

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14991 of 2022

Trilochan Sethy

....

Petitioner

Mr. U.C. Mohanty, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. P.K. Rout, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

11.07.2022

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the petitioner as well as learned counsel for the State. Perused the record.
3. The present writ petition has been filed by the petitioner with the following prayers:

“In the aforesaid circumstances, it is humbly prayed that this Hon’ble Court may graciously be pleased to admit this writ application and issue a RULE NISI calling upon the Opposite Parties to show cause as to why this writ application shall not be allowed and if the Opposite Parties failed to show cause or show insufficient cause, the said Rule may be made absolute and on hearing the parties through their counsel, this Hon’ble Court be further pleased to:

- i) Issue appropriate writ/writs holding that the order of notification issued by Govt. of Odisha Department of Water Resources vide Notification No.10621 dtd. 30.04.2022 under Annexure-6 and

extending promotion of private Opp.Parties no.4 & 5 in the grade of Asst. Executive Engineer(Civil) as illegal, arbitrary, unreasonable, discriminatory and violative of Article-14 & 16 of Constitution of India, as such liable to be modified/quashed.

- ii) Issue a writ of mandamus directing the Opposite Parties to treat the petitioner being a senior candidate in the Grade of Junior Engineer and Asst. Engineer (Civil) as per the final gradation list published under Annexure-3 series & 4 series and being more meritorious than the Opp.Parties No.4 & 5 is entitled for reconsider of his case for promotion to the post of Asst.Executive Engineer (Civil) and/or alternative at par with them along with all consequential service benefits in the aforesaid grade.
- iii) This Hon'ble Court further be pleased to pass such other appropriate Writ/Writs, direction/directions, order/orders as would be deem fit and proper in favour of the petitioner."

4. It is submitted learned counsel for the petitioner that although the petitioner is eligible to be promoted, however, he has not been given that promotion. It is further submitted by learned counsel for the petitioner that similarly placed juniors to the petitioner have been given promotion in the meantime. Further, learned counsel for the petitioner relying on the circular of the Government of Odisha ST & SC Development Department dated 30.06.2022 submits that the Government has issued a clarification regarding participation of reserved category candidates against Unreserved vacancies. Further learned counsel for the petitioner also relies upon the judgment of Hon'ble Supreme Court in the matter of ***Bharat Sanchar Nigam Limited & another vrs. Sandeep Choudhary and others*** : (Civil Appeal No.8717 of 2015, April, 28, 2022) wherein it has been held that the Hon'ble Apex Court reserve category candidates securing

higher marks than the last of the general category candidates are entitled to get seat/post in unreserved categories i.e. even while applying horizontal reservation, merit must be given precedence and if the candidates, who belong to SCs, STs and OBCs category have secured higher marks or are more meritorious, they must be considered against the seats meant for unreserved candidates.

5. Learned counsel for the State, on the other hand, submits that while considering the case for promotion, DPC has taken note of all the aspects and the law, rules and interference should not have been made. Therefore, it cannot be committed any preparation of gradation list of Assistance Engineer (Civil) under Annexure-4. However, learned counsel for the petitioner submits that the petitioner as a Government servant, he should approach the departmental authorities by filing an appropriate representation along with supporting documents and in such event the authorities shall consider the said representation strictly in accordance with laws and shall dispose of the matter within a stipulated period of time.

6. Considering the aforesaid submissions and further taking into consideration the judgment rendered by Hon'ble Supreme Court referred hereinabove, this Court thinks it proper directing the petitioner to approach the authorities by filing detailed representation taking into account the grounds there available along with circular, judgment and in support of his entire materials within a period of two weeks from today, if such representation is filed by the petitioner within the aforesaid stipulated time, the same shall be considered by the Opposite Party No.1 in accordance with law within a period of three months from the date of filing of such representation by passing a speaking and reasoned order. Any decision so taken on the said

representation shall be communicated to the petitioner within a period of ten days thereafter.

7. With the aforesaid observation/direction, the writ petition is disposed of.

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

(A.K. Mohapatra)
Judge

Jagabandhu

