

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No.13383 of 2022

Sarmistha Kumari Patro

....

Petitioner

Mr. S.K. Samal, Adv.

versus-

State of Odisha and Ors.

....

Opposite Parties

*Mr. Biplaba Mohanty, SC
(for S & ME Deptt.)*

CORAM:

DR. JUSTICE S.K. PANIGRAHI

ORDER

02.08.2022

Order
No.

- 06.
1. This matter is taken up through hybrid arrangement.
 2. Heard learned counsel for the parties.
 3. In this Writ Petition, the petitioner has challenged the Advertisement dated 23.12.2021 issued by the opposite party No.2- Director of Secondary Education, Odisha, Bhubaneswar for recruitment for the post of Initial Appointee Teachers in Government Secondary Schools of the State of Odisha, 2021-2022 wherein his candidature for the post of Initial Appointee Teacher (TGT-CBZ) pursuant to the said Advertisement has been cancelled on

the ground that he is not having two school subjects in Bachelor Degree.

4. The grievance of the petitioner is that the petitioner has B.Sc. (CBZ) Category with Honours in Bio-Technology, B.Ed. and having OSSTET qualified applied for the post of Initially Appointee Teacher pursuant to the advertisement dated 23.12.2021 issued by the Opposite Party No.2 and accordingly he appeared the Computer Based Test (CBT) and has secured 97.807% of marks and called for verification. But the Opposite Party No.2 vide notice dated 19.05.2022 had prepared merit list as well as reject list of the candidates where the candidature of the petitioner had shown to be rejected on the ground of "Not having two School Subjects in Bachelor Degree as prescribed, others having B.Sc. in Bio Technology. But in subject combination he has only fundamental of chemistry but no possess School subject such as Botany, Zoology, Biology, Chemistry and Bio-Technology". But the fact remains, the petitioner is a Science Graduate student having B.Sc. (CBZ) Category with Bio-Technology Honors and the subject Bio-Technology which covers papers like Chemistry, Botany, Zoology and Biology. But erroneously, the Opposite

Party No. 2- Director Secondary Education, Odisha has rejected the candidature of the petitioner.

5. Learned counsel for the petitioner brings to the notice of this Court to the letter dated 18.05.2022 issued by the Deputy Registrar, Berhampur University. The same is quoted hereunder:-

***“Berhampur University,
Bhanja Bihar, Berhampur-760007(Ganjam)
Odisha***

To

1. Sarmistha Kumari Patro,
C/o: Pitabash Patro,
At/PO- Govindbihar 6th Lane,
Near BDA Park Lochapada,
Berhampur- 760001

Sub: Clarification on the Subject of Bio-
Technology-reg.

Ref: Your applications dated 11.05.2022 and
dated 12.05.2022

Sir,

Inviting reference on the above cited subject, it is to inform you that the papers mentioned in the mark sheets of B.Sc. Bio-Technology like Biophysics & Instrumentation, Basic Biosciences, Techniques in Biophysics, Chemistry and Instrumentation, Cell Biology and Genetics, Biochemistry and Enzymology, Microbiology and Immunology, Molecular Biology, Developmental Biology, Environmental

Sciences & Biosafety are also taught in the subject Biology/belongs to the subject Biology.

Yours faithfully

Sd/-

*Deputy Registrar
Berhampur University"*

6. Learned counsel for the petitioner submits that this Court has earlier decided the similar issue in the case of **Jyotiranjana Jena and Ors.–vrs. Govt. of Odisha and Ors.**

vide common judgment dated 06.05.2022 passed in W.P.(C) No.38329 and 38405 of 2021. Hence, he submits that this Writ Petition may be disposed of in the light of the judgment passed in the case of **Jyotiranjana Jena** (supra).

7. Learned Standing Counsel for the Department of School and Mass Education submits that he has no objection, if this matter is disposed of in the light of the judgment passed in the case of **Jyotiranjana Jena** (supra).

8. On perusal of the records and the judgment passed in the case of **Jyotiranjana Jena** (supra), it appears that similar issue has already been decided by this Court in the said judgment which was disposed of on 06.05.2022. The only difference between the present case and the case of **Jyotiranjana Jena** ((supra) is that the petitioner in the instant case has completed his graduation degree in

Science (CBZ) with Honors in Bio-Technology and also B.Ed. qualification, whereas the petitioners in the case of **Jyotiranjana Jena** (supra) have completed graduation degree in Commerce (B.Com) and also B.Ed. qualification. The relevant and ordering portion of the said judgment is as follows.

