

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 8084 of 2016

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

AFR Priyabrata Behera Petitioner

-Versus-

State of Orissa & Anr. Opp. Parties

For Petitioner : M/s. S. Mallik & P.C Das,
Advocates

For Opp. Parties : Mr. A.K. Mishra,
Addl. Govt. Advocate
(O.P.1)

Mr. P.K. Mohanty, Sr. Advocate
along with M/s. P.K. Nayak, D.N.
Mohapatra, (Smt.) J. Mohanty,
P.K. Nayak, S.N. Das, A. Das &
P.K. Pasayat, Advocates
(O.P.2)

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR JUSTICE S. K. MISHRA**

DECIDED ON : 21.07.2022

DR. B.R. SARANGI, J. The Petitioner has filed this Writ Petition seeking to quash the Order dated 20.04.2016 in O.A. No.4251(C) of 2013, by which the Orissa Administrative

Tribunal, Cuttack Bench, Cuttack has dismissed the said O.A. filed by the Petitioner claiming for appointment against the vacant post of Lecturer in OTE & TE Cadre in Modern Office Management, pursuant to advertisement issued by Opposite Party No.2-Odisha Public Service Commission, Cuttack

2. The factual matrix of the case, in brief, is that Opposite Party No.2 issued an advertisement inviting applications for the post of Lecturer in OTE & TE cadre, pursuant to which the Petitioner submitted his application for participation in the selection for the post of Lecturer in Modern Office Management against the vacancy reserved for SC categories. After selection, a merit/assessment list was published. The Petitioner secured total 67.926 marks and one Rashmi Kaibarta belonging to SC category secured 71.725 marks. Opposite Party No. 2 recommended the name of Rashmi Kaibarta for the post. But she did not join the same, as she preferred some other respectable/better job. The Petitioner made a Representation to consider his case. As the same was not acceded to, he approached the

Odisha Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A. No.4251(C) of 2013. After due adjudication, the Tribunal, vide Order dated 20.04.2016 dismissed his claim. Hence, this Writ Petition.

3. Mr. S. Mallik, learned Counsel appearing for the Petitioner contended that since the Petitioner belonged to SC category and his position was second highest amongst SC category candidates and one post was remained vacant due to non-joining of one Rashmi Kaibarta, who stood first in the selection list, the Petitioner's name should be recommended for appointment to the said post. But no offer of appointment was given to the Petitioner. It is contended that the validity of merit list was expired in 2014. It is further contended that total number of vacancies was 87, out of which 18 posts were reserved for SC category. One Rashmi Kabarta, a SC category candidate had applied for two posts and she got offer for both the posts, but did not join in any of the posts. Thus, out of 18 posts meant for SC category, one post was fallen vacant. Therefore, the Petitioner is entitled to get offer of

appointment as his name was found place in Serial No.2 of the merit list. It is further contended that in all fairness, Opposite Party No.2 should have recommended the name of the Petitioner and instead of doing so, Opposite Party No.2 remained silent. Sub-clause-(d) of Clause-2 of the advertisement states that the number of vacancies to be filled up on the basis of this recruitment is subject to change by Government without notice depending upon the exigencies at the discretion of the State Government. But the State Government did not want to fill up the post, as a result, the Petitioner was deprived of getting his legitimate claim, though his name found in second position of the merit list. It is further contended that Sub-clause-IV of Clause-9 of the advertisement states that the advertisement should not be construed as binding on the Government to make appointment. The select list was published on 31.01.2013 and as far as Modern Office & Management subject is concerned, only one name, i.e., Rashmi Kaibarta was recommended. Thereby, the Authorities acted unreasonably by not filling up the post, which was

already advertised. In support of his contentions, he has relied upon the Judgment of this Court in ***Manasi Bisi v. Additional District Magistrate, Bargarh***, 2021 (I) ILR-CUT-793 and the Judgment of the apex Court in ***Director, SCTI for Medical Science & Technology v. M. Pushkaran***, (2008) 1 SCC 448.

