

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 4369 of 2010

An application under Articles 226 & 227 of Constitution of India.

AFR

Jayashree Dhal

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Petitioner

-Versus-

State of Odisha & others

.....

Opp. Parties

Advocate(s) appeared in this case:-

For Petitioner

: M/s. J.K. Rath, Sr. Advocate
with Mr. D.N. Rath, Advocate

For Opp. Parties

: Mr. P. Bharadwaj,
Addl. Standing Counsel

Mr. S.B. Jena, Advocate
[for O.P. Nos.2 & 3- OPSC]

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

20th September, 2022

SASHIKANTA MISHRA, J.

Pursuant to an advertisement issued by Odisha Public Service Commission (OPSC) on 19.08.2006 for conduct of Odisha Civil Services Examination, 2006 for recruitment to different posts/services in Category -I and II of Odisha Civil Services, the petitioner submitted her

application. Having qualified in the preliminary test, the petitioner was called upon to appear in the main examination held from 22.07.2009 to 20.08.2009. The petitioner claims to have been successful in the main written examination. She was called upon to attend Personality Test (Viva Voce). The final merit list of successful candidates was published but the petitioner's name did not appear therein. The petitioner sought for information from the OPSC on 29.05.2010 to furnish the category-wise details pertaining to cut off marks for Unreserved (UR) and SEBC category and the marks secured by the last UR and SEBC successful candidates. The said request was however turned down by the OPSC. It is stated that the petitioner is a woman category and is therefore entitled to be considered within the 33.33% reservation for women. The number of posts advertised was 380 but 378 persons were declared successful. According to the petitioner, 50% of the total advertised posts being 190, 63 posts were required to be reserved for women being to the extent of 33.33%. It is also stated that originally the percentage of reservation for a SEBC

candidate was 27% but in view of certain litigations and order passed by this Court the said quota was reduced to 11.2%. According to the petitioner, 21 posts thus reserved for SEBC ought to have been added in the UR category in which event the posts reserved for women category would have been increased from 63 to 69. On such facts, the petitioner approached erstwhile the Odisha Administrative Tribunal seeking the following relief:

“In view of the facts mention in paragraph-6 above, the applicant prays for the following relief(s).

Under the above circumstances, it is therefore, humbly prayed that this Hon’ble Tribunal be graciously pleased to direct the opposite party no.2 to recommend the names of the petitioner to the opposite party no.1 under unreserved women category since there is no proper representation in the said category. The petitioner has qualified both in the main written examination and as well as the personality test and to the best of the information/knowledge of the petitioner, the petitioner’s position comes within the said merit list.

And this Hon’ble Tribunal be pleased to direct the opposite parties to divert the left out 21 posts, which were kept for SEBC pertaining to the said recruitment examination, to the General category as per the decision made by this Hon’ble Tribunal and as well as by this Hon’ble High Court that for SEBC category, the reservation fixed to 11.25 % and the excess reservation made for SEBC was diverted from un-reserved category post.”

The said Original Application has since been transferred to this Court and registered as the instant Writ Petition.

2. Counter affidavit has been filed by opposite party no.1, wherein it is stated that 33.33% reservation for women out of 190 UR category comes to about 62. Out of such 62 posts, some SC, ST, SEBC/OBC candidates were selected by OPSC and given appointment in view of the principle that UR vacancies are open to all categories of candidates.

3. Counter affidavit has been filed by OPSC (opposite parties No. 2 and 3). It is specifically stated in the counter that the name of the applicant (petitioner) was not recommended by the Commission in the selection list sent to the Government due to her lower position in the final merit list. Referring to the Government Circulars dated 23.07.1997 and 15.03.1999, it is stated that the UR vacancies are open to all category of candidates. Accordingly, the Commission, recommended names of suitable candidates against UR vacancies (including Women) in view of their respective merit. The allegation

that less number of women candidates under UR category were recommended was specifically denied as false.

4. The petitioner filed a rejoinder to the counter affidavits filed by opposite party No.1 and opposite parties Nos.2 and 3. The allegation made in the writ petition regarding reduction of the percentage of posts of general category (UR posts) being allotted to SEBC category, was reiterated. It was stated that this resulted in exceeding the 50% limit of reservation. It is further stated that the Government Circulars referred to in the counter affidavits are not applicable to the case of the petitioner and that 33.33% quota is required to be maintained for all categories. Referring to the counter filed by the State that 62 posts were reserved for women, it is stated that the number ought to have been 63, which therefore implies that one less candidate was recommended.

5. The State filed a counter reply to the rejoinder filed by the petitioner specifically denying the allegation that less number of women candidates under UR category were recommended and that reserved category candidates were given place under the said quota.

