

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) Nos.19306 of 2018 and 2757 of 2017

In W.P.(C) Nos.19306 of 2018 and 2757 of 2017

Dr. Srikant Panda

....

Petitioner

-versus-

State of Odisha and others

....

Opposite Parties

Advocates appeared in this case:

For the Petitioner

:

In person

For the Opposite Parties

:

**Mr. M.K. Khuntia,
Additional Government Advocate**

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

JUDGMENT

22.09.2022

Dr. S. Muralidhar, CJ.

1. Both these writ petitions are by the same Petitioner and arise out of a common set of facts and are accordingly being disposed of by this common judgment.

W.P. (C) No. 2757 of 2017

2. The Petitioner states that he was awarded Ph.D. in Physics in the year 2012 and has also done his B. Ed. apart from acquiring certain other qualifications. Advertisement No.001 of 2015 was issued by the State Selection Board (SSB), Department of Higher Education, Bhubaneswar, for filling up the posts of Lecturers in

Non-Government Aided Colleges of Odisha. There were a total of 1625 vacancies in different disciplines. Among the eligibility criteria was the age limit. It was specified that candidates of general category should not be less than 21 years or more than 42 years as on 1st October, 2015. The relaxation of the upper age limit was applicable only to candidates belonging to the Scheduled Caste (SC), Scheduled Tribe (ST), Socially and Educationally Backward Classes (SEBC), Women and Ex-Servicemen. For persons with disability (PwD), the age limit was relaxable by 10 years provided that the disability was not less than 40%.

3. 100 posts of Lecturers in physics was on offer. The Petitioner applied for the post of Lecturer in Physics. However, he did not qualify in the main merit list published. As per the counter affidavit filed by the Opposite Parties, his name figured at Sl. No.45 after the merit list in the UR category. The SEBC candidates who topped in the list qualified in the UR category.

4. The grievance of the Petitioner was that there was no waiting list prepared and therefore, it was not clear whether the posts left unfilled by non-joining of the selected candidates would be offered to those in the wait list. Claiming that he has a legitimate expectation that such a process would be adopted, he has filed the present petition after making a representation.

5. His grievance is that his age crossed 41 in the meanwhile and recruitment that should have occurred in past 20 years had not happened. According to him, there were existing vacancies in the discipline of Physics in different Colleges and therefore, a

direction should be issued to offer those vacancies to persons like him in the waiting list. With this prayer, he filed W.P.(C) No.2757 of 2017 on 14th February, 2017.

6. On 25th April 2017, a counter affidavit has been filed by the Opposite Parties in which it has been categorically stated that there was no requirement for preparing any waiting list beyond those who figured in the merit list. This was not contemplated in the advertisement. Therefore, it was beyond the purview of the SSB to consider candidates beyond the merit list.

7. It is not possible for the Court, if there is no requirement in the advertisement and as per the governing Rules for preparing any 'wait list', for a mandamus to be issued to the Opposite Parties to offer any vacant post to the Petitioner irrespective of the fact that he does not figure in the merit list. Whether or not to have a waiting list for any particular selection is a policy decision to be made by the recruiting entity and it is not for the Court to dictate that for every selection there must be a wait list.

W.P.(C) No.19306 of 2018

8. As far as W.P.(C) No.19306 of 2018 is concerned, it was filed by the same Petitioner on 30th November 2018 stating that an age relaxation similar to the one given to persons applying for posts in the Orissa Civil Services must be extended to those who had applied pursuant to the advertisement issued for filling up posts of Lecturers in Non-Government Aided Colleges. The prayer in the present petition in fact is for a declaration that "the amendment made in the year 2015 to Rule (Fixation of Upper Age Limit)

1989 as *ultra vires* of the Constitution so as Clause 3 of Annexure-2 and further be pleased to hold that the Petitioner can be extended the relaxation of upper age limit for two years counted from the date of examination, 2015 for the post of Lecturer in Physics in the Non-Government Colleges held in accordance with Orissa Education (Selection Board for the State) Rules, 1992.” The consequential prayer is for a direction to the Opposite Parties to allow the Petitioner to appear in the selection pursuant to an advertisement No.003 of 2018 for filling up the post of lecturers in the Non-Government Aided Colleges.

9. The case of the Petitioner in this petition is that after an examination was held in 1992, the next selection was held in 2015 pursuant to an advertisement No.001 of 2015 in which the Petitioner participated but was unsuccessful. Meanwhile, the Petitioner completed 42 years as on 11th July, 2017. The upper age limit had to be as specified in advertisement No.003 of 2018 which was 42 years as on 1st September, 2018 which meant that the Petitioner would not be eligible to take the examination. It was claimed that in view of the large gap in holding consecutive selections, the age relaxation made available to candidates for civil services should also be extended to those applying pursuant to the advertisement No.003 of 2018.

10. A reply has been filed on behalf of the Department of Higher Education pointing out that the provisions of the Odisha Civil Service (Fixation of Upper Limit Age) Rules, 1989 as well as the amendments made thereto have no application as far as filling up vacancies in the Non-Government Aided Colleges in the State are

concerned. The latter is governed by the Odisha Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974. Further, with there being no interim order by the Court, it is pointed out that the recruitment pursuant to advertisement No.003 of 2018 was completed by the SSB and the selected candidates had already joined in new assignments against the vacant sanctioned posts.

11. In any event, fixation of upper age limit for appearance in examinations, is again in the policy domain of the State. It is not for the Court to dictate. Since the Rules have universal application, there cannot be any discrimination claimed by non-extension of relaxation of the upper age limit made available to the candidates for civil services to all other recruitment processes as well. Consequently, the Court is unable to grant any of the reliefs prayed for in the second petition as well.

12. For the aforementioned reasons, there is no merit in either of the writ petitions and they are dismissed as such, but, in the circumstances, with no order as to costs.

(S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge