

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 15998 OF 2016

In the matter of an application under Articles 226 and 227 of the Constitution of India.

<i>AFR</i>	State of Odisha & Anr.		Petitioners
		-Versus-	
	Subrat Dash & Ors.		Opp. Parties

For Petitioners : Mr. S.N. Nayak,
Addl. Standing Counsel

For Opp. Parties : M/s. D.K. Panda, G. Sinha,
S. Behera and A. Mishra,
Advocates
[O.P.1]

Mr. P.K. Mohanty, Sr.Advocate
(O.P.3)

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR. JUSTICE S. K. MISHRA

DECIDED ON : 11.08.2022

DR. B.R. SARANGI, J. By means of this Writ Petition, filed at the instance of the State and its functionary, prayer has been made to quash the common Order dated 13.01.2016 passed in O.A. No.109 (C) of 2012 and batch, as at Annexure-3, whereby the Odisha Administrative

Tribunal, Cuttack Bench, Cuttack has directed the State-Petitioners to extend age relaxation to Opposite Party No.1 and other Applicants in the connected Original Applications against the vacancies in the post of Assistant Agriculture Officer occurred prior to 15.07.2011, during which period the proviso to Rule-2 of the Odisha Civil Services (Fixation of Upper Age Limit) Rules, 1989 (in short Rules, 1989) was in force, with an observation that in the event Opposite Party No.1 and other Applicants are found eligible to such age relaxation, their candidature may be accepted and if they have already participated in the written test, their result should be declared along with other candidates. If any of the Applicants have not appeared in the written test and are found eligible on the basis of age relaxation, a Special Recruitment Test be conducted for them within a period of one month and consequential action be taken for declaration of result and for that requisite number of posts be kept vacant. It has also been observed that the said exercise, however, shall not be a bar for publication

of result and issuance of appointment order of other selected candidates.

2. The factual matrix of the case, in brief, is that pursuant to an Advertisement was issued by Opposite Party No.3-Odisha Public Service Commission for filling up of the posts of Assistant Agriculture Officer, Opposite Party No.1, having requisite qualification, applied for the said post. As per criteria prescribed in the Advertisement, a candidate must be under 32 years and above 21 years of age as on 1st January, 2011, i.e., he/she must have been born not earlier than 2nd January, 1979 and not later than 1st January, 1990. As no recruitment was held for the post of Assistant Agriculture Officer for more than a decade and in the meantime, the candidates have become overage, they would be deprived of appearing the recruitment test in view of the upper age limit prescribed in the Advertisement.

2.1 As per Proviso to Rule-2 of the Orissa Civil Services (Fixation of Upper Age Limit) Rules, 1989, "if for any reason applications have not been invited by the

Authority competent to conduct examination during any particular year to fill up the vacancies of that year, Applicants, who would have been eligible if applications were invited during that year, shall be eligible to compete at the examination held in the subsequent year". In view of this, Rules, 1989 will be applicable to Odisha Subordinate Agriculture Service Rules, 1980 and while publishing the Advertisement, the Authorities ought to have stipulated the said Clause enabling the Applicants to appear in the recruitment test by relaxing the upper age limit.

2.2. As per information obtained under the Right to Information Act, 2005 (for short "RTI Act, 2005"), out of the sanctioned strength of 552 Jr. Agriculture Officers, 277 posts were vacant during the year 2005, 319 in 2007 and 326 in 2009, when the said posts were abolished and upgraded to that of Assistant Agriculture Officer (Group-B) in 2009. In the rank of Assistant Agriculture Officer, 118 posts were vacant in 2009 and it was increased to 415 in 2010, after the cadre strength of the Assistant Agriculture Officer was increased to 1166 due to the up-

gradation of 552 posts of Junior Agriculture Officer to that of Assistant Agriculture Officer. In 2011, the vacancy position of Assistant Agriculture Officer was increased to 479. The State Government brought an amendment to the Orissa Civil Services (Fixation of Upper Age Limit) Rules, 1989, in which Proviso to Rule-2 was deleted. This amendment was notified by the G.A. Department on 14.07.2011 and it came into effect on 15.07.2011. In that view of the matter, the vacancies which arose prior to 15.07.2011 are to be governed by the old Rules, i.e., un-amended Rules, 1989 and the candidates are to get the benefit of relaxation of age. As such, the Applicants, being debarred from their legitimate right of age relaxation as per the un-amended Rules, 1989, filed O.A. Nos.109(C) 223(C), 224(C), 226(C), 245(C), 246(C), 247(C), 248(C), 249(C), 250(C), 292(C), 293(C), 3496(C), 3497(C) and 3496 (C) of 2012.

