

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 23810 of 2011

Union of India & Others

.....

Petitioners

Mr. B.S.Rayaguru, C.G.C

Vs.

Jhunurani Behera

.....

Opposite Party

None

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

06.12.2022

Order No.

03.

This matter is taken up through hybrid mode.

2. The memo of appearance filed by Mr. B.S.Rayaguru, learned Central Government Counsel be kept on record.

2.1. The present Writ Petition has been filed by the Union of India and its instrumentalities challenging the order dated 11.03.2011 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A No.387 of 2008. Vide the said order, the Tribunal while disposing O.A No.387 of 2008 filed by the Opposite Party, directed the Petitioners to consider/reconsider the case of the Opposite Party and to take a decision in the matter by passing a reasoned order with due communication to the Opposite Party within a period of 90 days from the date of receipt of the order.

2.2. The factual matrix giving rise to filing of the present case is that pursuant to the advertisement issued on 15.12.1993 inviting applications for filling up 3 posts of Technicians in U.R category, the interview was conducted on 26.02.1994. As per the said interview, a merit list was prepared and 6 persons from out of the merit list, were appointed in the year 1994. Subsequently, out of 6 persons, who were appointed, 3 of them left the job on personal grounds after serving for more than one year during the year 1996. In the merit list prepared basing on the interview held on 26.02.1994, the Opposite Party was placed at Sl. No.17. The Opposite Party seeking his appointment for the first time approached the Tribunal in O.A No.835 of 2006, which was disposed of by the Tribunal with a direction on the Petitioner No.2 herein to consider and dispose of the representation pending with him within a period of two months from the date of receipt of the order. In compliance to the same, a reasoned order when was passed by rejecting the representation of the Opposite Party on 15.01.2007. The Opposite Party challenging the same once again approached the Tribunal in O.A No.75/2007. The Tribunal disposed of the said O.A with a direction to examine the matter as to whether adequate reservation for SC & ST has been provided

and if not then to pass necessary order in the interest of justice. As per the said direction of the Tribunal, the case of Opposite Party was again considered with passing of a speaking order on 21.05.2008. In the said order, a stand was taken that since the validity of the panel prepared pursuant to the interview held on 24.02.1994 has expired, the Opposite Party cannot be provided with the appointment.

2.3. The Opposite Party challenging such order passed on 21.05.2008 approached the Tribunal in O.A No.387/2008. Learned Tribunal once again vide the impugned order dated 21.05.2008 under Annexure-3 disposed of the matter with the following order:-

“Hence, the Respondents are hereby directed to consider/reconsider the case of the Applicant, keeping in mind the observations made above and decision so arrived at should be communicated to the Applicant in a well reasoned order within a period of 90 days from the date of receipt of copy of this order. With the aforesaid observation and direction, this OA stands disposed of. There shall be no order as to costs”.

3. Mr. Rayaguru, learned Central Government Counsel appearing for the Appellant vehemently contended that since the Opposite Party is claiming appointment basing on the interview held on 26.02.1994, the panel of which was published and orders of appointment were issued in favour of six persons from the merit list

in the year 1994 itself, the Tribunal should not have entertained the claim of the Opposite Party while entertaining the matter in O.A No.835/2006. The said O.A was also filed after more than 10 years after expiry of the merit list, which was valid for one year.

3.1. It is also contended that pursuant to the order passed by the Tribunal in O.A No.835 of 2006, Petitioner No.2 when considered the matter and rejected the claim, the Tribunal once again entertained O.A No.75 of 2007 and disposed of the same with a direction on the Petitioners to consider the case of the opposite party. On the face of such order and after due consideration, the matter when was rejected vide order dated 21.05.2008. The Tribunal again entertained the third Original Application filed by the Opposite Party in O.A No.387 of 2008 and passed the impugned order on 21.05.2008 with a direction to consider/reconsider the case of the Opposite Party.

3.2. It is accordingly contended that since the claim of the Opposite Party pursuant to the direction issued by the Tribunal in O.A No.835 of 2006 and O.A No.75 of 2007 was duly considered and rejected, the Tribunal should not have directed for further consideration once again with passing of the impugned order on 21.05.2008. Such a direction to consider/reconsider the claim of

opposite party is not legally sustainable.

4. Even though notice of the Writ Petition was duly served on the Opposite Party, but nobody has entered appearance on his behalf.

5. We have heard Mr. B.S.Rayaguru, learned Central Government Counsel appearing for the Petitioners. On his consent, the matter was taken up and disposed of by the present order at the stage of admission.

6. This Court after going through the materials available on record and the order impugned finds that the Tribunal basing on the order passed in a similar case in O.A No.87 of 2007, which was disposed of on 21.10.2010, disposed of the matter in O.A No.387 of 2008 by directing the Petitioners herein to consider/reconsider the case of the opposite party. The Tribunal passed such an order as the Petitioners never disputed the stand taken by the opposite party that the claim of the opposite party is similar to the claim of the applicant in O.A No.87 of 2007. The Tribunal while dealing with the matter also takes into consideration the order passed on 10.02.2004 in O.A No.151/1997, wherein pursuant to the order passed by the Tribunal, applicants therein were provided with the appointment from out of the panel prepared in the year 1994.

Taking everything into account, more particularly the order passed in O.A No.87 of 2007, Tribunal disposed of the matter vide order dated 11.03.2011 with a similar direction on the Petitioners to consider/reconsider the case of the Opposite Party as has been directed in the case in O.A No.87/2007.

6.1. Since the Tribunal has only directed for consideration /reconsideration of the case of the Opposite Party in the light of the order passed in O.A No.87 of 2007, this Court does not find any illegality or irregularity in the said direction of the Tribunal. The Petitioners are also free to take a fresh decision on the claim of the opposite party. Therefore, this Court is not inclined to entertain the Writ Petition and the same is dismissed accordingly.

(DR. B.R. SARANGI)
JUDGE

Subrat

(B. P. SATAPATHY)
JUDGE