4. Pursuant to notice, Opposite Party No.2-OPSC filed Counter Affidavit before the Tribunal admitting that the Petitioner stood in the second position in the merit list, but he did not get appointment as the post in question was being regulated under the provisions of Odisha Technical Educational and Training Service Rules, 1985. Rules-4 & 6 of the said Rules, 1985, prescribe provisions of recruitment to the post by way of direct recruitment. As the Government sent a requisition to OPSC to fill up various posts, including the discipline of Modern Office Management in OTE & TE Cadre (Group-B) under Industries Department, Opposite Party No.2 had issued advertisement for filling up of two posts (1-SC & 1-UR) of Lecturers in Modern Office Management. After

completion of recruitment process, OPSC recommended two names i.e. one for Mrs. Loveleen Mohanty (W-UR) and another for Rashmi Kaibarta (W-SC). However, OPSC did not recommend the name of the Petitioner. It is also stated that the Government did not convey the OPSC to prepare the waiting list and send it to Government. Therefore, there was no scope to recommend the name of the Petitioner for appointment to the post in question.

5. Opposite Party No.1 also filed Counter Affidavit stating that a requisition was sent to fill up two posts of Lecturers (Modern Office Management) on 31.02.2013. Appointment offer was given to Rashmi Kaibarta, who declined to join. Since the Modern Office Management was a non-demanding subject, OPSC was not inclined to place requisition again and the post was kept in abeyance.

6 This Court heard Mr. S. Mallik, learned Counsel for the Petitioner; Mr. A.K. Mishra, learned Additional Government Advocate appearing for Opposite Party No.1 and Mr. P.K. Pasayat, learned Counsel

appearing for Opposite Party No.2-OPSC in virtual mode. Pleadings have been exchanged between the parties and with the consent of learned Counsel for the parties, the Writ Petition is being disposed of finally at the stage of admission.

7. On the basis of undisputed facts, the only question for consideration before this Court is as to whether Opposite Party No.2 had recommended the name of the Petitioner, who belonged to SC category and stood in Sl.No.2 in the merit list for the post of Lecturer in Modern Office Management?

8. No doubt an advertisement was issued by Opposite Party No.2 for filling up of two posts of Lecturer in Modern Office Management, pursuant to which selection was conducted. The Petitioner stood at Sl. No.2 under the SC category. Since the first candidate did not join in the said post, the said vacancy should be filled up by the candidate, who stood second in the waiting list. But the State Government did not want to fill up the post, because the subject "Modern Office Management" was a non-demanding one. Therefore, the

Government did not send requisition to the OPSC for recommendation of the name of the Petitioner and the said post was kept in abeyance. Aggrieved by the action of the Opposite Parties, the Petitioner approached the Orissa Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A. No.4251(C) of 2013, but the Tribunal, vide Order dated 20.04.2016, rejected the claim of the Petitioner.

9. Learned Counsel for the Petitioner has placed reliance on the Judgment of this Court in ***Manasi Bisi*** (supra). The Petitioner therein, who was second position in the merit list, sought for appointment to the post of Anganwadi Worker, as the 1st candidate did not join in the said post and this Court held that if the selected candidate did not join for some reason or other and merit list was prepared, engagement should be given from the list to the candidate who stood 2nd.

10. So far as reliance placed on ***Director, SCTI for Medical Science & Technology*** (supra) is concerned, in that case the reason for non-extension of benefit was due to the fact that the candidate had not

accepted his offer, therefore, the High Court passed the order confirming the Order of the Tribunal. The Judgment of the High Court, in view of the authoritative pronouncements, cannot be said to be perverse and the apex Court held that the respondent therein was to be offered with the appointment at a point of time when no policy decision was taken. There was no reason not to offer any appointment in his favour. Why the select panel was ignored was not explained and even the purported policy decision was not in their contemplation. Consequentially, the apex Court did not interfere with the Judgment of the High Court.

11. The aforesaid Judgments are not applicable to the present case, in view of the fact that as a matter of principle, the Government, being the Authority, has not sent requisition to OPSC to fill up the post from the remaining candidates and, as such, there was no waiting list prepared for the purpose and the Government kept the post in abeyance. Therefore, non-recommendation of the name of the Petitioner cannot be

said to be illegal, arbitrary and contrary to the provisions of law.

12. In the above view of the matter, we do not find any merit in the Writ Petition to interfere with the order dated 20.04.2016 passed by the Tribunal in O.A. No.4251(C) of 2013. Therefore, the Writ Petition is dismissed. But there shall be no order as to costs.

S. K. MISHRA, J.

I agree.

(DR. B.R. SARANGI)
JUDGE

(S. K. MISHRA)
JUDGE

Orissa High Court, Cuttack
The 21st July, 2022, Alok

