

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.25391 of 2022

Dr.Aseema Mallik

Petitioners

....
Mr.J.K.Rath, Sr. Advocate

-versus-

State of Odisha and others

.... ***Opposite Parties***

Mr.B.P.Tripathy, A.G.A.
Mr.G.P.Dutta, Advocate for O.P.Nos.2 & 3
Ms.Pami Rath, Advocate for Intervenor

**CORAM:
JUSTICE A.K.MOHAPATRA**

ORDER

03.11.2022

Order No.

06. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned Senior counsel for the Petitioner as well as learned Additional Government Advocate and Mr.G.P.Dutta, learned counsel for Opp.Party Nos.2 & 3 (OPSC) and Ms.Pami Rath, learned counsel for the private Opposite Party Nos. 4 & 5.
3. This writ application has been filed by the Petitioner with a prayer for a direction to Opposite Party Nos. 2 & 3 to recommend the name of the Petitioner to Opposite Party No.1 i.e. State Government since the Petitioner has come up successful and her name finds place in select list prepared for selection and appointment to the post of Assistant Professor in Ophthalmology pursuant to advertisement issued by Opposite Party Nos. 2 & 3 vide Annexure-1 to the writ application.
4. It is submitted by Mr.J.K.Rath, learned senior Advocate for the Petitioner that the Petitioner was duly selected for the post of Assistant Professor in Ophthalmology. He further submits that out of a total 12 posts of Assistant Professor in Ophthalmology, three posts were

reserved for S.C. category vide Advertisement No.19 of 2021-22. It is further contended by Mr.Rath, that three candidates were selected for the post of Assistant Professor in Ophthalmology under the S.C. category. They are the present Petitioner and Opposite Party Nos. 4 & 5. It is submitted by Mr.Rath that earlier another writ application was preferred by the candidate, who was in the 2nd position of the merit list. Dr.Laxmidhar Jena, who stood 2nd under the S.C. category in the select list filed a writ application and in the said writ application interim order was passed by directing not to fill up one post under S.C. category. Accordingly, the OPSC recommended the names of first two candidates and the name of the Petitioner could not be recommended in view of the interim order passed by this Court in W.P.(C) No.774 of 2022. Learned counsel for the Petitioner further contends that since the names of the above two candidates have been recommended, the writ application filed by Dr.Laxmidhar Jena bearing W.P.(C) No.774 of 2022 has been withdrawn vide order dated 31.10.2022. Xerox copy of the said order has been placed before this Court today. As a result of withdrawal of the previous writ application, there is no bar for recommending the name of the present Petitioner. Therefore, a direction should be issued to the OPSC to recommend the name of the present Petitioner.

5. Mr.G.P.Dutta, learned counsel appearing for OPSC files an affidavit stating that three posts were reserved for S.C. category and he further submits that in view of the interim order passed in W.P.(C) No.774 of 2022 one post under S.C. category was kept reserved and as such the name of the Petitioner could not be recommended. Furthermore, persons who stood 1st and 2nd in select list have been recommended by the OPSC. In the Affidavit filed by the OPSC, the OPSC has raised a ground that the Petitioner's name could not be

recommended as she was found less meritorious than the first two candidates.

6. Ms.Rath, learned counsel appearing for Opposite Party Nos. 4 & 5 submits that she has no grievance as the name of Opposite Party Nos. 4 & 5 have already been recommended by the OPSC for appointment under SC category. However, Opposite Party Nos. 4 & 5 are not being allowed to participate in counseling conducted by State Government.

7. Having heard learned counsel for the respective parties, this Court is of the considered view that the name of the present petitioner should have been recommended by the OPSC as she was selected for the 3rd post under SC category for appointment as Assistant Professor in Ophthalmology. Further the argument advanced by Mr.G.P.Dutta that the name of the Petitioner could not be recommended on the ground stated in counter affidavit is not sustainable as there is no such restriction in the advertisement or any condition imposed with regard to the cut off mark for such selection. It is further observed that since in the earlier writ application, there was an interim order to keep one post reserved and the interim order has extinguished with effect from 31.10.2022, there is no impediment to recommend the name of the present Petitioner. Accordingly, the OPSC, Opposite Party No.2 is directed to recommend the name of the present Petitioner to Government for appointment against 3rd post of Assistant Professor in Ophthalmology in S.C. category. In the event the name of the Petitioner along with other candidates, who have been recommended by the OPSC, the Government shall expedite the process for counseling of selected candidates.

8. At this juncture, Ms.Rath, learned counsel appearing for Opposite Party Nos.4 & 5 submits that all three candidates selected for

the post of Assistant Professor are not being allowed to participate in the counseling. In such view of the matter, the Opposite Party No.1 is directed to consider the case of all the three persons i.e. the present Petitioner and Opposite Party Nos. 4 & 5 and allow them to participate in the common counseling along with other candidates.

9. With the aforesaid observation and direction the writ application stands disposed of.

10. Issue urgent certified copy of this order in course of the day.

(A.K. Mohapatra)
Judge

RKS