2.3 The State-Petitioners filed their Counter Affidavit before the Tribunal contending that as per Rules, 1989, if for any reason applications were not invited by the Authority competent to conduct

examination during any particular year to fill up the vacancies of that year, Applicants, who would have been eligible, if applications were invited during that year, shall be eligible to compete at the examination held in the subsequent year. The said Proviso to Rules, 1989, has been deleted by an amendment vide Para-3 of the G.A. Department Notification dated 14.07.2011. Hence, the relaxation of upper age limit in respect of Applicants does not stand any merit after issuance of Notification dated 14.07.2011 of the G.A. Department. As a consequence thereof, the State-Petitioners claimed before the Tribunal for dismissal of the aforesaid Original Applications.

3. The Tribunal, after due consideration of the rival contentions of the parties, vide Order dated 13.01.2016, came to a conclusion that since the vacancies against the post of Assistant Agriculture Officer occurred prior to 15.07.2011, during which period the Proviso to Rule-2 of the Rules, 1989 was in force, the benefit is admissible to Opposite Party No.1 and other Applicants, therefore, allowed O.A. No.109(C) of 2012 and

batch. Hence, the State-Petitioners have challenged the said Order in this Writ Petition.

4. Mr. S.N. Nayak, learned Additional Standing Counsel appearing for the State-Petitioners, contended that by the time Advertisement was issued, if Opposite Party No.1 and other Applicants incurred disqualification, for having become overage, they are not entitled to participate in the process of selection, because by that time amendment to Proviso to Rule-2 of the Rules, 1989 was already made. Even if vacancies are prior to 15.07.2011, in that case Opposite Party No.1 and other Applicants are not entitled to get the benefit, as directed by the Tribunal. Thereby, it is contended that the Order dated 13.01.2016 passed by the Tribunal in O.A. No.109(C) of 2012 and batch should be quashed.

5. Mr. D.K. Panda, learned Counsel appearing for Opposite Party No.1, contended that as per un-amended Proviso to Rule-2 of Rules, 1989, if for any reason applications have not been invited by the Authority competent to conduct examination during any particular

year to fill up the vacancies of that year, Applicants, who would have been eligible if applications were invited during that year, shall be eligible to compete in the examination held in the subsequent year. In such eventuality, since there was no recruitment made from 1991 to 2011 and vacancies are prior to 2011, Opposite Party No.1, along with other Applicants, is eligible to participate in the process of selection. The vacancies relate to the period from 2005 to 2011, i.e., before commencement of the amended Proviso to Rule-2 of the Rules, 1989. To substantiate his contentions, he has placed reliance on the judgments of the apex Court in ***Y.V. Rangaiah v. J. Sreenivasa Rao***, (1983) 3 SCC 284; ***P. Mohanan Pillai v. State of Kerala***, AIR 2007 SC 2840; ***A.A. Calton v. Director of Education***, (1983) 3 SCC 33; ***State of Rajasthan v. R. Dayal***, (1997) 10 SCC 419 and ***B.L. Gupta v. M.C.D.***, (1998) 9 SCC 223.

6. Mr. P.K. Mohanty, learned Senior Counsel appearing for Opposite Party No.3-Odisha Public Service Commission, contended that in compliance of the interim Order passed by the Tribunal, the result of the

candidates has been kept in sealed cover, which shall be subject to result of the Writ Petition. As such, it is contended that since it is a year old case, he has not received any further instructions as to what has happened in the meantime.

7. This Court heard Mr. S.N. Nayak, learned Additional Standing Counsel appearing for the State-Petitioners; Mr. D.K. Panda, learned Counsel for Opposite Party No.1; and Mr. P.K. Mohanty, learned Senior Counsel appearing for Opposite Party No.3-Odisha Public Service Commission, through hybrid mode. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the matter is being disposed of finally at the stage of admission.

