

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.1172 of 2016

In the matter of an application under Articles 226 & 227 of the Constitution of India.

Sujit Kumar Mohanty **Applicant**

Versus

State of Odisha & Ors. **Opposite Parties**

For Applicant ... Mr.S.Swain, Advocate

For Opposite Parties ... Mr. R.K.Samal, Standing Counsel

JUDGMENT

संघर्षीय न्यायो

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 14.10.2022

Biswanath Rath, J. The above application was originally filed before the State Administrative Tribunal and registered as O.A.(C) No.1172 of 2016. Tribunal being abolished, matter has been transferred for being decided under the jurisdiction of High Court of Orissa and re-registered as WPC(OAC) No.1172 of 2016.

2. Short background involving the case is on the publication of advertisement dated 23.10.2014 vide Annexure-1, applicant finding himself eligible for the post of Assistant Teacher Trained Graduate Arts (Contractual) made his application for consideration of the competent authority. Material on record further discloses vide Annexure-5 in the scrutiny of the application form, applicant's name find place at serial No.1796 and his application stood rejected on the ground that he was over aged. Undisputedly there has been challenge to the age condition before the Tribunal and basing on a decision of the Tribunal, there has been relaxation of age up to 42 years covering the age of the applicant thereby as a consequence there is issuing of Corrigendum extending the age vide Annexure-6, the age prescribed earlier as 32 years stood modified to 42 years and making it clear all other terms and conditions outlined in the Resolution dated 27.10.2014 vide Annexure-2 stood confirmed.

3. It is claimed on the basis of the order of the learned Tribunal for extension of age, there has been re-scrutiny of the candidature of the applicant vide Annexure-8. However, application of the applicant was again rejected on the premises that the candidate has registered his/her name in Employment Exchange beyond the prescribed date i.e. 31.03.2014 as available at page-31.

4. Mr. Swain, learned counsel for the applicant in reference to the conditions at Annexure-2 and the advertisement at Annexure-1 contends applying conditions for the post involved in online application and there being no stipulation that the candidate must have been registered under the employment exchange by particular date, further there is twice registration of the applicant and in the scrutiny of

application of the applicant, authority already records Applicant already registered in 2014, taking this Court to the supply of documents on the registration of employment exchange aspects vide Annexure-9 and 9/A, Mr.Swain, learned counsel for the Applicant contended that the applicant's original registration with employment exchange being 28.10.2014, the next renewal due being supposed to be granted on October 2017 and the second registration date appearing at Annexure-9/A being made on 12.05.2015 and the last date of receipt of online application having been extended up to 22.1.2016 appearing at page-28 of the brief, Mr.Swain, learned counsel for the applicant contended that not only applicant's initial registration dates back to 28.10.2014. There should not have been any doubt on Employment Exchange registration aspect and further there was subsequent registration on 12.05.2015 available, there was no scope for rejecting the candidature of the applicant in the selection process involved. It is again reading through the registration requirement clause at page-16 of the brief vide Clause-4, Mr. Swain, learned counsel also submitted the only requirement of one having registered the name in either of the employment exchanges prescribed therein and having no cutoff date fixed there, there was no scope absolutely to take out the candidature of the applicant.

5. Mr.Samal, learned Standing Counsel in his opposition taking this Court to paragraph-11 of the counter affidavit contended for the applicant having a subsequent registration beyond 28.1.2015 not acceptable. Mr. Samal, learned Standing Counsel however no denial to the claim of the applicant had two registrations already available with the Employment Exchange and materials available with the

competent authority showing first registration dates back to 28.10.2014 and second registration dates back to 12.05.2015 vide Annexure-9 and 9/A and both valid.

6. Considering the rival contentions of the Parties, this Court finds undisputed fact remains the applicant applied pursuant to the Advertisement vide Annexure-1 and Resolution vide Annexure-2 dated 23.10.2014 and 27.10.2014, stipulated age relaxation up to 32 years for General Candidate. However, based on a decision of the Tribunal, there has been issuing of other Corrigendum vide Annexure-6 at page-26 onwards covering the case of the candidates up to 42 years. It is accordingly the position of the applicant got revived and his candidature come within Zone of consideration.

7. It is at this stage, looking to the controversy involved herein as to whether rejection of the candidature of the applicant for not being registered in the employment exchange beyond a prescribed date i.e. 28.01.2015, this Court takes into account here the clause contended on such requirement in the Resolution vide Annexure-2 Clause-4 in Resolution dated 27.10.2014 reads as follows:-

“The B.Ed./ B.H.Ed./ Sikshya Sashtri candidates should have registered their names either in the employment Bureau located at Vanivihar, Bhubaneswar/ Jyoti Vihar, Sambalpur/ Bhanja Vihar, Berhampur/ OUAT, Bhubaneswar or in the State Employment Exchange Bhubaneswar or at in any district employment exchange. The candidates for PET/ Urdu/ Classical/ Hindi teachers should have registered their names in the employment exchange located in the concerned Revenue District which he/she belongs to/State Employment Exchange. SC/ST and Physically Handicapped candidates should have registered their name in the special employment exchange for SC/ST and Physically Handicapped at Bhubaneswar or in any

employment exchange located in the concerned Revenue District which he/she belongs to.”