6. Heard Mr. J.K. Rath, learned Senior Council appearing along with Mr. D.N. Rath, learned counsel for the petitioner, Mr. P. Bharadwaj, learned Addl. Standing Counsel for the State and Mr. S.B. Jena, learned counsel appearing for OPSC.

7. According to learned Senior Counsel, Mr. Rath, the calculation of number of women candidates under the 33.33% quota is wrong, inasmuch as the total posts under UR category being 190, 63 posts were required to be earmarked for women. The petitioner being a woman stakes her claim under this category. However the OPSC wrongly considered women candidates from other categories particularly from SCBC in the UR category, which is completely illegal. It is further contended by Mr. Rath that only 45 women candidates were recommended for appointment in place of 63. It is further submitted that out of 380 posts, 378 persons were recommended leaving two posts vacant. Further, out of the said 378 candidates recommended, two candidates did not join and five candidates could not produce the required testimonials. As

such, 371 candidates ultimately joined the service leaving nine vacancies.

8. Mr. P. Bhardwaj, on the other hand, has argued that the State has acted upon the recommendations made by the OPSC because the same was found to be in consonance with its requisition as also the settled position of law governing reservations for different categories including women. It is further submitted that a candidate, irrespective of the category to which she belongs can compete under the UR category on merit and therefore, it is wrong on the part of the petitioner to say that other category candidates could not have been considered under the UR category.

9. Mr. S.B. Jena appearing for the OPSC while adopting the arguments made by Mr. Bhardwaj has further contended that 63 women candidates were required to be appointed under UR category. As per the settled position of law, UR category is open to all candidates on the basis of their respective merits. In the instant case, considering the relative merit of the candidates, including all categories, it is found that out of 190 candidates required to be

recommended under the UR category, 63 were women, which fulfilled the 33.33% criteria. Though some SC/ST/SEBC candidates may have been so recommended yet the same was on the basis of their higher merit and therefore, no illegality whatsoever was committed.

10. After hearing learned counsel for the parties at length, this Court is of the view that the list lies within a narrow compass, firstly, whether 33.33% of posts was reserved for women candidates in the UR category and secondly, whether the petitioner was eligible to be recommended for appointment.

11. Before proceeding to answer the aforementioned points, it would be profitable to briefly refer to the settled position of law with regard to reservation.

12. In ***Indra Sawhney vs. Union of India***, reported in ***1992 Supp (3) SCC 217***, the Supreme Court observed as follows:

".....There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes under Article 16(4) may be called vertical reservations whereas reservations in favour of physically handicapped under clause 1 of Article

16 can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations – what is called interlocking reservations.....”

In ***Rajesh Kumar Daria vs. Rajasthan Public Service Commission***, reported in (2007) 8 SCC 785, the Supreme Court has said that Article 16(4) relates to social reservation whereas Article 15(3) providing for reservation for women in respect of employment is a special reservation and also explained the principles of implementation of such reservations in the following manner:

- 1. Where a vertical reservation is made in favour of a Backward Class, the candidates in this category may compete for open or general category.*
- 2. If they are appointed on merit in the general category their number will not be counted against the backward class category and, as such, it cannot be considered that the vertical reservations have been filled up to the extent candidates of this category have migrated to the open category on merit.*
- 3. This means that the entire vertical reservation remains intact and unaffected and will be available in addition to those selected in general category competition*
- 4. However, the above principles applicable to vertical reservation will not apply to horizontal (special) reservation.*
- 5. Where a special reservation for women is provided within the vertical (social) reservation the following method of implementation is to be followed:*
 - a. First, the quota of vertical reservation is to be filled up in order of merit.*

- b. *Second, the remaining number of candidates among the vertical reservation (e.g., Schedule Caste women) has to be determined.*
- c. *Third, if the number of such Schedule Caste women in the vertical reservation is equal to or more than the horizontal reservation for inter-alia women under Article 15(3) often referred to as special reservation then there is no need for further selection to the special reservation quota.*
- d. *If, however, there is any shortfall, the requisite number of Schedule Caste women shall have to be taken by deleting the corresponding number of candidates belonging to Schedule Castes.*

It was pointed out that “women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women.”

In case of **Ramesh Ram vs. Union of India**, reported in (2010) 7 SCC 234, the Apex Court held that a policy of the State to fill up unfilled horizontal reservation by the candidates for vertical reservation cannot be faulted.

13. Approving the view taken in **Rajesh Kumar Daria** (supra) the Supreme Court in the case of **Saurav Yadav v. State of U.P.**, AIR 2021 SC 233: (2021) 4 SCC 542 held that the first rule that applies to filling horizontal reservation quotas is one of adjustment i.e. examining whether on merit any of the horizontal categories are adjusted in the merit list in the open category, and then, in

the quota for such horizontal category within the particular specified/social reservation. The long settled principle that mobility (“migration”) from the reserved (specified category) to the unreserved (open category) slot is possible, is based on meritorious performance.

