

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.21348 of 2022

Surendra Kumar Swain

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

20.10.2022

Order No

02. I.A. No.12991 of 2022

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. This is an application for modification of order dtd.24.08.2022.
3. Considering the grounds taken in I.A., the order dtd.24.08.2022 is recalled.
4. Accordingly, the I.A. is disposed of.

**(Biraja Prasanna Satapathy)
Judge**

03. W.P.(C) No.21348 of 2022

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. A.K. Chhatoi, learned counsel for the Petitioner and Mr. Balabantaray, learned counsel appearing for the State-Opp. Parties.
3. The Petitioner has filed the writ Petition with the following prayer:-

“i. Direct the respondent to extend the benefit of coverage under OCS O.C.S.((Pension)) Rules 1992 and the GPF (O) Rules 1938 in favour of the Petitioner within a stipulated period.”

4. It is submitted by Mr. Chhatoi, learned counsel for the Petitioner that vide the advertisement issued on 19.5.1995 under Annexure-1, the Petitioner not only made his application as against the vacancy meant for General candidate, but also his name was duly reflected in the select list published by the office of Opp. Party No.3 on 07.01.2000 under Annexure-2. In the said list and in respect of General (Male) candidate, the Petitioner's name was reflected at serial No.28.

5. It is submitted that even though the Petitioner was duly selected with his name finding place at Sl. No.3 in respect of General (Male), the Petitioner in view of the vacancy advertised for such General (Male) candidates at 32 in Annexure-1, the Petitioner should have been provided with the appointment. But it is submitted that instead of his qualifying the test and his name reflected in Annexure-2, the Petitioner was not issued with the order of appointment and was kept waiting.

6. It is submitted that only vide office order dtd.08.03.2007 under Annexure-4, Petitioner was provided with the appointment as Junior Clerk. Pursuant to the said order, the Petitioner not only joined, but also he was promoted to the post of Senior Clerk in the year 2012.

7. It is submitted that since the Petitioner was appointed as per order dtd.08.03.2007 under Annexure-4, he was debarred from being covered under the Provisions of OCS (Pension) Rules, 1992 and the

GPF(O) Rules, 1938. It is also submitted that even though the Petitioner was kept waiting till order at Annexure-4 was issued in his favour, but person similarly placed and selected vide notification under Annexure-2, were provided with the appointment immediately and accordingly they were covered under the provision of OCS (Pension) Rules, 1992 and the GPF(O) Rules, 1938.

8. It is also submitted that since because of the laches on the part of the Opp. Party, the Petitioner was kept waiting and provided with the appointment only vide order dtd.08.03.2007 under Annexure-4 even though he was declared selected in the notification dtd.07.01.2000, the Petitioner's claim for his inclusion under the provision of OCS (Pension) Rules, 1992 and the GPF(O) Rules, 1938 needs favourable consideration.

9. Mr. Chhatoi in support of his aforesaid submission relied on the decision of the learned Odisha Administrative Tribunal dtd.19.09.2013 passed in O.A. No.1612(C) of 2011 and 1613(C) of 2011. In the said decision, learned Tribunal in a case arising out of the present selection process held the Petitioners therein to be covered under the provisions of OCS (Pension) Rules, 1992 and the GPF(O) Rules, 1938.

10. Mr. Chhatoi accordingly submitted that the decision rendered by the learned Tribunal in the aforesaid case squarely applies to the case of the Petitioner. It is also submitted that the order of learned Tribunal passed in the aforementioned case was never assailed by the State-Opp. Parties and accordingly the same has attained finality in the eye of law.

11. Mr. Mishra, learned Standing Counsel appearing for the Opp. Parties submitted that since the Petitioner was appointed vide order dtd.08.03.2007 under Annexure-4 i.e. after coming into the force of the Odisha Civil Service (Pension) Amendment Rules, 2005, which came into force w.e.f. 01.01.2005, the Petitioner cannot be covered under the provisions of OCS (Pension) Rules, 1992 as well as GPF(O) Rules, 1938. Accordingly, Mr. Mishra prayed for dismissal of the writ Petition.

12. Heard learned counsel for Parties at length. Perused the materials available on record. There is no dispute that pursuant to advertisement issued under Annexure-1 on 19.05.1995, the Petitioner was duly selected with publication of the select list vide notification dtd.07.01.2000 under Annexure-2.

13. In view of the vacancy available and reflected in Annexure-1 in respect of General (Male) candidates at 32, the name of the Petitioner being placed at Sl. No.3 in the list of General (Male) candidates, he should have been provided with the appointment after publication of the notification under Annexure-2. The opp. Parties in their counter affidavit in W.P.C(OAS) No.31 of 2015 have not assigned any cogent reason for not providing appointment to the Petitioner immediately after issuance of the notification under Annexure-2 and keeping the same pending till the order dtd.08.03.2007 was issued under Annexure-4.

14. It is also not in dispute that some of the selected candidates, whose name finds place in Annexure-2 were provided with the appointment immediately after publication of the said notification and accordingly they came under the provisions of OCS (Pension) Rules, 1992 as well as GPF(O) Rules, 1938.

15. Though was provided with the order passed by the learned Tribunal in the aforementioned O.A. No.1612(C) of 2011 and O.A. No.1613(C) of 2011 but submitted that he has no instruction as to whether the order of the learned Tribunal has been assailed before this Court or not. But he fairly submitted that similar issue has been held in the affirmative by the learned Tribunal.

16. Be that as it may, in view of the admitted position with regard to the selection of the Petitioner with publication of the select list under Annexure-2 on 07.01.2000 and the vacancies available in respect of General (Male) candidate as reflected under Annexre-1 and the order passed by the learned Tribunal in the aforementioned case, the Petitioner's claim for his inclusion under the provisions of OCS (Pension) Rules, 1992 and the GPF(O) Rules, 1938 needs favourable consideration.

17. Accordingly, this Court while allowing the prayer made in the writ Petition directs the Opp. Parties to extend the benefit of coverage under OCS (Pension) Rules, 1992 and the GPF(O) Rules, 1938 in favour of the Petitioner. It is further directed that the Opp. Parties shall complete the entire exercise within a period of 3 months from the date of receipt of this order.

18. With the aforesaid observation and direction, the writ Petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Subrat