

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 26893 of 2022

Kamalesh Behera

.... ***Petitioner***

Mr. Jayanta Rath, Sr. Adv.

-versus-

State of Odisha & Ors.

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

Mr. D. Mund, AGA

CORAM:

DR. JUSTICE S.K. PANIGRAHI

Order
No.

ORDER
20.10.2022

- 02.
1. This matter is taken up through hybrid arrangement.
 2. Heard.
 3. In this Writ Petition, the petitioner challenges the notice No. 9224 dated 07.10.2022 issued by the Odisha Public Service Commission wherein the candidature of the petitioner for the post of Assistant Professor (Stage-I), Geology pursuant to the advertisement No. 8 of 2020-21 has been rejected in arbitrary manner. The petitioner has passed M.Sc in integrated programme and it was not possible to verify the minimum eligibility condition of M.Sc separately wherein the petitioner has submitted all the relevant documents and certificate which clearly shows the marks secured in M.Sc Integrated course

examination in much above 50% which is the minimum marks prescribed for the said test.

4. Shorn of unnecessary details, the substratum of the matter presented before this court remain that the Odisha Public Service Commission (herein after called "OPSC") made an advertisement vide No.08/ 2020-21 for recruitment to the post of Assistant Professor in different state public universities under the administrative control of the Higher Education Department. In such advertisement clause-4 has prescribed educational qualification for the aforesaid posts. The petitioner having gone through details of advertisement and understand the same filled up application in online portal of OPSC. In his educational qualification he clearly mentioned that he has M.Sc. and Ph.D dual degree passed out from IIT, Bombay. His application form was accepted and the petitioner was called for document verification on the basis of his educational qualification and rules of selection prescribed by the OPSC. The said verification of original documents was done vide notice No. 6974/ PSC dated 29.09.2021. The petitioner has dual degree (M.Sc. & PhD) and one certificate issued by the institute without segregating marks of M.Sc and PhD, so he uploaded the same. The same was accepted and the

petitioner was called for interview, but at the time of verification his candidature was rejected without giving him an opportunity to clarify his standpoint in respect of his educational qualification.

5. Learned counsel for the petitioner submits that after the rejection notice was published, the petitioner approached and tried to convince the O.P. No.2 regarding dual degree qualification and segregation of marks as per rule of the institute. However, the O.P. No.2 did not consider the certificate nor did they allow the petitioner for interview. There was no rule prescribed to provide certificate for segregation of marks where candidates possesses dual degree and also no chance to upload such. Furthermore, no opportunity has been given to the petitioner to clarify his stand in respect of dual degree which violates principle of natural justice. There is no suppression of facts regarding educational certificate and the dual degree also approved by the OPSC for selection of the aforesaid post.

6. Indisputably, in the case at hand, this Court is of the opinion that in the matters of appointment, the rules provided by the appointing committee has to be strictly followed. In the present case, OPSC has not provided any instructions for candidates holding dual degrees. Even

though this can be considered as a distinctive case, however it is arbitrary to out-rightly reject the candidature of the petitioner.

7. The appointment of candidates holding dual degrees has been acknowledged by several High Courts including Madras High Court in the case of **The Secretary vs The State Of Tamil Nadu**¹ passed in W.P.(MD)No.12639 of 2016:

“20. Hence, this Court is able to see in this case the fate of a poor teacher to suffer an order of rejection of approval only on account of delay in considering the proposal for approval for no bona fide reasons. The teacher was eligible at the time of her appointment as several appointments were approved at the time of her appointment and none of them with dual degree and got appointment earlier were disturbed. The teacher was never at fault. This Court is of the view that the teacher concerned who was in service for more than six years without getting salary need not be disturbed after this length of time on the basis of the eligibility, due to changed circumstances later in point of time. Added feature in this case is the admitted position that the appointment of a teacher with dual degree which was prior to the judgment of this Court in Thirnavukarasu’s case was not disturbed in any other case by cancelling the appointment or by terminating the service. The teacher’s eligibility should also be considered by applying the equitable principles because of the facts that the delay in approval was for on valid reason and that the teacher concerned was in service for several years.”

8. To deal the issue involved in the present case it would be necessary to consider very important aspects in the interest of justice, rule of law and in the greater interest of public, when any particular process or selection or appointment has suffered from legal and procedural improprieties, deficiencies, irregularities or illegalities. The settled legal proposition is that principles of natural justice are in built in the statutory rules and require observance unless the same stand excluded by the rules itself. The adjudicating authority must be impartial and without any interest or bias of any type; where the Adjudication Authority is exercising judicial or quasi-judicial power, the order must be made by that authority and that power cannot be delegated or sub-delegated to any other offices the adjudicating authority must give full opportunity to the affected person to produce all the relevant evidence in support of his case.

9. In **K.L. Tripathi v. State Bank of India**², the Supreme Court observed as under:-

"It is not possible to lay down rigid rules, as to when the principles of natural justice are to apply, nor as to their scope and extent....there must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirement of natural justice must depend on the facts and circumstances of the case, the nature of the

enquiry, the rules under which the Tribunal is, acting, the subject matter to be dealt with, and so on so forth."

10. The Supreme Court has reiterated, time and again, that the doctrine of natural justice cannot be imprisoned within the strait-jacket or rigid formula and its application would depend on the scheme and policy of the statute and relevant circumstances involved in a particular case. In the present case, considering the lack of provisions regarding the candidature or individuals holding dual degrees, the petitioner should have been provided a hearing to clarify his standpoint regarding the segregation of marks.

11. In such view of the matter, Serial No.4 of Annexure-7 in respect of the petitioner only is hereby quashed and the mark sheet as submitted with Annexure-5 at page-40 may be considered and shall be accepted.

12. The Writ Petition is, accordingly, disposed of in terms of the above directions.

13. Urgent certified copy of this order be granted on proper application.

(Dr. S.K. Panigrahi)
Judge