

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OA) No. 1871 of 2018

Chaturbhuja Nayak

.....

Petitioner

Mr. N. Rath, Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

*Mr. N. Jena, Standing Counsel for
S&ME Deptt.*

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

19.09.2022

Order No.

01

This matter is taken up through hybrid mode.

2. Heard Mr. N. Rath, learned Counsel for the Petitioner and Mr. N. Jena, learned Standing Counsel for School & Mass Education Department.

3 The Petitioner has filed this Writ Petition seeking direction to the Opposite Parties to make appointment of the Petitioner against Group-C Post commensurate with his qualification on regular basis as per OCS (RA) Rules, 1990 or from the date his juniors got such appointment within a stipulated time period.

4. Mr. N. Rath, learned Counsel for the Petitioner contended that the petitioner has already got appointment against Group-D post under OCS (RA) Rules, 1990, but he is entitled to get Group-C post commensurate with his qualification on regular basis.

5. Mr. S. Jena, learned Standing Counsel for School & Mass Education Department contended that since the petitioner claims appointment under Rehabilitation Assistance scheme and has already extended with Group-D post, which has already been accepted by him, now he cannot claim for higher post than that of the post already held by

him under RA Rules. According to him, Rule-7 of the OCS (RA) Rules, 1990 clearly stipulates that once appointment has been made, he cannot claim of higher post subsequently. He also relied on the judgment of the apex Court in the case of *State of Uttar Pradesh and others v. Premlata*, (2022) 1 SCC 30.

6. Having heard learned Counsel for the parties and after going through the record, it appears that the Petitioner's claim for appointment under RA Rules has been considered and he was issued with appointment against Group-D post. Now he cannot claim that commensurate with his qualification, he is to be given appointment against Group-C post. Rule-7 of the OCS (RA) Rules states as follows:-

7. Posts to which such appointment can be made- Appointment under these rules shall be made once against any post either in Group C or Group D which is a base post in the said groups and the maximum scale of pay for such posts in Group C and Group D shall as revised by the Government from time to time, when a member of the family has been appointed to a particular post, no further claim shall be entertained for appointing the same person to a higher post. For any further advancement in service, he will have to take his chance in the normal course and compete with other eligible persons.

7. In view of the above rules since the Petitioner has already accepted the Group-D service, now he cannot claim for up gradation to Group-C commensurate with his qualification. More so, the apex Court has already held in the case of *Premlata* (supra) that the High Court erred in interpreting Rule-5 and holding that suitable posts means any post suitable to qualification of candidate and appointment on compassionate ground is to be offered considering the educational

qualification of appointment and directing appellant to consider respondent for compassionate appointment in Grade-III post. The apex Court observed that once the person has accepted the terms and condition of appointment on compassionate ground, he cannot claim the benefit of higher post.

8. In view of such position, the claim made by the Petitioner cannot sustain in the eye of law and as such, the Writ Petition merits no consideration and the same stands dismissed.

Alok

(DR. B.R. SARANGI)
JUDGE

