

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 11764 of 2014

Bijay Kumar Sahoo

.....

Petitioner

Mr. M.K. Mohanty, Adv.

Vs.

State of Orissa and others

.....

Opposite Parties

Mr. A.K. Mishra, AGA

Mr. S. Rout, Adv.

(For O.P. No.4)

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

25.03.2022

Order No.

23.

This matter is taken up through hybrid mode.

2. Heard Mr. M.K. Mohanty, learned counsel for the petitioner; Mr. A.K. Mishra, learned Addl. Government Advocate for State-opposite parties; and Mr. S. Rout, learned counsel for opposite party no.4.

3. The petitioner has filed this writ petition seeking to quash the inquiry report dated 03.08.2013 of Dr. Deepak Kumar Prusty, Addl. Director of Health Services (PMS &R)-cum-Enquiring Officer under Annexure-5 and also the order dated 08.05.2014 passed by the Orissa Administrative Tribunal in O.A. No. 1267 of 2012 under Annexure-7.

4. Mr. M.K. Mohanty, learned counsel for the petitioner contended that an advertisement was issued for filling up of the post of Pharmacist. As per guidelines issued vide Annexure-1 for contractual appointment to the paramedical posts under Chief District Medical Officer, Khordha, five posts of pharmacist were to be filled up, out of which one post was meant for ST and other four were meant for UR category. The candidates must have

passed diploma in Pharmacy and have registered their names in the Odisha Pharmacy Council. The age limit was as per the State Government norms. Salary for the said post was Rs.5200/- per month. The selection was to be made according to the merit in the D. Pharma examination. It is contended that the petitioner claims appointment against four UR category posts, even though he was selected under UR (PH) category. It is further contended appointment of the petitioner was challenged by opposite party no.4 by filing O.A. No. 1267 of 2012 before the Orissa Administrative Tribunal, Bhubaneswar. The said opposite party no.4 also approached this Court by filing W.P.(C) No. 22923 of 2012 praying for an enquiry to be made for issuance of handicapped certificate in favour of the petitioner. The said writ petition was disposed of, vide order dated 11.12.2012, directing the opposite parties to consider the representation of opposite party no.4 in accordance with law within a period of three months by affording opportunity of hearing to all the parties. In compliance of the same, enquiry was conducted and a report was submitted vide Annexure-5 by holding that the petitioner had suppressed the truth of caste certificate and disability certificate and, therefore, he should be terminated from service and appointment order should be issued in favour of opposite party no.4. It is contended that the tribunal, while disposing of the O.A. No.1267 of 2012, directed opposite party no.1 to take action on the enquiry report of Dr. Deepak Kumar Prusty, Addl. Director Health Services (P & MR) within a period of two months, which is subject matter of challenge in this writ petition.

5. Mr. A.K. Mishra, learned Addl. Government Advocate contended that the advertisement issued under Annexure-1 in the

shape of guidelines, does not contemplate with regard to appointment of PH category candidates under UR category, rather it only envisages with regard to filling up of four nos. of UR category posts. It is contended that the appointment of the petitioner under UR(PH) category was disputed by opposite party no.4 by filing original application before the tribunal and, as such, an enquiry was conducted pursuant to the order dated 11.12.2012 passed by this Court in W.P.(C) No. 22923 of 2012 and the inquiry officer, by observing that the petitioner has suppressed the truth of caste certificate and disability certificate, recommended for termination of his service. Accordingly, steps were taken by opposite party no.1 for termination of his service and, as such, he has been issued with notice vide Annexure-C/4 dated 20.06.2014 to appear before the appellate medical board in order to examine the authenticity of the disability certificate. It is contended that till date the petitioner has not appeared before the appellate medical board, but approached this Court by filing the present writ petition.

6. Mr. S. Rout, learned counsel for opposite party no.4 contended that since the petitioner has got appointment under UR(PH) category against four posts advertised under the UR category, that itself is arbitrary and unreasonable on the part of the authority. Therefore, opposite party no.4 approached the tribunal by filing O.A. No. 1267 of 2012, and also approached this Court by filing W.P.(C) No. 22923 of 2012, which was disposed of vide order dated 11.12.2012 directing the opposite parties to consider the grievance of opposite party no.4 and on that basis enquiry was conducted, in which proceeding the petitioner deliberately and willfully did not participated. Thereby, the Enquiring Officer came

to a conclusion that the petitioner has suppressed the truth of caste certificate and disability certificate and, therefore, recommended for termination of his appointment and also opined to give appointment to opposite party no.4. Consequentially, the tribunal, taking into consideration such enquiry report, directed the opposite party no.1 to take action on the inquiry report of Dr. P.K. Prusty, Additional Director, Health Services (P&MR) within a period of two months. Pursuant to such order, though notice was issued to the petitioner to appear before the appellate medical board, but instead of appearing before the appellate board, the petitioner has approached this Court by filing the present writ petition, wherein this Court, vide order dated 30.07.2014, passed interim order to the extent that the enquiry report dated 03.08.2013 and order dated 08.05.2014 passed by the tribunal in O.A. No. 1267 of 2012 would remain in abeyance and the petitioner's employment shall not be terminated without leave of this Court. It is contended that though the relief has already been granted to opposite party no.4 by the tribunal, but the same has not been availed up till now.

