

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) No.1405 of 2015

Bharati Mohanty

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

**CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
22.12.2022**

Order No

- 08.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Pursuant to the order passed by this Court on 24.11.2022, the letter issued by the Directorate, Secondary Education vide letter No. 31362 dtd.15.12.2022 is produced before this Court. The same be kept on record.
3. Heard Mr. S.K. Das, learned counsel for the Petitioner and Mr. A.P. Das, learned Addl. Standing Counsel appearing for the Opp. Parties.
4. The present writ petition has been filed by the Petitioner inter alia with the following prayer:-

“Under the above circumstances, it is therefore humbly prayed that the Hon'ble Tribunal be graciously pleased to quash the select list so published on 30.5.2015 under Annexure-5 and the rejection list dtd. 3.6.2015 under annexure-7;

And further the Hon'ble Tribunal be pleased to direct the respondents to include the name of the applicant in the final merit list and engage her as contractual PET and grant her all consequential service benefits;

And/or pass any other order/orders in the fact and circumstances of the case to give complete justice to the applicant.”

5. It is contended that the Petitioner pursuant to the advertisement issued under Annexure-1 made her application for the post of contractual PET. It is also contended that the name of the Petitioner was wrongly reflected in the reject list of candidates published under Annexure-7 and on the ground that the Petitioner has secured less than 45% in her +2 examination.

6. Learned counsel for the Petitioner submitted that the Petitioner had in fact secured 47.33% of mark and the same is also apparent in the mark sheet available at Annexure-8 to the writ petition. The Petitioner challenging the rejection of her candidature when moved this application, a counter affidavit was filed by the O.P. No. 2. In the said counter in Para 7 & 8 O.P. No. 2 admitted that the Petitioner's name was wrongly rejected by mistake. Para 7 & 8 of the counter filed by O.P. No. 2 is reproduced hereunder:-

“7. That subsequent to publication of draft merit list objections were invited from the candidate. While publishing the draft merit list and Issuing the guidelines for verification. Instructed to all the district officers to make an internal verification of the applications and enclosed documents of all candidates again and rectify and upload the data where required. So while uploading the data after compliance of objection and internal verification of the status of verification in case of the applicant has been by mistake uploaded as rejected for which the applicant's name was excluded from the final merit list.

8. That the rejection of candidature of the applicant was not intentional and has occurred inadvertently. So the allegation made by the applicant that the authorities

arbitrarily and whimsically rejected her claim is not correct. Inclusion of her name in the merit list published on 30.05.2015 would not as such entitle her to be included in the select list as she would not have made into the selection zone SEBC category because, the cut-off mark in the SEBC select list was 186.0788 where as her mark was 184.66.”

7. On going through the said affidavit when learned counsel for the Petitioner brought to the notice of this Court that persons who have secured less percentage of mark were placed at Sl. No. 297, 298, 564, 565, 568 & 569 of the merit list published under Annexure-5, this Court passed the following order on 24.11.2022:-

“Heard Mr. S.K. Das, learned counsel for the Petitioner and Mr. N.N. Satapathy, learned Standing Counsel appearing for the Opp. Parties.

3. It is the case of the Petitioner that for appointment as a contract teacher in Govt. High School, her claim was rejected on the ground that the Petitioner has secured below 45% mark in her +2 examination. But in Para 7 of the counter affidavit the Opp. Parties have admitted that it is by mistake that the applicant's name was excluded from the final merit list. But in Para 8 of the counter a stand has been taken that since the Petitioner belongs to SEBC and she has secured less than the cut off mark, she has not been provided with the appointment.

4. Mr. Das, learned counsel for the Petitioner however brought to the notice of this Court the provisional merit list annexed vide Annexure-5, wherein person placed at Sl. No. 297, 298, 564, 565, 568 and 569 though belongs to SEBC category and have secured less mark than the Petitioner, but they have been selected and appointed.

5. Mr. Satapathy, learned Standing Counsel is directed to obtain instruction on the same point and apprise this Court whether the persons placed in the above notes serials have been provided with the appointment in the meantime. Such instruction shall be provided by the next date.

6. As requested by Mr. Satapathy, list this matter on 16.12.2022.

7. Office is directed to delete WPC(OA) No. 1674 of 2015 and in its place list this matter along with WPC(OAC) No. 1674 of 2015.

8. A free copy of the order be provided to Mr. N.N. Satapathy, learned Standing Counsel for intimation and compliance.”

8. Pursuant to the said order the O.P. No. 2 produced before this Court the letter dtd.15.12.2022 as indicated hereinabove. In the said letter it has been clearly indicated that the persons placed at Sl. No. 297 & 298 of the merit list under Annexure-5 have been provided with engagement to the post of PET and their names were recommended to DEO, Sundargarh and Kandhamal respectively for their engagement.

9. In view of the stand taken in the counter affidavit in Para 7 & 8 and the admission made in the communication dtd.15.12.2022, this Court while allowing the writ petition, directs the O.P. No. 2 to take appropriate step for providing appointment to the Petitioner as against any available vacancy in the district of Balasore. It is also contended by the learned counsel for the Petitioner that the post of PET is vacant at present in Badhapal Govt. High school, Badhapal, Baliapal Block, Balasore, M.C.S.N Govt. High School. Chhamouz, Jaleswar Block, Balasore, Sadashiba Govt. High school, Salikotha, Jaleswar Block, Balasore, Khuluda Shitala High School, Khuluda, Jaleswar Block, Balasore, Paikasida High School, Paikasida, Jaleswar Block, Balasore, Radha Krushna Govt. High School, Velura, Basta Block, Balasore.

10. Therefore, O.P. No. 2 is directed to take necessary step for providing appointment to the Petitioner as against the aforesaid six (6) nos. of schools, if as per the contention of the learned counsel for the Petitioner vacancy is available there at present. Such

exercise shall be completed within a period of one (1) month from the date of receipt of this order. The Petitioner is directed to produce a copy of this order before the O.P. No. 2, who shall act on the same within the aforesaid time period.

10. The writ petition is disposed of with the aforesaid observation.

(Biraja Prasanna Satapathy)
Judge

Sneha