8. There is no dispute that Opposite Party No.1 and other Applicants have got requisite qualification for the post of Assistant Agriculture Officer, save and except some of them have become age barred because of the age limit fixed in the Advertisement and they have been deprived of appearing in the examination, even though

they have fulfilled other requirements fixed in the Advertisement. Therefore, the sole question, which revolves round in this case for decision of this Court, is whether proviso to Rule-2 of the Rules, 1989, which has been deleted by way of an amendment vide Notification dated 14.07.2011, published in Odisha Gazette on 15.07.2011, is applicable to Opposite Party No.1 and other Applicants, when vacancies are prior to 15.07.2011?

9. As it appears, the last recruitment for the post of Junior Agriculture Officer (Group-C), as per Odisha Subordinate Agriculture Services Rules, 1980, was held in the year 1994 and, thereafter, the post of Junior Agriculture Officer was upgraded to Assistant Agriculture Officer (Group-B) of Odisha Agriculture Service by way of restructuring the cadre of Odisha Agriculture Service and selection to such post was to be made through the OPSC, vide Resolution No.4968-AFE-1(SP)27/2005-Ag. dated 17.02.2009 published in the Odisha Gazette on 07.03.2009. Pending framing of Rules, for the purpose of regulating the Recruitment and Conditions of Service of

Assistant Agriculture Officer (Group-B) under Article 309 of the Constitution, the State Government in Agriculture Department issued instructions vide Resolution No.6812 dated 17.03.2011. Therefore, Odisha Subordinate Agriculture Services Rules, 1980 are not applicable to recruitment of the Assistant Agriculture Officer (Group-B), whose Appointing Authority is the Government in Agriculture Department. There is no dispute with regard to the fact that during the period from 1991 to 2011, neither the recruitment to the post of Junior Agriculture Officer nor Assistant Agriculture Officer was made. Though Opposite Party No.1 and other Applicants had requisite qualification, but, as because no Advertisement was made during that period even if vacancies were there, they could not be able to get any opportunity to try their luck. Now that some of them have become over-aged, since the vacancies occurred prior to amendment of the Proviso to Rule-2 of the Rules, 1989, which came into force w.e.f. 15.07.2011, such vacancies should be filled up as per old Rules, but not by the amended Rules.

10. In **Y.V. Rangaiah, P. Mohanan Pillai** and **A.A. Calton** (supra), the apex Court held that the vacancies which occurred prior to the amendment to the Rules would be governed by the old Rules and not by the amended Rules and, as such, ordinarily the Rules, which were prevailing at the relevant time, when the vacancies arose, would be adhered to and the qualification must be fixed at that time and the eligibility criteria as also the procedure prevailing on the date of vacancies should ordinarily be followed.

Similar view has also been taken by the apex Court in **R. Dayal** (supra).

11. In **B.L. Gupta** (supra), the apex Court in Paragraph-9 of the said Judgment held as follows:

*“9. When the statutory rules had been framed in 1978, the vacancies had to be filled only according to the said Rules. The rules of 1995 have been held to be prospective by the High Court and in our opinion this was the correct conclusion. This being so, the question which arises is whether the vacancies which had arisen earlier than 1995 can be filled as per the 1995 Rules. Our attention has been drawn by Dr. Behta to a decision of this Court in the case of N.T. Devin Katti vs. Karnataka Public Service Commission. In that case after referring to the earlier decision in the cases of **Y.V. Rangaiah Vs. J. Sreenivasa Rao, P. Ganeswar Rao Vs. State of A.P. and A.A. Calton Vs. Director of Education** it was held by this Court that the*

vacancies which had occurred prior to the amendment of the Rules would be governed by the old Rules and not by the amended Rules”.

12. In view of such position, vacancies which arose prior to 15.07.2011 will be governed by the old Rules, i.e., un-amended Rules, 1989 and the candidates are to get the relaxation in age notwithstanding anything contrary contained in the Recruitment Rules. Therefore, this Court is of the considered view that the Tribunal has not committed any error apparent on the face of the record by passing the Order dated 13.01.2016 in O.A. No.109(C) of 2012 and batch, which is hereby upheld.

13. Accordingly, the Writ Petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

S. K. MISHRA, J. I agree.

(S. K. MISHRA)
JUDGE