Reading the aforesaid provision, this Court nowhere finds, there is availability of any cut-off date on registration of any candidate under either of the employment exchange indicated therein. Plain reading of the same clearly establishes the candidate applying for such post should have been registered under either of the employment exchange. This Court here takes into consideration the Corrigendum issued after the Tribunal direction vide Annexure-6 extending the filing of online application at page-26 of the brief, while stipulating all other terms and conditions outlined in the Resolution No.23104/SME dated 27.10.2014 read with corrigendum No.387/SME dated 6.1.2015 vide Annexure-2 and Annexure-4 shall remain unaltered, Annexure-6 again at the end pre-fixes the last date of receipt of Online applications is 22.1.2016.

It is at this stage reading the corrigendum dated 06.1.2016, this Court finds, there is no change in the conditions stipulated in Annexure-2 by clause-4 therein, thus in the worse registration by 22.01.2016 would suffice the registration . It is in the circumstance, this Court now proceeded to the documents filed by the applicant to establish the registration aspect appearing vide Annexure-9 series at page-32 & 33 clearly describes the applicant initially registration in Employment Exchange appears to be 28.10.2014 and there is clear import in Annexure-9, the next renewal due in October, 2017, since this Court finds through Annexure-2 cut-off date for filing application though fixed to 20.11.2014 already covered in employment exchange registration certificate vide Annexure-9 registered on 28.10.2014.

Even taking into consideration the extension of filling of online application vide Annexure-6, cutoff date being 22.01.2016, since the registration certificate of applicant vide Annexure-9 remain valid up to October, 2017, this document itself is sufficient enough in considering the case of the applicant at hand.

8. This Court here taking into consideration, the application form of applicant vide Annexure-3, check list involving the application form of applicant vide Annexure-3, there is clear indication at condition-12 to the right side of the document, the applicant affixed the Employment Registration No. SEE/13892/14 containing an endorsement of registration vide Annexure-9. It is in the circumstance, this Court finds, there has been illegal rejection of the application of the applicant at the relevant time so far it related to Employment Exchange registration certificate. While there is sufficient material on record to establish that the applicant was already registered himself in the employment exchange by 2014, his case undisputed illegally rejected on this score.

9. In the circumstance, this Court interferes in the impugned rejection of Annexure-8 and consequently rejecting Annexure-11 declares the applicant as a valid candidate in the selection process pursuant to Annexure-1. It is at this stage this Court takes into consideration the interim protection enjoyed by the applicant being granted by the Tribunal by its order dated 08.04.2016 which reads as follows:-

“Heard Mr. S.Swain, Id. Counsel for the applicant and Mr.S.K.Jee, Id. Standing counsel, SME.

The applicant has challenged the order of rejection of his application for the post of Contractual teacher, on this ground that he has not registered his name in the

Employment Exchange beyond in schedule date i.e. on 12.5.2012.

Issue notice on admission. Counter be filed within for weeks and rejoinder, if any, be filed within two weeks thereafter.

List this matter six weeks after.

So far as prayer for interim order is concerned, any appointment made in the category to which the applicant applied shall be subject to result of the O.A.

Send copies.”

Considering there is interim direction directing the appointment in the category of which the applicant has applied shall be subject to result of the OA, this Court while allowing the application directs the selection authority to consider the applicant's merit aspect in the light of consideration already given to similar situated persons and if the applicant is found otherwise meeting eligible. The criterial for being selected the select list involving selection process in the category of Assistant Trained Graduate Arts to be freshly brought only in the ouster of last candidate therein and bringing their the name of the applicant and applicant be posted in his place for there is illegal rejection of his candidature. In the event the applicant succeeds in the merit aspect and given posting his fitment shall be made taking into consideration of the position of the similar situated persons already posted vide Annexure-1 for applicant for all other purposes.

10. This Court however also clarifies in the event the applicant selected and posted, since applicant has not worked out all through he is not entitled to get arrear benefits which will be treated notionally but however the period of experience will be taken into account for all other purposes. Entire working shall be completed within a period of

one month from the date of communication of this order by the applicant.

11. The WPC (OAC) succeeds but however there is no order as to cost.

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BISWANATH RATH, J.

*Orissa High Court, Cuttack.
Dated the 14th day of October, 2022/Swarna, Junior Stenographer*

