

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) (OA) No.1051 of 2018

**Bibhuti Bhusan Sahoo &
Others**

....

Petitioners

-versus-

State of Odisha & Others

....

Opposite Parties

**COROM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

ORDER

14.09.2022

Order No

- 1.** This matter is taken up through Hybrid Mode.
- 2.** It is submitted that the Petitioners do not want to press this Writ Petition as against the Opposite Party Nos.5 to 11. A memo filed to that effect be kept on record.
- 3.** Heard Mr. P.K.Mishra, learned counsel for Petitioners and Mr. Y.S.P.Babu, learned Addl. Government Advocate for the State-Opposite Parties.
- 4.** The Petitioners are all working as Assistant Executive Engineer in Minor Irrigation Cadre and they are aggrieved by the decision taken by the Government in the Department of Water Resources vide Resolution dated 25.11.2017 under Annexure-11.
- 5.** Mr. Mishra, learned counsel for the Petitioner submitted that as per the said resolution, the promotional prospect of the petitioners was completely wiped out as it was decided to fill up the base level vacant post of Asst. Executive Engineer existing under the Minor Irrigation and Ground Water Survey and Investigation Organization by deployment from Major and Medium Irrigation cadre of the Department of Water Resources

and the vacancies in these two cadres to be added to the cadre of Major and Medium Irrigation Project.

6. Mr. Mishra also brought to the notice of this Court, the relevant recruitment rules i.e. Odisha Engineering Service (Methods of Recruitment & Conditions of Service) Rules, 2012 under Annexure-7. Rule 4(2) of the said rule as provided as under:-

“4(2) The number of post to be filled up by way of promotion under clause(a) of sub-rule(1) shall be 33% (thirty-three per centum) of the total posts and the remaining 67% of the posts shall be filled up by direct recruitment”.

7. Mr. Mishra, learned counsel for the Petitioner submitted that as per the said rule 33% of the post in the cadre of Asst. Executive Engineer is to be filled up by way of promotion from eligible Asst. Engineer. But in view of the impugned resolution, the petitioners though are eligible, but they are not being considered for such promotion.

8. A counter affidavit filed by the Opposite Parties through the Chief Engineer, Minor Irrigation, Odisha, Bhubaneswar. In the said counter though various stands have been taken, but the grounds taken by the Petitioner with regard to the conflicting point regarding Rule-4(2) of the 2012 Rules and Clause-4(i) of the Resolution dated 25.08.2017 has not been addressed to by the said opposite parties.

9. On the other hand it is submitted by the learned counsel for the State that the said resolution is not in violation of Rule-4(9) and (10) of the 2012 rules. This Court after going through the materials available on record finds that as per Rule-4(2) of the 2012 Rules, 33% of the post in the cadre of Asst. Engineer is to be filled up by way of promotion from eligible Assistant Engineer. By virtue of the impugned resolution, the Promotional prospect of such Asst. Engineer has been fully wiped out.

10. Therefore, in view of the rules governing the field and which is in force as on date, the Opposite Parties are directed to fill up 33% of the vacant posts in the cadre of Asst. Executive Engineer in M.I Cadre by way of promotion from eligible Asst. Engineer continuing in M.I. cadre. The impugned resolution dated 25.11.2017 under Annexure-11 is modified to the aforesaid extent.

11. Since it is submitted that the Petitioners in the meantime have become eligible for such promotion, the Opposite Party No.1 shall take effective steps to consider that case as against the 33% vacancy in the rank of Asst. Executive Engineer within a period of three months from the date of receipt of this order.

12. With the aforesaid observation and direction, the Writ Petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Subrat