

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 13808 of 2017

Sisir Kumar Pradhan

.....

Petitioner

None

Vs.

State of Orissa and others

.....

Opposite Parties

Mr. A.K. Mishra, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

21.07.2022

Order No.

03.

This matter is taken up through hybrid mode.

2. None appears for the Petitioner at the time of Call. Earlier also when the matter was taken up on 20.05.2022, this Court realizing the fact that the Counsel for the Petitioner was no more, directed the Petitioner to engage any other Counsel to prosecute the matter.

3. This Court heard Mr. A.K. Mishra, learned Additional Government Advocate and perused the record.

4. Mr. A.K. Mishra, learned Additional Government Advocate contended that this Writ Petition arises out of Common Order dated 26.04.2017 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in a Batch of Original Applications including the Original Application of the Petitioner bearing O.A. No. 2645 (C) of 2014, by which the Tribunal came to a finding that the Resolution dated 06.08.1979 do not confer any right to the applicants therein for claiming appointment and the statutory rules,

which have been framed under Article 309 of the Constitution, cannot be treated as illegal, and accordingly the Tribunal did not interfere with the process of selection.

5. Having heard learned Additional Government Advocate for the State and after going through the record, it appears that the Petitioner had filed separate Original Application claiming therein that he is a Diploma Holder in Civil Engineering and as per the Resolution of the Government in P&S Department dated 6.8.1978, his name had been empanelled for appointment as Junior Engineer. While he was waiting for appointment, the Odisha Diploma Engineers' Service (Methods of Recruitment & Consolidations of Service) Rules, 2012 (in short "2012 Rules") came into force with effect from 05.01.2013 and on the basis of the said Rules, the Advertisement dated 04.08.2014 was published inviting applications for direct recruitment to the post of Junior Engineers. After 2012 Rules came into force, the resolution dated 6.8.1979 stood repealed and no action was taken for appointment under the said Resolution. Thereby, the right of the Petitioner and others, who were waiting for long years for appointment as Junior Engineer, was violated. In some of the cases, it was averred that even after the 2012 Rules came into force, appointment was made from the panel in the year 2014 in relaxation of the Rules and thereby the Petitioner and similarly situated persons were discriminated. As such persons had been empanelled as per the Resolution, referred to above, they have a right to be appointed against the vacancies, which occurred prior to coming into force of 2012 Rules. Accordingly, the impugned Advertisement which had been issued to fill up 551 posts of Junior Engineers was sought to

be quashed and such persons should be appointed as Junior Engineers against the available vacancies by following 1979 Resolution.

6. Opposite Party No.4 filed Counter Affidavit in O.A. No. 2645(C)/2014, which was adopted in all other Original Applications, including the Petitioner's Original Application, stating therein that the Advertisement had been issued following the Odisha Diploma Engineers' Service (Method of Recruitment & Condition of Service) Rules, 2012. It is the prerogative of the Government to frame Recruitment Rules and accordingly, the Odisha Diploma Engineer's Rules 2012 was framed. After the said Rules were brought into force, all previous Rules and instructions of Government for recruitment of Diploma Engineers were repealed. Since the Odisha Diploma Engineers' Service (Method of Recruitment & Condition of Service) Rules, 2012, were framed under the proviso to Article 309 of the Constitution, no illegality has been committed and, as such, the applicants to the Original Applications have no locus standi to challenge the said Rules. As the Advertisement was issued basing on the said Rules to make direct recruitment to the post of Junior Engineers, the Advertisement cannot be treated as illegal.

7. Opposite Party No.6 also filed a separate counter stating that the process of recruitment has been taken up as per the Odisha Diploma Engineer's (MOR & CS) Rules 2012. Further, by way of Amendment the empanelled candidates have been allowed to appear in three consecutive recruitment tests commencing from the current years examinations, with relaxation of age, who have

become over-aged in the meantime. When such provision has been made, even by giving relaxation of age, the applicants to the Original Applications are in no way affected. Their grievance therefore merits no consideration and, as such, Opposite Party No.6 sought for dismissal of the Original Applications.

8. The Tribunal, taking into consideration the pleadings made available on record and taking into consideration the Judgments of the apex Court in the cases of State of *Himachal Pradesh v. A parent of a student of a Medical College, Simla and Others*, AIR 1985 SC 916, *Asif Hameed and others v. State of Jammu and Kashmir and others*, AIR 1989 SC 1899 and *Union of India v. Association of Democratic Reforms and another*, AIR 2002 SC 2122 came to a definite conclusion that since the Advertisement was issued in terms of Rules 2012 and thereafter due process of selection was followed, no illegality or irregularity has been committed by the Authorities.

9. Considering the above aspect, this Court is the opinion that since Advertisement was issued pursuant to a Rule framed under Article 309 of the Constitution of India and, as such, the persons, including the Petitioner whose names had been empanelled under the Resolution of 1979 were given three opportunities to participate in the process of selection by following the Rules, by relaxation of age, thereby, such persons cannot be said to be prejudiced in any manner. Therefore, instead of availing the opportunity given to them to participate in the process of selection by getting relaxation of age on three occasions, challenging the same and claiming for appointment, pursuant to the Resolution,

1979, cannot be sustained in the eye of law. More so, the Advertisement having been issued in terms of Rules 2012, that cannot be said to be unsustainable in the eye of law.

10. In view of the above, the Tribunal is well justified by dismissing the Original Applications in passing a reasoned order, stating that such Original Applications are not entertainable and maintainable. But at the same time, the Tribunal observed that the Government, being a Model Employer may take a decision as one time measure and consider to relax the relevant provision under the Rules for appointment of such applicants and for that purpose, if necessary, may fix certain quota in future recruitment.

11. Even though such order was passed on 03.05.2017 granting liberty to the State Government to take necessary steps and in the meantime five years have been passed, but nothing has been placed on record to show, what are the further actions taken by the State.

12. In any case, since the Advertisement issued for appointment of Junior Engineer pursuant to 2012 Rules is under Challenge, this Court is not inclined to entertain the Writ Petition as this Court does not find any error apparent on the face of the record calling for interference.

13. In view of the above, the Writ Petition merits no consideration and the same stands dismissed accordingly.

(DR. B.R. SARANGI)
JUDGE

Arun/Banita

(S.K. MISHRA)
JUDGE