

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 4316 of 2010

Prasanta Kumar Behera

.....

Petitioner

Mr.A.Mohanty, Adv.

Vs.

State of Odisha and others

.....

Opposite Parties

State Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

22.09.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. A. Mohanty, learned counsel for the petitioner and Mr. A.K. Mishra, learned Addl. Government Advocate.

3. The petitioner has filed this writ petition seeking direction to the opposite parties to give him appointment as Fireman within a stipulated time.

4. Mr. A. Mohanty, learned counsel for the petitioner contended that the petitioner is a matriculate sports person and reserve category candidate, i.e., Socially Educationally Backward Class (SEBC). Pursuant to the advertisement issued by the authority on 28.01.2010 for filling up 406 vacant posts as fireman, out of which 46 posts are earmarked for SEBC category, the petitioner submitted his application, which was considered and he was allowed to participate in the process of selection and, as such, he had secured 54% marks. But he was not given appointment though a candidate securing 53.25 marks, namely, Rabindra Behera has been given appointment. Therefore, the petitioner has approached this Court by filing the present writ petition.

5. Mr. A.K. Mishra, learned Addl. Government Advocate contended that the petitioner, who belonged SEBC category and

claimed to be appointed as fireman, has secured 54 marks in aggregate, i.e., physical, written and personality test. But he could not qualify for the post of fireman, as the last selected candidate of SEBC category (non-Home Guard) secured 54.25 marks. With regard to selection of Rabindra Behera securing 53.25 marks, it is contended that he belonged to SEBC category under reserved category of Home Guard. Thereby, considering the Home Guard quota of 10% of vacancies, his case has been considered. Therefore, the case of the petitioner has not been rightly considered. Consequentially, he seeks for dismissal of the writ petition.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the petitioner had submitted his application pursuant to advertisement for appointment as fireman and by following the recruitment process itself, the petitioner, who belonged to SEBC category, secured 54 marks in aggregate and could not qualify for the post of fireman, as the last selected candidate of SEBC category (non-Home Guard) secured 54.25 marks. Consequentially, the petitioner was not found eligible to be selected having secured less mark than that of the last selected candidate. Much reliance has been placed on the document, which has been annexed at page-15 of the writ petition, stating that one Rabindra Behera belonged to SEBC category securing 53.25 marks was selected whereas the petitioner was not selected. But fact remains, he was selected under the SEBC category, as he was working as a Home Guard. More so, the persons, those who are appointed in the Home Guard category, their appointment is based on the fact that the Government in S.C.

and S.T. Development Department vide letter dated 29.07.2010 issued instructions to the Principal Secretaries and Secretaries of all departments for implementing the Odisha Reservation of Post and Services for Socially Educationally Backward Classes Act, 2008, which provides 27% reservation vide resolution dated 26.02.2007. The said resolution clearly provides reservation for appointment of Home Guards and Ex-Servicemen for the post of fireman in their respective categories. Accordingly, Home Guards and Ex-Servicemen were selected. Further, Home Department Resolution dated 26.02.2007 prescribes that reservation of posts for Home Guard candidates in the recruitment test of fireman vide Rule-8.1(c), which read as under:-

“Rule 8.1 (c) :- “ 10% vacancies in the rank of Fireman shall be reserved for eligible Home Guards as per Home Department letter no. 516/CD dtd. 16.3.1995. They will be eligible against the Reserve vacancy under the respective category to which they belong i.e. U.R., S.E.B.C, S.C.,S.T.”

7. Therefore, after publication of the advertisement, all District Commandants were requested vide directorate letter dated 24.01.2010 to sponsor applications of willing and eligible Home Guards for recruitment of fireman and accordingly the selection process was carried on. Therefore, Rabindra Behera, who belonged to Home Guard category and SEBC category was selected having secured 53.25 marks and, as such, the petitioner being a non-home guard, he cannot claim parity with the person who was appointed under Home Guard category. More so, the cut-off mark for SEBC category of non-Home Guard has been fixed as 54.25 marks, whereas the petitioner secured 54 marks. Consequentially, the petitioner having secured less marks cannot

claim that he should be selected and appointed as fireman.

8. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

Ashok

