

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.4396 of 2016

Susil Kumar Sethy

....

Petitioner

Ms. B.K. Pattanaik, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. K.K. Nayak, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

Order No.

ORDER
16.05.2022

04.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner as well as learned counsel for the State.
3. The original application was filed before the OAT by the Applicant to direct the Opposite Parties to appoint the Petitioner as Asst. Driver from the date when others have been appointed.
4. After abolition of Odisha Administrative Tribunal, the matter has been transferred to this Court and re-registered as W.P.(OAC) No.3854 of 2013.
5. From the pleadings of the case, it is revealed that an advertisement was issued by the Opposite Party No.3 inviting applications from eligible candidates for filling up 437 posts of Asst. Driver. Further stipulation has been provided in the said advertisement by the Opposite Party No.3 indicating the eligibility criteria to be considered for selection as Constable. The eligibility

criteria for the said post were (i) He must have passed HSC examination or equivalent examination by any recognized Board/Council. (ii) He must be able to speak, read and write Oriya (iii) He must have passed Oriya as one of the subjects in the High School Certificate Examination or an examination in Oriya language equivalent to M.E. standard recognized by the School and Mass Education Department, (iv) He must have registered his name in one of the Employment Exchange of the District or covering the District, (v) He must not be less than 18 years of age and be not more than 25 years age as on 01.01.2013, (vi) in respect of reserved category candidates referred to Clause-5 shall be relaxed 5 years for SC/ST and SEBC candidates. Further in respect of a Home guard and Group-D posts to be eligible for consideration for the post of Asst. Driver, the age has to be not less than 30 years and not more than 45 years as on 01.01.2013.

6. It is submitted that the Petitioner being a SC candidate possessed all requisite qualifications for the post of Asst. Driver and participated in the selection test. After completion of selection test, a common merit list of 397 candidates was prepared. Though candidates under U.R. category have been selected but the Petitioner was not selected despite the fact that he has secured more marks than the candidates, who have been selected and given appointment. Accordingly, the case of the Petitioner was not taken into the zone of consideration for appointment to the post of Asst. Driver.

7. Aggrieved by the action of the opposite parties, one of the candidates, namely, **Surya Kanta Swain** approached the tribunal in **O.A. No.4050 (C) of 2013**. It is submitted by learned counsel for the Petitioner that the case of Surya Kanta Swain was taken up by the

tribunal for hearing and the same was finally decided by the tribunal by order dated 25.10.2016 wherein the learned tribunal considered the facts of the case finally and opined in paragraphs-13 and 14 of the judgment, which reads as under:

“13. The ratio of the said judgment of the Apex Court in the case of Jitendra (supra) fully attracts the facts of the present case. The applicants as can be seen from the additional counter though securing higher marks than the private respondents were denied selection on the grounds that they have availed age relaxation meant for SEBC candidates. The private respondents have secured less mark than the applicants but have been offered appointment against U.R. vacancies. In view of the above ratio established by the Hon’ble Apex Court the case of the private respondents could not have been considered to be included in the select list without the applicant’s case being considered as the applicants have secured more marks than them in the recruitment tests. The applicant’s case cannot be ignored on the ground as submitted by the respondents that the merit list of the year 2013 may not be reserved for appointment as against the vacancies for indefinite period.”

14. In view of the above discussion, state respondents are directed to consider the appointment of the applicants for the post of Assistant Drivers as against un-reserved posts advertised in Annexure-1 from the date private respondents got such appointment. They will be entitled to all service benefits accordingly but financial benefits from the date they perform actual duties.”

8. The order passed by the tribunal was challenged by the State before this Court in W.P.(C) No.4101 of 2019. A Division Bench of this Court by order dated 13.7.2021 dismissed the writ petition by a detailed order and confirmed the order of the tribunal in favour of the Petitioner.

9. The order dated 13.7.2021 was challenged before the Hon’ble

Supreme Court in SLP(C) Nos.21074-21075 of 2021 by the State of Odisha and others, wherein the Hon'ble Supreme Court by order dated 05.01.2022 dismissed the SLP(C), accordingly upholding the judgment of the tribunal as well as this Court. Therefore, the decision of the tribunal in the case of **Surya Kanta Swain** (supra) has attained finality.

10. Learned counsel for the Petitioner submits that the case of the Petitioner is similar to the case of **Surya Kanta Swain** (supra), therefore, the ratio decided by the tribunal confirmed by the Hon'ble apex Court which attained finality is applicable to the facts of the case of the Petitioner.

11. Learned counsel for the State on the other hand filed counter affidavit objecting to the prayer of the Petitioner in the writ petition. He further submits that since the advertisement is of the year 2013, no direction could be given to act upon the same at this stage. However he does not dispute to the fact of the case in **Surya Kanta Swain** (supra), wherein the Hon'ble Supreme Court of India has upheld the decision of the Tribunal.

12. Having heard learned counsel for the parties and keeping in view the facts and circumstances of the present case as well as taking into consideration the decisions rendered by the Hon'ble Supreme Court as well as this Court, this Court directs the Authority to consider the case of the Petitioner in the light of the ratio laid down in the case cited supra. Petitioner is directed to approach the Authority, i.e. D.G. & I.G. of Police, Orissa-Opposite Party No.2 along with certified copy of this order and copies of the orders/judgments he is relying upon within a period of four weeks from today. In such event, the case of the Petitioner shall be

considered for appointment to the post of Asst. Driver from the date from which others have been appointed, in accordance with law keeping in view the ratio laid down by the tribunal, which was affirmed by this Court as well as Hon'ble Supreme Court of India. Further, if Petitioner is found eligible to the post and subject to availability of post, decision on the same shall be taken within a period of two months thereafter.

13. With the above direction, the Writ Petition stands disposed of.

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

Jagabandhu

