

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) (OAS) No.17 of 2018

Alekha Charan Barik

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

08.09.2022

Order No

3.

1. This matter is taken up through Hybrid Mode.

2. Heard learned counsel for Petitioner and learned counsel appearing for the State- Opposite Parties.

3. The present Writ Petition has been filed with the following prayer:-

“(i) Pass an order that the Respondents cannot reserve the post for scheduled tribe in contravention of the advertisement after the recruitment process is over & further direct them to appointment & fill up the post of barber to exhaust the process of recruitment thereby appoint the applicant.

(ii) And pass any further order / direction as deemed fit and proper by your lordships”.

4. Learned counsel for the Petitioner submitted that pursuant to the advertisement issued under Annexure-1, the Petitioner made his application for the post of Barber in respect of the vacancy available in the office of 1st Bn., O.S.A.P., Dhenkanal.

5. Learned counsel for the Petitioner further submitted that on receipt of the application, the Petitioner was directed to appear before the Commandant, O.S.A.P. 6th Bn., Cuttack on

27.11.2017 to appear at the interview and the Petitioner also made his appearance on the date fixed.

6. It is also submitted that even though the Petitioner was placed at Sl.No.1 in the merit list in respect of the candidate appearing for the post of Barber, but the Petitioner when was not provided with the appointment, he applied for information under the RTI Act in order to know the reason for not providing him appointment vide the information provided under RTI Act under Annexure-5, the Petitioner was intimated that since the post of Barber has been kept for reserved S.T. candidate, the petitioner cannot be provided with appointment as against the said post. The Petitioner was also provided with the merit list, wherein it is found that Petitioner is placed at Sl.No.1 in respect of the post of Barber.

7. Learned counsel for the Petitioner submitted that in the advertisement issued under Annexure-1, the Post of Barber was not reserved for any reserved category candidate and the Petitioner was not only issued with the notice to appear in the interview but also he came out successful by securing 1st position in the merit list.

8. It is further submitted that once an advertisement was issued, there can be no change with regard to the criteria after issuance of such advertisement and taking part of the candidates in the interview.

9. Learned counsel for the Petitioner in support of the aforesaid submissions relied on the decision rendered in the case of **Secretary, A.P. Public Service Commission vs. B.Swapna and Others**. In the said decision, Hon'ble Apex Court has held as follows:-

"It has been repeatedly held by this Court that the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. Therefore, the decision of the High Court, to the extent it

pronounced upon the invalidity of the circular orders dated 26.06.1996, does not merit acceptance in our hand and the same are set aside”.

10. Learned counsel for the Petitioner also relied on the decision of this Court reported in the case of **Vol-100 (2005) CLT 465**. This Court in Paragraph-27 of the said judgment held as follows:-

“In the instant matter, the question before this Court is not that the modalities fixed by the Committee / Full Court were illegal, but the question is that once norms were published in the advertisement for notice of all, whether it could be changed at a later stage without notice to any of the candidates and general public and without issuing any corrigendum of the advertisement in question. In our opinion once an advertisement was issued to fill up a post in any office under the State, it is the duty of the recruiting authority to give necessary information to all in a precise and clear manner”.

11. Learned counsel for the Petitioner in support of the same, also relied on the decision of the Hon’ble Apex Court reported in the case of **Arati Ray Choudhury vs. Union of India & Others**.

12. Learned counsel for the Petitioner further submitted that there can be no reservation in case of single post advertised under Annexure-1. He relies on a decision of the Hon’ble Apex Court in that light reported in **AIR 1988 SC 959**. The Hon’ble Apex Court with due reference to various decisions rendered on the issue ultimately held as follows:-

“These principles unmistakably lead us to the conclusion that if there is only one post in the cadre, there can be no reservation with reference to that post either for recruitment at the initial stage or for filling up a future vacancy in respect of that post. A reservation which would come under Art.16(4), pre-supposes the availability of at least more than one posts in that cadre”.

13. Making all such submissions, learned counsel for the Petitioner submitted that since in the advertisement there is no stipulation to fill up the post of Barber by any reserved category, the action of the opposite parties in not providing

appointment to the petitioner in spite of the fact that the petitioner was placed at Sl.No.1 in the merit list is illegal.

14. Learned Addl. Government Advocate for the State on the other hand submitted that even though there was no stipulation in the advertisement regarding reservation of the post of Barber, but vide communication issued under Annexure-E to the counter dated 04.12.2017, it was decided to get the said post reserved for S.T. Candidates and since the petitioner does not belong to reserved category, he was not provided with the appointment.

15. Heard learned counsel for the Parties. Perused the materials available on record.

16. Taking into account the stand taken in the writ petition, this Court finds that in the advertisement issued under Annexure-1, there was no stipulation that the post of Barber is reserved for any reserved category candidate and by the time Annexure-E was issued, the process of the selection was already completed with the Petitioner having stood 1st in the merit list in respect of the post of Barber.

17. Therefore, in view of the decision relied on by the learned counsel for the Petitioner and the fact that prior to issuance of Annexure-E, the process of selection has already been completed, the ground on which the petitioner has not been extended with the benefit of appointment as per the considered view of this Court is not just and proper.

18. Therefore, this Court while disposing the Writ Petition directs the Opposite Party No.3 to issue necessary order of appointment in favour of the Petitioner within a period of one month from the date of receipt of this order. The Petitioner is directed to provide copy of this order before the Opposite Party No.3 within a period of seven days from the date of receipt of

the order. The Opposite Party No.3 is directed act on the same and comply the order as directed hereinabove.

19. Accordingly, the Writ Petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Subrat

