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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A.No.102 of 2016

Biswaranjan Biswal and others ***Appellants***

Mr. J. Biswal, Advocate

-versus-

State of Odisha and others ***Respondents***

Mr. D.R. Mohapatra, Senior Standing Counsel

**CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

Order No.

**ORDER
29.11.2022**

Dr. S. Muralidhar, CJ.

05. 1. The challenge in the present writ appeal is to an order dated 24th February 2016 passed by the learned Single Judge dismissing W.P.(C) No.3138 of 2016 filed by the present three Appellants praying for a direction to Opposite Parties i.e., Odisha Primary Education Programme Authority and the School and Mass Education Department (S & ME Department), Government of Odisha, to permit the Appellants to participate in the selection process for the post of Sikshya Sahayak (SS) pursuant to an advertisement dated 12th September 2014, and the subsequent corrigendum dated 9th February 2016, and if selected, to engage them as such.

2. The background facts are that each of the Appellants acquired the B.Ed. degree and thereafter, appeared in the Odisha Teachers' Eligibility Test (OTET) Paper-II conducted by the Board of

Secondary Education, Odisha in December 2014. The results were published in the month of March, 2015.

3. There were two guidelines issued by the S & ME Department regarding engagement of SSs. The first guideline was dated 6th August 2013, where *inter alia* Clause-6 Category-2 prescribed that the candidate should have passed in OTET Category-II among other qualifications. As far as the age was concerned, the candidates had to be not below 18 years and above 35 years and in case of SC/ST, Women, Ex-Serviceman and SEBC, the upper age limit could be relaxed for 5 years and in case of PH candidates, by 10 years.

4. On 11th September 2014, a revised guideline was issued regarding engagement of SSs during 2014-15. This *inter alia* stipulated that “passing of required training and the score in OTET is mandatory for all the candidates”. As regards the age limit, it was to be determined as on 12th September 2014 “i.e., the date of publication of the advertisement”.

5. It transpires that as regards the non-relaxation of the age limit for specified categories of persons, W.P.(C) No.6670 of 2015 was filed in this Court. In pursuance of the order of this Court passed therein, “the last date for submission of on-line application for the post of SS” was extended “for the candidates within the age group of 35-42 as on 30th September 2014 with relaxation of 5 years for SC/ST/SEBC/Women and 10 years for PH candidates”. It is only by virtue of this corrigendum which provided for the relaxation of the upper age limit that the three writ Petitioners (the Appellant

herein) became eligible to apply for the post of SS. Under the earlier advertisement dated 12th September 2014, they would not be eligible. In terms of the corrigendum dated 9th February 2016, the last date for submission of application was 28th February, 2016.

6. The Appellants contended that they had possessed the requisite qualification of OTET-II in March 2015, which was before the last date for submission of applications in terms of the corrigendum, and, therefore, their candidature could not have been rejected on the ground of lack of requisite qualification. The stand of the S & ME Department on the other hand was that since for the purposes of determination of age, as per the enhanced age criterion, the relevant date was fixed as 30th September, 2014 the qualification also had to be obtained as of that date.

7. The learned Single Judge accepted the plea of the Department that the corrigendum related back to the original advertisement itself and therefore, the cutoff date for determining whether the candidate has possessed the necessary qualification had to be the same date fixed for determining the age which was 11th September, 2014.

8. Learned counsel for the Appellants has drawn the attention of the Court to the judgment of the Supreme Court in ***Rekha Chaturvedi v. University of Rajasthan 1993 Supp (3) SCC 168*** where, *inter alia*, in para 10, it was observed as under:

“10.The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In

the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications.”

9. In the present case too, there is no specific rule which governs the situation where by virtue of a corrigendum, the upper age limit for applying for a post may have been enhanced. Indeed, the revised guideline issued by the S & ME Department was also silent on this aspect.

10. The above dictum of the Supreme Court was reiterated by the Supreme Court subsequently in ***Rajasthan Public Service Commission v. Kaila Kumar Paliwal AIR 2007 SC 1746*** where it was observed as under:

“21. Recruitment to a post must be made strictly in terms of the Rules operating in the field. Essential qualification must be possessed by a person as on the date of issuance of the notification or as specified in the

rules and only in absence thereof, the qualification acquired till the last date of filing of the application would be the relevant date. See *Ashok Kumar Sharma and Others v Chander Shekhar and Another* [(1997) 4 SCC 18], *U.P. Public Service Commission U.P., Allahabad and Another v Alpana* [(1994) 2 SCC 723] and *Harpal Kaur Chahal (Smt.) v Director, Punjab Instructions, Punjab and Another* [1995 Supp (4) SCC 706].”

11. The situation in the present case is that there are no specified rules as regards the relevant date for considering whether the candidate has the requisite qualification. Admittedly, by the last date of filing of the applications in terms of the corrigendum i.e., 28th February 2016, all the three Appellant here had already acquired the OTET-II qualification and were therefore eligible to be considered for engagement as SSs.