Coming to the present case, it is undisputed that the petitioner belongs to the Unreserved Category and therefore she has to compete on merit under such category alone including the special reservation for women namely 33.33%.

14. In course of hearing, being directed by this Court, the OPSC has filed two further affidavits. In the first affidavit sworn on 11.05.2022 by the Additional Secretary of OPSC a detailed breakup of the category wise vacancies and number of candidates recommended has been given. Originally, the vacancy position was notified as follows:

<u>Category</u>	<u>Vacancy</u>
UR	124 (41-W)
S.E.B.C.	104 (33-W)
SC	60(17-W)
ST	92(32-W)
Total	380 (123-W)

However, because of various orders passed by the Odisha Administrative Tribunal, the percentage of reservation for SEBC category was reduced from 27% to 11.25% and accordingly, the vacancy position was worked out as follows:

<u>Category</u>	<u>Vacancy</u>
UR	190
S.E.B.C.	42
SC	62
ST	86
Total	380

Out of 380 vacancies, the Commission recommended a total of 378 candidates including 126 women, the breakup of which is as follows;

<u>Category</u>	<u>Vacancy</u>	<u>No. of Candidates recommended</u>
UR	190	100 (34-W)
S.E.B.C.	42	122 (41-W)
SC	62	70 (22-W)
ST	86	86 (29-W)
Total	380	378 (126-W)

As it appears, as against the original vacancy position of respective categories, particularly, SEBC and SC, some

excess candidates have been appointed. In the SEBC category 80 candidates in excess have been appointed but they are said to come under the UR category by virtue of their merit. Similarly, 8 candidates belonging to SC category were recommended in excess and clubbed in UR category because of their higher position in merit. Ultimately, the candidates and women candidates recommended from each category are as follows:

<u>Category</u>	<u>Vacancy</u>	<u>Women candidates recommended</u>
UR	190	63
S.E.B.C.	40	13
SC	62	21
ST	86	29
Total	378	126

Thus, if the tables quoted above are analyzed, it would be evident that out of 190 candidates recommended, 80 from SEBC category and 8 from SC category were so recommended on the basis of their own merit and therefore, rightly included in the UR category. The remaining 102 candidates were of UR category. Out of such 190 candidates, 63 candidates were women, from whom 41

women were from SEBC category and 22 women were from SC category. It is submitted on affidavit by the OPSC that all the 63 women candidates were recommended under the UR category by virtue of their merit. This Court finds no reason to doubt the affidavit filed by the Additional Secretary of the OPSC.

As directed, learned counsel for the OPSC has also produced the concerned file relating to recruitment of OCS (2006) (File No. LE-I-2010/11, Volume-III). The proceeding of the Selection Board for recruitment to Odisha Civil Services (2006) is contained at pages 112, 111 and 110. A category-wise break up of successful candidates is available at page -109 of the said file. Apart from the figures referred to hereinbefore, it mentions that 34 women candidates belonging to UR category were also selected in the said category over and above 22 women candidates under SC category, 29 under ST category and 41 under SEBC category.

15. In view of the settled position of law relating to the horizontal and vertical reservations, this Court finds no infirmity much less any illegality in the recommendations

made by the OPSC of women candidates under different categories. This answers the first point framed for determination.

16. Coming to the second point, given the fact situation narrated in the preceding paragraphs, it is evident that the petitioner being an UR category candidate, would have been eligible for recommendation had her performance being equal to or more than the last person selected in UR category. As is also seen, 34 candidates were selected under UR category. Being directed again, the OPSC filed another affidavit sworn by the Additional Secretary on 01.08.2022, wherein it is stated under Paragraph-4 as follows:

“That on verification of merit list of Odisha Civil Service 2006 it is found that the last candidate of UR (W) selection in Odisha Civil Service 2006 is Madhusmita Mohapatra Roll No. 134629 and on verification of tabulation sheet it is seen that Madhusmita Mohapatra has Secured 1186 marks (1016 marks in main written examination plus 170 marks in viva-voce test) and as regards to the petitioner’s position in final list, it is submitted that the petitioner’s Roll number is 116447 and her position is 286 and the marks secured is 1144 (974 in main written examination plus 170 marks in viva-voce test).”

17. This Court finds no reason to disbelieve the sworn affidavit by the Additional Secretary of OPSC nor any material is forthcoming from the side of the petitioner to dispute the correctness of the averments made therein. It is therefore evident that the petitioner not having secured the required marks for being recommended, no relief can be granted to her in the instant writ petition.

18. For the foregoing reasons therefore, the writ petition is found to be devoid of merit and is therefore, dismissed. There shall be no order as to costs.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 20th September, 2022/ A.K. Rana, P.A.