

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.235 of 2018

Tarjan Patra

....

Appellant

Ms. Saswati Mohapatra, Advocate

-versus-

State of Odisha and others

....

Respondents

Mr. M.K. Khuntia, A.G.A. for the State

CORAM:

THE CHIEF JUSTICE

JUSTICE M.S. RAMAN

Order No.

ORDER
26.10.2022

Dr. S. Muralidhar, CJ.

- 06.
1. The challenge in the present writ appeal is to a judgment dated 25th April 2018, passed by the learned Single Judge dismissing W.P.(C) No.6271 of 2016 filed by the present Appellant.
 2. The aforementioned writ petition was filed by the Appellant questioning the selection of Respondent No.4 herein for the post of Grama Rozgar Sevak (GRS) on the ground that he lacks the essential qualification of 10+2.
 3. The background facts are that an advertisement dated 7th November 2015 was issued calling for applications from intending candidates for the aforementioned post. While the present Appellant had passed 10+2, as far as Respondent No.4 was concerned, he possessed a diploma qualification. The

advertisement in question *inter alia* stipulated that the candidate must possess the following qualification:

“(c) **Qualification:** 10 +2 Pass and preference will be given to commerce stream having computer proficiency of “O” Level with use of Odia language in Computer.”

4. Undoubtedly, the advertisement was silent on what equivalent qualification was acceptable. As it transpired, both the Appellant and Respondent No.4 had applied for the post. The Appellant scored 53.70% marks in HSC and +2 whereas Respondent No.4 secured 73.54% marks. However, the Respondent No.4 had a diploma in Engineering.

5. In the counter affidavit filed by the Respondents-State authorities, a reference was made to a Notification dated 25th June, 2014 of the Council of Higher Secondary Education, Odisha, Bhubaneswar wherein it was stated that a 3 years Diploma Course in Engineering Branch conducted by SCTE & VT, Odisha would be equivalent to the +2 Science stream conducted by the CHSE, Odisha having basic foundation subjects like Physics, Chemistry, Mathematics and English. This was to take effect from 16th November, 2013, which was prior to the date of the advertisement in question, i.e. 7th November, 2015.

6. The question that then arose was whether the above notification could have been applied when the advertisement issued on 7th November, 2015 was silent as to the qualifications equivalent to the +2 qualification. This was answered in the affirmative by the learned Single Judge *inter alia* on the ground that the

aforementioned notification dated 25th June 2014 was not challenged and inasmuch as it was prior to the advertisement, there is no illegality committed in applying such notification.

7. Ms. Saswati Mohapatra, learned counsel for the Appellant has placed reliance on the decisions in ***Bedanga Talukdar v. Saifudaullah Khan (2011) 12 SCC 85*** and ***Prakash Chand Meena v. State of Rajasthan (2015) 8 SCC 484*** to contend that there has to be a strict adherence to the qualification norms as spelt out in the advertisement. The equivalent qualification which was not specifically mentioned as regards could not have been applied by the authorities at the stage of selection.

8. In ***Bedanga Talukdar (supra)***, the well settled principle that the selection process had to be conducted “strictly in accordance with the stipulated selection procedure” was reiterated. It is also held that there cannot be any relaxation in the terms and conditions in the advertisement “unless such power is specifically reserved.” It was noticed that “in the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity.” In the facts of that case, it was found that the advertisement did not spell out any power of relaxation and it was also not in the Rules.

9. However, in the present case, while there may not have been any specific Rule recognizing equivalence of the Diploma in Engineering with 10+2, a Notification was issued by the CHSE, Odisha on 25th June, 2014, which was a public document. This was prior to the advertisement itself. Therefore, it was not as if any new

Rule or new norm has been introduced beyond the advertisement. Consequently, the said decision is of no assistance to the Appellant.

10. As far as the decision in *Prakash Chand Meena (supra)* is concerned, there the question was whether the candidates possessing the qualification of B.P.Ed are eligible and State Government could have issued directions of inclusion of B.P.Ed. qualification in the zone of eligibility for appointment to the post of Physical Training Instructor Gr III when it was not so mentioned in the advertisement? The Supreme Court in the facts of that case answered the question in the negative, and held that: “In the matter of eligibility qualification, the equivalent qualification must be recognised as such in the recruitment rules or government order existing on or before the initiation of recruitment process.” (emphasis supplied) In the present case, as already noted, the equivalence was recognised by a government notification issued much prior to the commencement of the recruitment process.

11. Consequently, this Court is not satisfied that any ground has been made out for interference with the impugned judgment of the learned Single Judge. There is no merit in the present appeal and it is dismissed as such.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge