

IN THE HIGH COURT OF ORISSA AT CUTTACK

WA Nos. 47 of 2014 and 41 of 2014

WA No.47 of 2014

Binod Bihari Bag

.... Appellant

Mr. Sukanta Kumar Dalai, Advocate

-versus-

State of Odisha and Others

... Respondents

Mr. M.K. Khuntia, Addl. Govt. Advocate

Mr. D.R. Mohapatra, Senior Standing Counsel

AND

WA No.41 of 2014

Rajashri Behera

.... Appellant

Mr. J. Biswal, Advocate

-versus-

State of Odisha and Others

... Respondents

Mr. M.K. Khuntia, Addl. Govt. Advocate

Mr. D.R. Mohapatra, Senior Standing Counsel

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

ORDER

08.09.2022

Order No.

32. 1. Both these appeals are directed against the same judgment dated 13th January 2014 passed by the learned Single Judge disposing of W.P.(C) No.6422 of 2012 filed by Binod Bihari Bag, the Appellant in W.A. No.47 of 2014.

2. While directing notice to issue in the first mentioned appeal on 26th February 2014, this Court directed status quo to be maintained as regards the appointment of the Appellant in W.A. No.41 of 2014 i.e., Rajashri Behera.

3. The background facts are that an advertisement was issued for the post of Sikshya Sahayak (SS) in the B.A., B.Ed. category by the Collector, Jharsuguda on 14th September, 2011. As far as the Appellant in W.A. No.47 of 2014 i.e., the writ Petitioner is concerned, he applied for the post of Trained Graduate Arts (SS) meant for Physically Handicapped (PH). The prayer in the writ petition was that the final merit list should be quashed and the selection letter issued in favour of Rajashree Behera (who was impleaded as Opposite Party No.5 in W.P.(C) No.6422 of 2012) should be quashed and instead he should be engaged in her place.

4. The learned Single Judge has in the impugned judgment taken note of the reservation made in different categories as set out in the advertisement. What is relevant as far as the present case is concerned is that in the General Category two vacancies were reserved for female and three for male and one in the SEBC category Female. There was also one vacancy in the PH category.

5. In the merit list that was published, Rajashri Behera figured at Sl No.9. There was one other person Padmasini Khamari, who also applied in the SEBC quota who figured at Sl No.6. During pendency of the writ petition, after disability commissioner was lifted the stay, the vacancy earmarked for PH was in fact offered to the Appellant-Binod Bihari Bag and an appointment order was

issued in his favour on 17th September 2012. However, as sought to be explained by his counsel Mr. S.K. Dalai, he did not join on the pretext that the writ petition was pending in the Court and that he needed a direction from the Court to enable him to join.

6. As far as Rajashri Behera is concerned, since there were two vacancies earmarked in the SEBC category and she belonged to the SEBC, there should have been no difficulty in appointing her against that category because the candidate above her in the merit list Padmasini Khamari although belonging to the SEBC was high in merit and could be accommodated in the General category itself. There were two vacancies earmarked for females in the General category. This meant that in the single post meant for female SEBC, Rajashri Behera could have been appointed.

7. The learned Single Judge for some reason failed to appreciate the legal position a candidate who may have applied in the reserved category, may on her own merit be able to be accommodated against the vacancies meant for the General/UR category, if she had scored high enough marks in the general merit list. Consequently, the quashing of the appointment of Rajashri Behera by the learned Single Judge was unwarranted. It may be noted here that Mr. Dalai, learned counsel for the Appellant I W.A. No. 47 of 2014 i.e. the original writ Petitioner Binod Bihari Bag repeatedly stated that he had no objection to Rajashri Behera being granted the above relief.

8. As far as the writ Petitioner i.e., the Appellant in W.A. No.47 of 2014 is concerned, the learned Single Judge observed in para 19 of the impugned order as under:

“19. However, it is seen that after lifting of the stay order of the Physically Handicapped Commissioner, the authorities have been issued engagement order in favour of the petitioner, but he has not joined in pursuance thereof. Therefore he has forfeited his right to claim engagement as Sikshya Sahayak in the physically handicapped category.”

9. Mr. Dalai, however, states that Binod Bihari Bag was always prepared to join the post and he did not do so only because the writ petition was pending. The Court finds this explanation to be unacceptable. There was no order by the learned Single Judge preventing Binod Bihari Bag from joining the post when it was offered to him. The failure to do so, was of his own doing and therefore, no fault can be found in the above observation of the learned Single Judge. Nevertheless, it will be open to Binod Bihari Bag to take up the appointment if the post is still vacant by reporting to the authorities within a period of two weeks from the date of this order.

10. The net result is that the writ appeal of Rajashri Behera i.e. WA No.41 of 2014 is hereby allowed and the impugned order of the learned Single Judge to the extent, it quashes her appointment is hereby set aside. Since she is already continuing, order be issued confirming her appointment within two weeks from today. W.A. No.47 of 2014 is disposed of with the directions already issued as far as Binod Bihari Bag is concerned.

11. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S.K. Jena/Secy.

