

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 9377 of 2017

Dillip Kerketta

.....

Petitioner

Mr. S.Behera, Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. S.N. Nayak, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

20.06.2022

Order No.

05.

This matter is taken up through hybrid mode.

2. Heard Mr. S. Behera, learned counsel for the petitioner and Mr. S.N. Nayak, learned Additional Standing Counsel for the State.

3. The petitioner has filed this writ petition seeking to quash the order dated 24.04.2017 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 459 (C) of 2014.

4. On perusal of the records, it reveals that pursuant to the advertisement issued by the Principal Chief Conservator of Forests, Orissa, Bhubaneswar under Annexure-1 to the Original Application, the petitioner applied for the post of Forest Guard in Sundargarh district. The petitioner belongs to S.T community and was residing in Sundargarh district and had registered his name in Sundargarh Employment Exchange. As per the said advertisement, 28 posts of Forest guard were to be filled up in Sundargarh division so also 17 posts under Rourkela Division. Sundargarh and Rourkela Forest Divisions were both coming

under the revenue district of Sundergarh. As per Clause-5 of the advertisement, the eligibility criteria clearly stipulates that a candidate must have registered his/her name in any Employment Exchange within the jurisdiction of the respective appointing authority. Accordingly, the petitioner was called for the written test and got qualified in the said test along with 35 others and thereafter verification of his certificates and documents were conducted on 26th November, 2011 and viva voce test was held on the next day. After necessary formalities and tests, a select list was prepared in order of merit vide Annexure-2 to the Original Application, wherein the name of the petitioner was overlooked. The names of one Chiranjib Dang, who belongs to ST community and had registered his name in Rourkela employment exchange, appeared at Sl No.24 of the select list, while that of Pragyan Paramita Samal, who belongs to SEBC (W) candidate of Jajpur district and had registered her name in Rourkela Employment Exchange, had also participated in the recruitment test. Since both of them had registered their names under Rourkela Employment Exchange, they could not have been considered by the DFO, Sundergarh in terms of Clause-5 of the advertisement. On the basis of the select list, opposite party no.4 issued the order of appointment in respect of 28 selected candidates on 4.4.2012. Chiranjib Dang joined on 11.4.2012 while Pragyan Paramita Samal joined on 16.4.2012 as Forest Guards under DFO, Sundergarh Forest Division. Pragyan Paramita Samal, who joined as Forest Guard, subsequently left her job and joined as a Forester on 5.6.2012 on being so selected. The petitioner made a representation praying his case to be considered against the post

lying vacant consequent upon the vacancy arose after Pragyan Paramita Samal quit the job, as because he had secured next higher mark i.e 54, which was just below the candidate placed at sl no. 13 of the select list. Since Pragyan Paramita Samal and Chiranjib Dang, whose name found place at sl nos.1 and 12 respectively were both to be declared as “not eligible candidate as per Advertisement”, the petitioner’s case had to be considered. Pragyan Paramita Samal was no more in service and Chiranjibi Dang could not have been considered as his name was registered in Rourkela Employment Exchange. While 28 posts of Forest guards were advertised to be filled up in Sundargarh Division, only 9 posts were given to general category (UR) and remaining 19 posts for reserved category, thereby exceeding 50% which was also not permissible under law and could not have been done as per the decision of the Apex Court. 14 candidates in order of merit for U.R. category irrespective of their caste were given appointment and the petitioner could have been given appointment against U.R category if the persons securing higher marks in ST category would have been given appointment against unreserved category vacancy on the basis of their higher marks.