“16. The petitioners, who are otherwise eligible, are now excluded on the basis of an artificial classification introduced in the impugned advertisement. There is no nexus sought to be achieved with the intent or object of the State Government, as the excluded candidates also fulfill the requirement of a trained graduate teacher and have studied two of the required subjects albeit named differently. When all across the State, the course of English is called Communicative English in the B.Com Degree and Economics is called Business Economics in the B.Com Degree, then denying all B.Com graduates the opportunity to be successful in being appointed as a trained graduate teacher using this hyper-technical approach is wholly arbitrary and amounts to an artificial discrimination which cannot hold in law. If prima facie, unit wise the contents of the subject are similar, no matter what it is called, then the position of all such candidates are substantially the same with respect to the object sought to be achieved by the State is prescribing prior education in these subjects as the minimum qualification. The idea behind the

State introducing a requirement as such is just to ensure that the candidate has adequate knowledge in the subject. If in fact the said qualification was for any other purpose and meant to be so narrow then the State would not have allowed education in the school subjects in any of the "Pass/ Hons/ Elective/ Optional/Compulsory" manner. If the present Petitioners are otherwise eligible and they have studied the subject during their graduation course, then the object of the said qualifying criteria is satisfied.

17. Recently in **Priyanka Menaria v. State of Rajasthan**¹, the Hon'ble High Court of Rajasthan was pleased to hold under similar circumstances that:

"20. The syllabus (Annex.13) produced by the petitioner fortifies the contention of having studied Economics as such during course of her graduation and, therefore, the action of the respondents in rejecting the candidature of the petitioner by mere reference to the fact that the mark-sheets produced by the petitioner indicated Banking and Business Economics instead of Economics, cannot be sustained.

21. The above aspect also finds support from the fact that for subject Science the candidates having studied Bio-Technology and Bio-Chemistry have been held eligible, which are also

¹2019 SCC OnLine Raj 3443

specialized subjects within broader subject Science and, therefore, as the petitioner has studied Banking & Business Economics, the same can very well be treated as part of Economics.

22. Consequently, the writ petition filed by the petitioner is allowed. It is held that the petitioner, who has studied Banking and Business Economics in her graduation (B.Com) would be eligible for appointment on the post of Teacher Gr.III (Level-II) in subject Social Science.

23. The respondents would take steps for according appointment to the petitioner, in case, the petitioner is found otherwise eligible. The petitioner would be entitled to all consequential benefits regarding her seniority etc. However, monetary benefits would be paid to the petitioner from the date of her appointment."

18. The Hon'ble Supreme Court in **State of J&K v. Triloki Nath Khosa**², held that:

"30. Since the constitutional code of equality and equal opportunity is a charter for equals, equality of opportunity in matters of promotion means an equal promotional opportunity for persons who fall, substantially, within the same class. A classification of employees can therefore

²(1974) 1 SCC 19

be made for first identifying and then distinguishing members of one class from those of another.

31. Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints; or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well marked classes characterized by different and distinct attainments. Classification, therefore, must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

32. Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the Courts to substitute their own judgment for that of the legislature or the Rule-making authority on the need to classify or the desirability of achieving a particular object."

19. It is apparently evident to any reasonable man from the averments placed and the submissions advanced that the subject Communicative English and English implicate the same subject. Additionally, the Subject Economics takes under its purview, the subjects of Macro Economics and Micro Economics and thus Business Economics is the same as the subject of Economics. Therefore, the action of the opposite parties in not allowing the petitioners, despite possessing all requisite and essential qualifications and after qualifying the computer-based Test (CBT), to be appointed as a trained graduate teacher is erroneous and arbitrary.

20. Accordingly, while allowing both the aforesaid writ petitions, this Court sets aside the rejection of the candidatures of the petitioners in the selection process and directs the opposite parties to consider the candidatures of the petitioners in the light of the fact that they possess all requisite qualifications and have qualified in the CBT.

21. Both the writ petitions are disposed of being allowed."

9. In view of the aforesaid common judgment passed in W.P.(C) No.38329 and 38405 of 2021, both the Writ Petitions are disposed of being allowed.

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

(Dr. S.K. Panigrahi)
Judge

SD

