

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.20783 of 2022

Surya Kanta Swain

.... Petitioner

-versus-

State of Odisha & Others

.... Opposite Parties

**COROM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
29.09.2022**

Order No

- 03.** 1. This matter is taken up through Hybrid Mode.
2. Heard Mr. L.P. Dwivedy, learned counsel for the Petitioner and Mr. A.P.Das, learned Addl. Standing Counsel for the State- Opposite Parties.
3. The present Writ Petition has been filed challenging the order dated 08.07.2022 passed by the Opposite Party No.2 under Annexure-6.
4. It is submitted that the Petitioner approached the learned Tribunal in O.A. No.4050(C) of 2013 claiming his appointment as against the post of Asst. Driver against unreserved post from the date the private opposite parties were provided with such appointment.
5. It is submitted that learned Tribunal vide a common order passed on 25.10.2016 disposed of the said Original Application with the following order:-

“In view of the above discussion, state respondents are directed to consider the appointment of the applicants for the post of Assistant Drivers as against un-reserved posts advertised in Annexure-1 from the date private respondents got such appointment. They will be entitled to all service

benefits accordingly but financial benefits from the date they perform actual duties”.

6. Learned counsel for the Petitioner submitted that the State-Opposite Parties seeking review of the said order filed R.P. No.98(C) of 2017. But learned Tribunal vide its order dated 25.04.2018 when dismissed the Review Petition, the State-Opposite Party challenging both the orders approached this Court in W.P.(C) No.4101 of 2019. This Court vide order dated 13.07.2021 when dismissed the said writ petition, State-Opposite Parties approached the Hon'ble Apex Court challenging the order passed by this Court in Special Leave to Appeal No.21074-21075/ 2021.

7. It is submitted that Hon'ble Apex Court in its order dated 05.01.2022 under Annexure-5 dismissed the SLP by confirming of the order passed by this Court.

8. Learned counsel for the Petitioner submitted that in spite of the confirmation of the order passed by the learned Tribunal by the Hon'ble Apex Court, without implementing the same, the impugned order under Annexure-6 was passed by holding that the Petitioner is not eligible for appointment as against the vacant post of Driver. Even though vide order dated 22.08.2022 and 20.09.2022, learned Addl. Standing Counsel was directed to obtain instruction on the same in absence of any instruction learned Addl. Standing Counsel expressed his inability to assist this Court.

9. Having heard learned counsel for the Parties and in view of the fact that the order passed by the learned Tribunal was confirmed by the Hon'ble Apex Court vide its order under Annexure-5 there was no occasion on the part

of the Opposite Party No.2 in rejecting the Petitioner's claim vide the impugned order dated 8.7.2022 under Annexure-6.

10. Therefore, this Court is inclined to quash the said order under Annexure-6 and while quashing the same directs the Opposite Party No.2 to take appropriate step for appointment of the Petitioner in the light of the order passed by the learned Tribunal in its order dated 25.10.2016 in O.A No.4050(C) of 2013. The said exercise shall be completed within a period of one month from the date of receipt of this order.

11. With the aforesaid observations and directions, the Writ Petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Subrat