4.1 Challenging such action of the authorities, the petitioner approached the Tribunal by filing O.A. No. 2924(C)/2012 and on the intervention of the Minister of Forest, the petitioner withdrew the case as per the order dated 25.7.2013 vide Annexure-8 and thereafter, the petitioner made a representation to the Minister, Forest & Environment, who in turn forwarded the same to the authority for taking appropriate action, pointing out that the petitioner had already crossed the maximum

age limit for the government job. Since nothing was done, finding no other alternative, the petitioner filed O.A. No. 459 (C) of 2014. Notice being issued by the tribunal, the opposite parties appeared and filed their counter denying the claim made by the petitioner in the Original Application and also stated that 28 number of vacancies were to be filled up in Sundargarh Forest Division in the category wise break up available in the advertisement as per the Recruitment and conditions of Service of Forest Guards Rule, 1998. In Sundargarh district, there were three numbers of Forest Divisions, such as Sundargarh, Rourkela and Bonai and there were three Employment Exchange Offices in Sundargarh, namely Employment Exchange Office, Sundargarh and Employment Exchange Office, Rourkela and Employment Exchange Office, Bonai. But Rourkela Employment Exchange Office covers the whole of the district and Sundargarh Forest Division comes within Sundargarh District. Two candidates, namely Chiranjib Dang and Pragyan Paramita Samal, who registered their names in Rourkela Employment Exchange were allowed to participate in the recruitment test conducted during 2011 in Sundargarh Forest Division, which is not in violation of the eligibility criteria. The District Employment Officer, Rourkela in his letter dated 29.03.2011 had clarified that the District Employment Exchange has the discretion to register the names of all the candidates residing over entire revenue area of Sundargarh district, but the other two Employment Exchanges, i.e. Sundargarh and Rourkela have been restricted to revenue sub-division of Sundargarh and Bonai respectively. The Selection Committee has prepared the select list of 28 candidates keeping in view the roster point/ORV

Act and tabulation of marks secured by the candidates and accordingly the order of appointment were issued pursuant to order dated 04.04.2012 of Principal Chief Conservator of Forests. Similarly Chiranjib Dang and Pragyan Paramita Samal had also been appointed as Forest Guard on 11.04.2012 and 16.04.2012 respectively. Subsequently Pragyan Paramita Samal was appointed as Forester vide order dated 02.06.2012 and joined the post on 05.06.2012, for which she left the job of Forest Guard and accordingly the said post was lying vacant. Since no order had been received from the higher authorities and there was no provision to prepare a waiting list to be appointed in the future vacancy, the case of the petitioner could not be considered. Thereby, the representation filed by the petitioner was rejected.

5. To the above pleadings, the tribunal came to a finding that both Chiranjib Dang and Pragyan Paramita Samal had admittedly registered their names in Rourkela District Employment Exchange prior to filing of applications. Rourkela District Employment Exchange has jurisdiction over Sundargarh district, as averred by respondents in the counter and as per the clarification issued by the authority concerned. Since those who registered their names in Rourkela District Employment Exchange, are entitled to be considered for employment in Sundargarh Sub-Division, thus in the jurisdiction of Sundargarh DFO, cannot be said that the persons registering their names in Rourkela Employment Exchange are not eligible as the said Employment is not located within the territorial jurisdiction of Sundargarh DFO. Apart from the same, Chiranjib Dang and Pragyan Paramita Samal had not been made parties to the Original Application. Therefore, the

tribunal is well justified in observing that, whether they are eligible to be considered or not, that cannot be taken into consideration while adjudicating the same in their absence. More so, with regard to the quantum of reservation in the advertisement published in the year 2011, according to the petitioner, out of 50% reservation from the total post, only 9 posts were reserved for UR category, thereby the advertisement exceeded 50% of reservation, but the same had not been challenged. Rather the petitioner participated in the process of selection and at a belated stage, he cannot raise this question. More so, the Original Application bearing O.A. No. 2924 (C) of 2012 having been withdrawn vide order dated 25.07.2013, at the belated stage, he cannot approach the tribunal making the grievances to extend the benefit of appointment.

6. In view of the above, this Court does not find any illegality or irregularity in the impugned order passed by the tribunal to call for interference.

7. The writ petition thus merits no consideration and stands dismissed accordingly.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

Arun/Banita