commerce was permitted to appear at Council Examination as private candidate without studying in any School or College, but the petitioner could not be admitted in second year of course of Council. There was no logic or justification for not permitting such a student to get admitted in 2nd year of Course, if he had duly studied and successfully completed 1st year of an accepted equivalent course with same subjects. A student admitted into 2nd year of Higher Secondary Course of Council would also be required to pass qualifying Test Examination before being sent up to take final Examination. Hence, Council of Higher Secondary Education was not justified in withholding the result of the petitioner therein. The ratio decided in the

said case is not applicable to the present case and factually both the cases are totally different and are distinguishable.

9. In the instant case, Clause 13(h) of the advertisement unequivocally prescribes that in case of physically handicapped persons, attested copies of the certificates/ identity card issued by competent authority were to be attached along with the application form. The petitioner had only enclosed the registration certificate issued in his favour by the Government of India, Ministry of Labour and Employment, DGE&T, Vocational Rehabilitation Centre for Handicapped, which according to him is suffice to meet the requirement of clause 13(h). But if specific documents are prescribed in the advertisement to be supplied by the candidates and the same were not filed by the petitioner, it cannot be said that the petitioner has complied the conditions stipulated in the advertisement. In absence of compliance of any of the conditions of the advertisement, the petitioner cannot claim the benefit as has been asked in the present writ petition. Thereby, this Court does not find any error

apparent on the face of the order dated 09.11.2012 passed by the tribunal in O.A. No. 334 (C) of 2012 in rejecting the claim of the petitioner. As such, the order impugned passed by the tribunal does not require interference by this Court at this stage.

10. In the result, the writ application merits no consideration and the same is hereby dismissed. There shall be no order as to costs.

SAVITRI RATHO, J.

I agree.

.....
DR. B.R. SARANGI,
JUDGE

.....
SAVITRI RATHO,
JUDGE

Orissa High Court, Cuttack
The 5th May, 2022, Arun/GDS