

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A No. 779 of 2022

***Odisha Public Service
Commission***

....

Appellant

Mr. S.Jena, Advocate

-versus-

State of Odisha and others

....

Respondents

Mr.J. Katikia, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH**

ORDER

12.10.2022

Order No.

- 1 1. The challenge in the present Writ appeal to an Order dated 17th May, 2022 passed by the learned Single Judge disposing the Writ Petition (OAC) No.1359 of 2017 filed by Respondent No.3.
2. An advertisement was published by the Orissa Public Service Commission (OPSC) bearing Advertisement No.3 of 2015-16 inviting applications for the post of Asst. Executive Engineer (AEE) (Civil and Mechanical) in Group-A of Orissa Engineering Services. 657 posts were notified of which 43 were reserved for S.C. category candidates.
3. Respondent No.3 belonging to S.C. Category had applied for the said post and appeared in the written examination. Candidates twice number of vacancy were called for viva voce on the basis of marks secured in the written examination. According to the Respondent No.3, candidates securing less marks in the written examination were called to appear for viva voce, whereas he was not.

4. According to Respondent No.3 as per the disclosed results, he had secured 196 marks in the written examination and through R.T.I sought the marks of other candidates. He noticed that S.C. category candidates securing 190 marks in both written and viva voce were selected and appointed as AEE. In reply filed by OPSC, pointed out that the lowest mark secured by S.C (Male) candidates in the written examination was 218 whereas the Petitioner had obtained only 196 marks. It is only the S.C (Female) candidates who had obtained 190 marks who were called for interview.

5. During the course of hearing before the learned Single Judge, it transpired that the last candidate in the unreserved category (UR) had secured 196 marks which was the same marks as the Respondent No.3 and therefore he ought to have been called for viva voce.

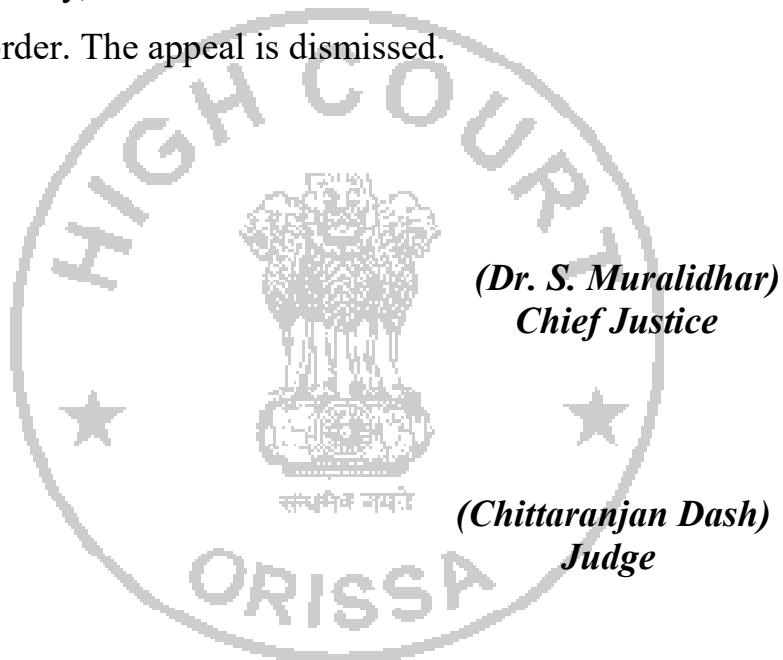
6. It was argued by the OPSC that it was their policy to call candidates only as per the cut off marks for each category of reservation and therefore the Petitioner who had scored less than the last S.C Male candidate was not called for viva voce. The learned Single Judge rejected the said argument following the judgment of Supreme Court in *Saurav Yadav v. State of Uttar Pradesh (2021) 4 SCC 542* by observing that

“Unreserved category is not a category of reservation but it is open to all categories of candidates. As a result even candidate belonged to the reserved category can compete for the unreserved category on merit and some or higher marks than the UR candidates.”

7. The above principle enunciated in the impugned judgment of the learned Single Judge is unexceptionable and consistent with the settled legal position.

8. It is then argued by Sri Jena the learned counsel for the Appellant that there are in fact no vacancy available against which the Respondent No.3 could be accommodated. The learned Single Judge appears to have been missed this fact and has accordingly directed that if after calling the Respondent No.3 for viva voce, he qualifies then a supernumerary post should be created to accommodate Respondent No.3. This appears to be justified in the facts and circumstances of the case.

9. Consequently, the Court is not inclined to interfere with the impugned order. The appeal is dismissed.



(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge