

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.5774 of 2022

Dr. Rita Rani Sahoo **Petitioner**
Mr. Avijit Mishra, Adv.

-versus-

State of Odisha and Ors. **Opposite Parties**
Mr. S. K. Samal, AGA
Mr. J. Rath, Sr. Adv.
(for O.Ps.3 & 4)
Mr. K.A. Guru, Adv.
(for intervenor)

CORAM:
Mr. JUSTICE S.K. PANIGRAHI

Order
No.

ORDER
31.05.2022

8.

1. This matter is taken up by hybrid mode.
2. Heard learned counsel for the Petitioner and learned counsel for the Opposite Parties.
3. The Petitioner has filed this application challenging Notice No.9611 dated 29.12.2021 issued by opp. party No.2 wherein the name of candidates have been recommended for appointment to the posts of Lecturer in different disciplines of Government Medical Colleges of the state of Odisha in Class-II (Group-B) of Odisha Homeopathic Medical Education Service under Health and Family Welfare Department pursuant to advertisement no. 03 of 2020-21, even though they are already

working in the same posts in the same cadre being selected by OPSC vide advertisement No.01 of 2015-16 and in the process, the petitioner who can be the next eligible candidate for the said posts is going to be debarred to be considered.

4. Shorn of unnecessary details, the substratum of the matter presented before this Court remain that the Petitioner has been an aspirant for the post of Lecturer in Government Medical Colleges of the state of Odisha in Class-II (Group-B) of Odisha Homeopathic Medical Education Service under the Health and Family Welfare Department and after 2015 no advertisement was issued by the government for filling of the same. While the matter stood thus, the petitioner came across an advertisement issued by opp. party No.2 vide advertisement no-03 of 2020-21 dated 08.07.2020 for recruitment of posts of Lecturer in different disciplines of Government Medical Colleges of the state of Odisha in Class-II (Group-B) of Odisha Homeopathic Medical Education Service under Health and Family Welfare Department. The petitioner found herself eligible for the post of Lecturer as per the eligibility criteria fixed in the advertisement and for which applied for the same.

5. In the instant case, Sasmita Mohapatra (Roll No.164) and Priyanka Priyadarsini Pati (Roll

No.155) have been recommended by opp. party No.2 for appointment for the post of Lecturer in Government Homeopathic Medical Colleges pursuant to Advertisement/Annexure-1 whereas both the candidates were selected for the said post and their names were recommended by OPSC for appointment in the same post in the same cadre vide notice No.674 dated 30.01.2017. Aggrieved by the same, the petitioner has approached this Court.

6. Learned counsel for the Petitioner submits that OPSC was expected to reject the candidatures of the candidates who are already working in the post of Lecturers in Government Homeopathic Medical Colleges of the state of Odisha in Class-11 (Group-B) of Odisha Homeopathic Medical Education Service Under Health and Family Welfare Department is conducted in terms of Odisha Homeopathic Medical Service (Method of Recruitment and Conditions of Service) Rules, 2013 and continuing in the same cadre, the same was not done and names of such candidates have been recommended by OPSC for appointment, which is illegal arbitrary and not sustainable in the eye of law. It is submitted that a similar issue came up during the recruitment process conducted by OPSC pursuant to advertisement No.12 of 2018-19

which was conducted for appointment of Asst. Professors in different disciplines in government Medical Colleges, where few names of the candidates who were already working in other Government Medical Colleges in the same post and cadre and appeared in the selection process, were recommended by OPSC for appointment and where Opp. Party No.1 vide notification No.12868 dated 04.06.2020 was pleased to reject their candidatures for the said post for the second time as they were already appointed and working under Odisha Medical Education Service Cadre after duly recruited pursuant to advertisement No.10 of 2016-17 and further requested OPSC to recommend the names of candidates who were below the candidates selected in the respective disciplines.

7. He further submits that once a candidate has exercised his/her option of subject in a selection process and has got appointment in Class-II (Group-B) of Odisha Homeopathic Medical Education Service Cadre under Health and Family Welfare Department, Government of Odisha, cannot be allowed to participate in any subsequent selection process of Lecturers of Homeopathic in Government Medical College. But in the instant case, OPSC in an illegal and arbitrary manner has

recommended names of two candidates who are already working in the same posts having been selected by OPSC pursuant to advertisement no-01 of 2015-16 for the second time for appointment in the same posts pursuant to advertisement no-03 of 2020-21 which is not sustainable in the eye of law and for which opp. party No.1 may kindly be directed to cancel the candidatures of the candidates.