7. Having heard learned counsel for the parties and after going through the records, this Court finds that an advertisement was issued for filling up of five posts of Pharmacists under the CDMO, Khordha, out of which, one post reserved for ST and four nos. of posts were reserved for UR category. More so, the petitioner though belonged to SEBC category, he claimed the benefit under UR category. Had the petitioner been appointed simply under UR category, then there would not have been any dispute. Rather, the petitioner has been appointed under UR (PH) category as against four nos. of vacancies meant for UR category, which creates a

problem for the petitioner. As such, the selection and engagement of the petitioner was challenged by the opposite party no.4 before the tribunal. The physically handicapped certificate, which was received by the petitioner, and on the basis of which he has received the benefits also creates doubt, as the same was not obtained in proper manner, as required under law. Therefore, opposite party no.4 approached this Court by filing W.P.(C) No. 22923 of 2012, which was disposed of, vide order dated 11.12.2012, directing opposite party no.1 to consider and dispose of the representation in accordance with law within a period of three months. On consideration of the same, direction was issued to cause enquiry with regard to physically handicapped certificate issued in favour of the petitioner. Pursuant thereto, though enquiry was conducted on 25.07.2013, but the petitioner did not appear on that date fixed. But the enquiry report clearly indicates that the petitioner had applied for both Pharmacist and MPHW (M) and, as such, he had applied as a general (UR) candidate for the post of Pharmacist and as SEBC for the post of MPHW (M). His caste certificate was examined, and it was proved that he is (Teli) by caste under SEBC category and, as such, he has suppressed the truth for his appointment as UR (PH) candidate. When this was revealed, the CDMO asked for a show cause, vide letter no.2091/02-03-13, and the office of the CDMO, Khodha is silent over the same. Further, his date of birth is 18.06.1974 and he had applied for PH certificate on 01.07.2009, i.e., after a period of 35 years, at Capital Hospital. The recruitment age is 21 to 32 years and, therefore, issuance of PH certificate on 01.07.2009 is a matter of question. As a consequence thereof, the petitioner was appointed as Pharmacist at the age of 39 years, i.e., on 15.09.2012

and, as such, the petitioner had manipulated to receive the disability certificate of 50% from Capital Hospital on 01.07.2009. As per letter no.25384/G dated 20.09.2005 of General Administration Department of Govt. of Odisha, the persons with disabilities, when selected as per the reservation for them, shall claim the vacancies reserved for the categories to which they may belong, which means that persons with disabilities will claim the vacancy reserved for SEBC. Taking into consideration the inquiry report, the tribunal, by observing that the action on such enquiry report seems to be pending as none of the parties could apprise as to the action taken on such inquiry report, has directed the opposite party no.1 to take action on the inquiry report of Dr. P.K. Prusty, Additional Director, Health Services (P&MR) within a period of two months. In compliance thereof, notice was issued to the petitioner to appear before the appellate medical board, vide letter dated 20.06.2014. But the petitioner instead of appearing before the medical board, approached this Court by filing the present writ petition challenging the order passed by the tribunal and, as such, obtained an interim order in his favour and till date he has not appeared before the appellate medicate board. But fact remains, the appointment of the petitioner has been made under UR(PH) category post, when such post was advertised, rather the posts were advertised for UR category. Therefore, it creates grave doubts as to how the authority could give appointment to the petitioner under UR(PH) category. So far as disability part is concerned, when opportunity was given to the petitioner, pursuant to the order passed by the tribunal, the petitioner did not appear before the appellate medical board and, as such, the enquiry report indicates that the petitioner has suppressed the truth of caste

certificate and disability certificate. Therefore, recommendation was made for his termination and to issue appointment order in favour of opposite party no.4. Accordingly, when steps were to be taken by the authority, the petitioner approached this Court by filing the present writ petition.

8. In the above view of the matter, this Court is of the considered view that if the petitioner claims appointment on the basis of PH category, it is incumbent upon him to satisfy the authority that he is really entitled to such benefit in terms of the disability certificate issued in his favour. But, when notice was issued to him on 20.06.2014 to appear before the appellate medical board vide Annexure-C/4, he did not appear. Therefore, on 17.10.2014, the Deputy Secretary to Government wrote a letter to Director for Welfare of PWDs to furnish the authenticity report of the disability certificate of the petitioner immediately so that the contempt case can be avoided. Thereafter, though the petitioner was directed to appear before the appellate medical board on 02.09.2014, but till date the petitioner has not appeared before the medical board.

9. In the above view of the matter, this Court is of the considered view that if the petitioner claims appointment under PH category against the posts meant for UR category, then he has to justify his disability by appearing before the Appellate Medical Board, SCB Medical College and Hospital, Cuttack for verification of his disability certificate. Accordingly, this Court directs the petitioner to appear before the Appellate Medical Board, SCB Medical College and Hospital, Cuttack on 11.04.2022, so that the appellate medical board can examine him and furnish report in accordance with law. Needless to say, on the

basis of the report furnished by the appellate medical board, the opposite party-authority shall take follow up action in accordance with law, as expeditiously as possible, preferably within a period of four weeks therefrom.

10. With the above modification of the order passed by the tribunal, the writ petition stands disposed of.

11. A free copy of this order be handed over to Mr. A.K. Mishra, learned Addl. Government Advocate for compliance.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

Ashok/Sukanta

(SAVITRI RATHO)
JUDGE