12. It must be mentioned here that on 8th April 2016, in the present writ appeal, the following interim order was passed:

“Issue notice as above.”

The submission of the learned counsel for the appellants is that since there was no cut off date specified either in the advertisement or in the Rules or any office memorandum, the cut off date for acquiring the essential qualification would be the date of application, as has been held by the Apex Court in case of *Rajasthan Public Service Commission vs. Kaila Kumar Paliwal and Anr.*, AIR 2007 SC 1746. It is contended that as on the date of application filed by the appellants which was in terms of the corrigendum no.1297/Estt/16 dated 9.2.2016, the appellants had already acquired the essential qualification and as such, non- acceptance of the application of the appellants on such ground is wholly unjustified.

Considering the aforesaid facts, we are of the opinion that appellants have made out a prima facie case for

grant of interim protection. Accordingly, it is directed that respondents shall accept the hard copies of the application of the appellants for the post of Sikhya Sahayaks with reference to Corrigendum no. 1297/Estt/16 dated 9.2.2016 issued under Annexure-5 and to allow them to participate in the selection process. However, their result should be kept in sealed cover and should not be declared without the leave of this Court.

A free copy of this order be given to the learned Standing Counsel, School and Mass Education Department.

Urgent certified copy of this order be granted in course of the day.

13. Subsequently, on 29th September 2022, the following order was passed:

“1. Learned counsel appearing for the School and Mass Education Department shall produce on the next date the sealed cover containing the results in respect of the present Appellants in terms of the order passed by this Court on 8th April 2016.

2. List on 29th November, 2022.”

14. Pursuant to the above order, today in Court, Mr. Mohapatra, learned Senior Standing Counsel appearing for the S & ME Department tendered a sealed cover containing the results of the participation of the three Appellants in the selection process. Those results were perused by the Court and also shared with the learned counsel for the Appellants as well as the learned Senior Standing Counsel for the S & ME Department. The results show that all three Appellants have qualified in the selection test, but have not been offered employment since according to the S& ME Department, they should have obtained the requisite OTET-II

qualification as of the original date in the advertisement i.e., 30th September 2014, and not subsequent thereto.

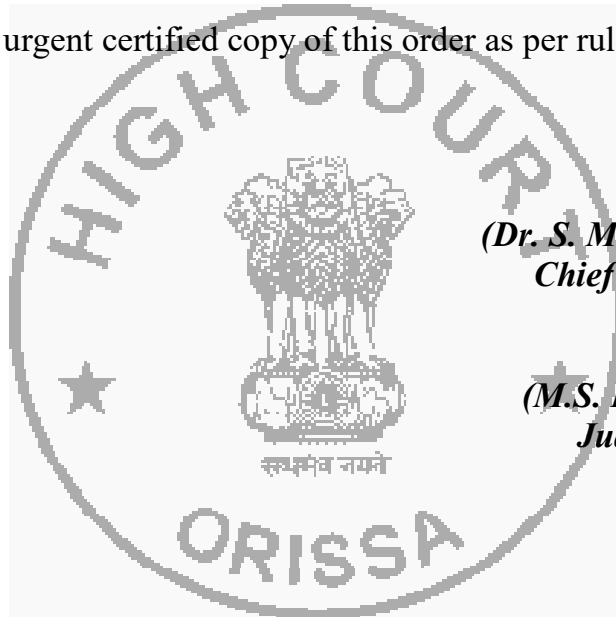
15. In view of the settled legal position explained in the above decisions of the Supreme Court, this Court is not able to accept the plea of the S & ME Department that the requisite qualification of OTET-II was not possessed by these Appellants as of the last date for filing of the applications in terms of the advertisement read with corrigendum.

16. Even the plea that the corrigendum relates back to the original advertisement overlooks the fact that as far as the present Appellants are concerned, they became qualified to apply only because of the relaxation of the upper age limit pursuant to the orders of this Court as explained hereinbefore. In other words, it is only by virtue of corrigendum that the Appellants came to apply for the post. If the corrigendum were to relate back to the original date, they would not even be qualified to apply. Therefore, as far as the three Appellants are concerned, it cannot be said that the relevant date for determining whether the Appellants possess the requisite qualification has to be the original date of 30th September 2014. It has to be the revised date in terms of the corrigendum.

17. The settled legal position being that in the absence of Rules, the last date of submission of the application would be the relevant date as far as obtaining the qualification concerned, in the present case, that date would be 28th February, 2016. Clearly, by that date, each of the three Appellants had acquired the requisite OTET-II qualification.

18. For all of the aforementioned reasons, this Court is unable to agree with the conclusion reached by the learned Single Judge in the impugned order. The impugned order is accordingly hereby set aside. The writ appeal is disposed of with a direction to the S & ME Department to issue appointment letters to the three Appellants as Junior Teacher (Contractual) [which is what the post of SS has been renamed as], within a period of eight weeks. It is made clear that the Appellants would not be entitled to any arrears of pay.

19. Issue urgent certified copy of this order as per rules.



(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K. Guin