- 8.** Learned counsel for the Opposite Party Nos.3 and 4 submits that all the selection and recruitment was made pursuant to the rule framed by the State Government, i.e. Odisha Homeopathic Medical Service (Method of Recruitment and Conditions of Service) Rules, 2013. In the said Rules, there is no restriction for any in-service candidate to apply against future vacancy. Rather, in the advertisement at Clause-9 (vi), it has been provided that Government servants/ in-service Homeopathic doctors whether temporary or permanent, are eligible to apply provided that they possess the requisite qualification and are within the prescribed age-limit as provided under Para-3 and 4 of the Advertisement. They must inform their respective Heads of Offices in writing regarding submission of their applications for this recruitment and obtain "No Objection Certificate".

In the present case, the opposite party no.3 is having the qualification of M.D. in Repertory discipline and opposite party no.4 is having the qualification of M.D. in Practice of Medicine discipline. They applied pursuant to the advertisement under Annexure-9 in the year 2015-16, but on the basis of their merit and since chosen discipline of the opposite party Nos. 3 and 4, i.e. Practice of Medicine and Repertory was advertised, but could not be made available to the opposite parties 3 and 4, but the opposite party no.3 joined in Surgery and opposite party no.4 joined in Community Medicine respectively on 28.02.2017.

- 9.** In the advertisement, there is a stipulation that an in-service person can apply and in advertisement under Annexure-1, subject Practice of Medicine and Repertory were made available, the opposite parties 3 and 4 being in-service candidates and the said discipline being their chosen discipline, they applied by obtaining "No Objection Certificates" from the competent authority. Therefore, there is no irregularity or illegality in their selection.
- 10.** A cursory look at the concerned Rule regarding the eligibility of in-service candidates. The advertisement at Clause-9(vi), Page-15, permits the

in-service candidates for the post. The same is quoted below:

“9(vi). Government servants/In-Service Homoeopathic doctors whether temporary or permanent. are eligible to apply provided that they possess the requisite qualification and are within the prescribed age-limit as provided under Para-3 & 4 of the Advertisement. They must inform their respective Heads of Offices in writing regarding submission of their applications for this recruitment and obtain "No Objection Certificate.”

11. In fact, Opposite Party Nos.3 and 4 applied pursuant to the advertisement under Annexure-9 in the year 2015-16, but on the basis of their merit and since chosen discipline of the opposite party Nos.3 and 4, i.e. Practice of Medicine and Repertory was advertised, but could not be made available to the opposite parties 3 and 4, but the opposite party no.3 joined in Surgery and opposite party no.4 joined in Community Medicine. respectively on 28.02.2017. In the advertisement, there is no stipulation that an in-service person can't apply. Since the Opposite Parties 3 and 4 are in-service candidates and the said discipline being their chosen discipline, they applied by obtaining “No Objection Certificates” from the competent

authority. Hence, they were found suitable for appointment of the post advertised for.

12. It is settled that once a person applied and faced the process of selection, being unsuccessful now he/she cannot question the selection process. In ***Union of India v. S. Vinodh Kumar***¹ this Court held:

"18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same."

In such view of the matter, the petitioner after participating the interview can't question the propriety of the selection process unless some serious mal practice, fraud etc. are apparent in the selection process.

13. Similarly, in the case of ***Sadananda Halo v. Momtaz Ali Sheikh***² the Supreme Court held:

"59. It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process. There are of course the exceptions carved out by this Court to this general rule."

14. Having considered the matter in aforesaid perspective and guided by the precedents cited hereinabove, this Court rejects the petition.

¹2007 8 SCC 100

²2008 4 SCC 619

15. The Writ Petition is, accordingly, disposed of in terms of the above directions. There shall be no order as to costs.

16. Urgent certified copy of this order be granted on proper application.

(S.K.Panigrahi)
Judge

BJ

