

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.12376 of 2012

Subrat Kumar Mahali

.....

Petitioner

Mr. S.P. Mohanty, Adv.

Vs.

Union of India and others

.....

Opposite Parties

Mr. G. Mohanty, CGC

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

05.08.2022

Order No.

14.

This matter is taken up by hybrid mode.

2. Heard Mr. S.P. Mohanty, learned Counsel appearing for the Petitioner and Mr. Gyanolok Mohanty, Central Government Counsel appearing for the Union of India-Opposite parties.

3. The Petitioner has filed this Writ Petition seeking to quash the Order dated 10.04.2012 passed in O.A. No.640 of 2011, by which the Central Administrative Tribunal, Cuttack Bench, Cuttack, has dismissed the Original Application filed by the Petitioner.

4. Mr. S.P. Mohanty, learned Counsel appearing for the Petitioner contended that the Petitioner has been denied to appear in the Limited Departmental Examination for promotion to the cadre of Inspector on the ground that although he was selected for promotion to the cadre of Postmaster Grade-I but had not declined to accept the said promotional post, which is arbitrary and unreasonable. Being aggrieved by the said Order of the Authority, the Petitioner approached Tribunal, but the Tribunal dismissed the Original Application. Therefore, the Petitioner has approached this Court by filing the present Writ Petition.

5. Mr. Gyanalok Mohanty, learned Central Government Counsel appearing for the Opposite Parties, on the other hand contended that the Order impugned passed by the Tribunal is well

justified and does not require interference of this Court, as the same has been passed following due procedure of law.

6. Having heard learned Counsel for the Parties and after going through the records, this Court finds that the Petitioner, while working as Postal Assistant, Jagatsinghpur Head Post Office, having been qualified in the Departmental Competitive Examination conducted by the Opposite Party No.2, was appointed as Postmaster, Choudwar Post Office, vide Order dated 19.07.2011, and thereafter he applied to appear in the Inspector Posts Examination, 2011 scheduled to be held on 3rd and 4th September, 2011. Vide Memo dated 24.08.2011, it was informed by the Opposite Party No.2 that the candidates, who qualified in the Departmental Postmaster Grade I Examination and the officials, who are undergoing training for Postmaster Grade I, may be permitted to appear in the Limited Departmental Examination for promotion to the cadre of Inspector of Posts to be held on 03-04 September, 2011, if they are not yet appointed as Postmaster Grade-I. It was also clarified vide Memo dated 26.09.2011 that declination of appointment by the official can be accepted, if the same is received before issue of Order of appointment. Consequent upon the said instruction, Opposite Party No.2, vide letter dated 06.09.2011, informed that the Petitioner excepting those whose declinations are accepted, will not be permitted to appear at the Inspector Posts Examination as appointment Order has already been issued in their favour in Postmaster Grade-I cadre. The Petitioner being one such employee, who was appointed as Postmaster Grade-I, Choudwar Post Office, but had not declined for the post of Postmaster Grade-I, was debarred from appearing in the aforesaid examination. Thereby, he being aggrieved by such decision, approached the Tribunal by filing

Original Application with a prayer to quash the Order dated 06.09.2011, in which he was debarred from appearing in the Inspector of Posts Examination, 2011 with further prayer to direct the Opposite Parties to allow him to appear in the examination of Inspector of Posts rescheduled to be held on 15th and 16th October, 2011, as the said instruction is not confined to Rules governing the field for recruitment to the post of Inspector of Posts and Postmaster Grade-I.

7. Pursuant to notice, Opposite Parties filed Counter Affidavit stating *inter alia* that the Petitioner had applied for the post of Inspector in Postal Examination and his name among other eligible candidates was forwarded to the CMC Limited, the agency authorized to conduct the I.P. Examination, 2011. In the meanwhile, instruction of the Directorate dated 24.08.2011 was received, thereby it was decided that all qualified Postmaster Grade-I officials excepting those whose declinations are accepted will not be permitted to appear in the Inspector Posts Examination, as appointment orders have already been issued in their favour in Postmaster Grade-I cadre. As the Petitioner was appointed as Postmaster Grade-I, Choudwar Post Office and had not declined the appointment for the said post, he was not allowed to appear in the Inspector Posts Examination along with others and the CMC Limited was directed not to issue hall permits in favour of the Petitioner and all other similarly situated persons, who had applied to appear at the Inspector of Posts Examination and, as such, this being a policy decision, judicial interference was not warranted. As a consequence thereof, the Petitioner stated that he is ready to appear in the Examination and his case may be considered for promotion. To substantiate his argument, he has relied upon the case of ***Paluru Ramkrishnaiah and others v. Union of India and***

another, AIR 1990 SC 166 and, as such, the benefit admissible to the Petitioner cannot be denied.

6. The Tribunal, after due adjudication of contentions raised by the Parties, came to the conclusion that the Recruitment Rules clearly provides that the post of Inspector shall be filled up 33.34% by way of direct recruitment through Staff Selection Commission and 66.66% by way of promotion through limited Departmental Competitive Examination. The Postmaster constitutes a separate cadre in the Rules. The decision relied on by the Petitioner provides that an executive instruction could make a provision only with regard to a service matter, which is not covered by the Rules and that such executive instruction cannot override any provision of the Rules framed under Article 309 of the Constitution of India. When there is no ex facie/express provision in the rules permitting such of the employees, who qualified and were appointed as Postmaster Grade-I to appear at the Inspector of Posts Examination, eliminating them from the zone of consideration cannot be faulted with. The Authority has every right to take policy decision through executive instruction of-course the said decision should not be contrary to what has been provided in the Rules. It is trite law that in policy decisions the judicial interference, as a matter of routine, is not permissible. It has also been observed that vide letter dated 06.09.2011 issued by the Opposite Party No.2 consequent upon the decision of the Opposite Party No.1 communicated vide Memo dated 24.08.2011 subsequently clarified in Memo dated 26.09.2011, the Petitioner has challenged the letter dated 06.09.2011, without challenging the decision of the Opposite Party No.1 basing on which the letter dated 26.09.2011 was issued. Therefore, this Court is of the considered view that the Tribunal has not committed any error in

passing the Order impugned. More so, the selection has already been over since 2011 and in the meantime for more than 10 years have passed and, therefore, by efflux of time, the Writ Petition has become infructuous. More so, what has happened in the meantime, nothing has been placed on record. In view of such position, this Court does not find any merit in the Writ Petition, which is accordingly dismissed.

(DR. B.R. SARANGI)
JUDGE

Ashok/Padma

(S.K. MISHRA)
JUDGE

