

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.20846 of 2022

Jeevan Kumar Sahoo

....

Petitioner

-versus-

State of Odisha & Anr.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

29.09.2022

Order No

05. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard Mr. G.R. Sethi, learned counsel for the Petitioner and Mr. A.P. Das, learned ASC appearing for the Opp. Parties.

3. The present writ Petition has been filed with the following prayer:-

“It is therefore humbly prayed that this Hon'ble Court my graciously be pleased to admit the case, call for the records and after hearing both the parties pass the following reliefs:

- i) *To quash the order did. 30.03.2022 under Annexure-11.*
- ii) *To direct the Opp. Parties to appoint the Petitioner as ARI against the vacancy caused due to non joining of selected candidates in accordance with order dtd.1.3.2016 passed in OA NO 4105(C)2014under Annexure - 5.0 To direct the Opp. Parties to grant all financial and consequential benefits.*
- iii) *And for this act of kindness, the petitioner as in duty bound shall ever pray.”*

4. It is submitted that seeking his appointment as Asst. Revenue Inspector as against the non-joining vacancies in respect of the selection process initiated pursuant to the advertisement issued on

26.04.2012 under Annexure-1 the Petitioner along with another approached the learned Tribunal in O.A. No. 4104(C) of 2014 and 4105(C) of 2014.

4. It is submitted that vide a common order dt.01.03.2016, learned Tribunal disposed of both the O.As with the following order:-

“In view of the abere facts and circumstances of the particular case, the respondents authorities are directed to consider the case of the applicants taking into accourts the pre amended rules of Orissa District Reverservin Methoit of Recruitment and Conditions of Service Rules, 1983 and on consideration, if they come within the one of consideration, the appointment order is sued to them to the post of ARI/Amin due to the non joining of selected candidates out of the merit list within a period of two months from the date of receipt of a copy of this order. However, their such appointment may be made notionally from the date others were appointed and their entitlement for actual financial benefit may be given from the date of their actual joining into the post.

With these orders, the O.A.s are disposed of.”

5. It is submitted that challenging the said order passed by the learned Tribunal the State Opp. Party approached this Court in W.P.(C) Nos.2288 and 2292 of 2017. This Court vide its order dtd.30.07.2018 under Annexure-6 dismissed both the writ Petitions by confirming the order passed by the learned Tribunal.

6. Learned counsel for the Petitioner submitted that after dismissal of the matter by this Court though the Petitioner in O.A. No.4104(C) of 2014 Mr. Sudhir Ranjan Acharya was provided with the appointment as against the non-joining vacancies, but the

Petitioner's claim was kept pending. Accordingly, he approached this Court in W.P.(C) No.20837 of 2021 and this Court vide its order dtd.29.08.2021 under Annexure-10 dispose of the said writ Petition with a direction on the Opp. Party i.e. Collector, Cuttack to take a decision on the Petitioner's claim as made in Annexure-8 to the said writ Petition.

7. It is submitted that though the Petitioner and the Petitioner in O.A. No.4104(C) of 2014 were similarly situated and a common order was passed to provide them appointment as against non joining vacancies, but the claim of the Petitioner was rejected vide the impugned order dtd.30.03.2022 under Annexure-11. Learned counsel for the Petitioner submitted that since person similarly situated basing on similar order passed by the learned Tribunal has been provided with the appointment as against non-joining vacancies, the claim of the Petitioner should not have been rejected.

8. A counter affidavit is filed by the O.P. No. 2 and in the said counter it has been indicated that permission to provide appointment as against the non-joining vacancies since was turned down by the Govt. in the Revenue and Disaster Management Department vide letter dtd.11.11.2014, the Petitioner cannot be provided with the appointment. It is also submitted that the Petitioner was an applicant under SEBC category and he has secured 141 marks, whereas last such candidate appointed under SEBC category has secured 145 mark. It is accordingly submitted that in view of such factual position, the claim of the Petitioner was rightly rejected by the Collector-O.P. No. 2.

9. Heard learned counsel for the Parties. Perused the materials available on record. This Court after going through the same finds

that the Petitioner and the Petitioner is O.A. No.4104(C) of 2014 claiming extension of similar benefit i.e. consideration of their case as against non-joining vacancies approached the learned Tribunal and learned Tribunal in its common order passed on 01.03.2016 under Annexure-5 allowed the said claim.

10. Since basing on the said order passed by the learned Tribunal and confirmed by this Court in its order dtd.30.07.2018, the Petitioner in O.A. No.4104(C) of 2014 has been provided with the appointment, it is the view of this Court that the claim of the Petitioner should also have been allowed by providing appointment as against such non-joining vacancies.

11. In that view of the matter this Court is inclined to quash the impugned order dtd.30.03.2022 and while quashing the same, directs the O.P. No. 2 to provide appointment to the Petitioner as against such non-joining vacancies as has been extended in favour of the Petitioner in O.A. No.4104(C) of 2014. This Court directs the O.P. No. 2 to complete the entire exercise within a period of two (2) months from the date of receipt of this order.

12. The writ Petition is disposed of with the aforesaid observation and directions.

(Biraja Prasanna Satapathy)
Judge

Sneha