

W.P.C (OAC) NO.1808 OF 2016

Smt. Sujata Senapati ... **Petitioner**

State of Odisha & others ... Opposite Parties

For Petitioner : Shri S.K.Ojha, Advocate

For Opposite Parties : Shri R.N.Acharya,
Standing Counsel,
School & Mass Education
Department

JUDGMENT

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in School and Mass Education Department notifying therein the reject list of candidates for the post of Contract Teacher in Government High Schools for 2014-15 (Classical Teacher) for such candidates, who had applied pursuant to Notification dated 7th January, 2016. The Petitioner's name finds place in the said reject list.

2. The brief facts of the case are that a selection notification was issued by the Government of Orissa in School and Mass Education Department inviting applications from eligible candidates for the post of Contractual Teacher in various disciplines in Government Secondary Schools of the State. The said notification was issued on 27th October, 2014 and it was provided therein that the candidates shall be under the age of 32 years and above 21 years as on 30th September, 2014 apart from other criteria laid down relating to qualification etc. The said resolution is enclosed as Annexure-1 to the Writ Petition. Subsequently, a corrigendum was issued modifying certain conditions of service of the Contractual Teachers on 6th January, 2015 (Annexure-2). Some intending candidates approached the erstwhile Odisha Administrative Tribunal in O.A. No.3589(C)/2014 and batch. Learned Tribunal, vide order dated 17th December, 2015 directed the Department to revise the upper

age limit from 32 to 42 years. Though the said order of the Tribunal was challenged by the State before this Court, but the same was dismissed. Accordingly, a further corrigendum was issued on 7th January, 2016 revising the upper age limit for the posts from 32 to 42 years and, accordingly, applications were invited specifically from those candidates who became eligible basing on the said corrigendum. It was specifically mentioned that candidates who had applied earlier pursuant to the original notification need not apply. The Petitioner claims to have become eligible in view of the modified eligibility criteria relating to her age and, accordingly, she submitted online application for the post of Classical Teacher (Sanskrit) for Jajpur District. A copy of her application has been enclosed as Annexure-4. After scrutiny of applications, another Notification was issued by the Department on 4th February, 2015 fixing the date and place for verification of documents as enclosed to the application and, accordingly the Petitioner was called upon to attend verification of documents on 8th February 2016, which she complied. The documents, so supplied by the Petitioner along with her application were verified and accepted. But surprisingly, a draft reject list was circulated through Web Portal of the Department, enclosed as Annexure-7

whereby, the Petitioner's name found place at Sl. No.17 with the remark "Due to invalid registration card, i.e. issued after 6th April, 2015". Since the Petitioner had submitted a valid Registration Card which she had obtained prior to making the application she submitted an application objecting to cancellation of her candidature. However, just after publication of the final merit list, another reject list was published in the Web Portal rejecting the candidature of the Petitioner on the ground that her objection has no merit as her employment registration was not valid as on 6th April, 2015. According to the Petitioner the above action of authorities in rejecting her candidature on the ground of absence of valid registration certificate is entirely contrary to the principles enshrined under Articles 14 and 16 of the Constitution of India. The Petitioner, therefore, approached the erstwhile Odisha Administration Tribunal in OA No.1808(C) of 2016 with the following prayer:-

“(i) Issue notices to the Respondents;

(ii) Call for the concerned selection file from the office of the Respondent No.3;

(iii) To quash the reason of rejection of candidature (Annexure-11) so far as applicant is

concerned holding that the same is unsustainable in the eye of law;

(iv) To direct the Respondent Nos.1 to 3 to extend the benefit of appointment as per her merit position assigned in the Merit list (Annexure-10) as against the post of Classical Teacher (Sanskrit) in Jajpur District as against the contractual post forthwith;

(v) To extend all consequential benefits and financial benefits from the date it is extended to other persons;

(vi) And may pass such other order/orders as deemed just and proper.”

The said O.A. has since been transferred to this Court and registered as the present Writ Petition.

3. A counter affidavit has been filed by the District Education Officer, Jajpur (Opposite Party No.3), disputing the averments made in the original application/Writ Petition mainly taking the plea that the rejection of the Petitioner's candidature on the ground of non-availability of the valid registration in the Employment Exchange as on the cut-off date i.e. on 6th April, 2015 is entirely justified. It is further stated that the original notification itself provided that the candidates must have registered themselves in certain employment exchanges named specifically in the notification and as the Petitioner did not have a valid registration as

on the cut-off date i.e. 6th April, 2015, her candidature was rightly rejected.

The Petitioner filed a rejoinder to the said counter stating that she had submitted the registration number of the employment exchange certificate issued on 10th January, 2016 and validity of the said certificate was till January, 2019. Therefore, rejection of her application on the ground that she had not submitted valid registration certificate is entirely contrary to the facts. It is further stated that even otherwise law is well settled that the candidature of a person cannot be rejected only on the ground of absence of employment exchange certificate.

Pursuant to the direction of this Court, the Opposite Party No.3 filed another affidavit enclosing the original advertisement, its corrigendum dated 6th January, 2015 and the further advertisement issued on 7th January, 2016. It was further stated in the affidavit that as per the Corrigendum dated 6th January, 2016 (enclosed as Annexure-A/3 to the counter), it was specifically stated that only those candidates, who are eligible in all respects as per the eligibility criteria fixed in the advertisement and the guidelines published in the OPEPA Website by the last date of

receipt of the applications fixed in the advertisement, but could not apply for having crossed the age limit fixed in the advertisement, can only apply. The last date of submission of application form for such candidates was fixed to 22nd January, 2016 pursuant to order passed by the learned Tribunal vide O.A. No.3589(C)/2014. In so far as the claim of the Petitioner is concerned, it is stated that as on the cut-off date i.e. 6th April, 2015, she did not possess the registration number of employment exchange, which is a mandatory requirement of the original Advertisement.

The Petitioner filed an additional affidavit stating that the Employment Registration Certificate was issued by the competent on 19th January, 2016 and since the last date of receipt of online application was 22nd January, 2016, she had submitted her application in due time and had categorically stated that she had not applied earlier in response to the previous advertisement and that the present application is her only application.

The Opposite Party No.3 again filed an affidavit in reply stating that though the Petitioner was within the age limit at the time of first advertisement, she chose not to apply for the post of

Classical Teacher pursuant to the original advertisement dated 19th October, 2014, but applied only when the corrigendum was issued. In the original advertisement, it was stipulated that the applicant has to fulfil all the criteria as per advertisement dated 19th October, 2014 which includes submission of valid employment exchange registration number, but the Petitioner had not applied only because she did not have a valid registration number and subsequently when the corrigendum was issued relaxing the upper age limit, she had applied after obtaining a registration certificate.

4. Heard Shri S.K.Ojha, learned counsel for the Petitioner, and Shri R.N.Acharya, learned Addl. Standing Counsel appearing for the School and Mass Education Department.

5. It is submitted by Shri Ojha that if a candidate is otherwise qualified and eligible for employment her candidature cannot be rejected only on the ground of non-submission of employment exchange registration number. That apart, in the instant case, the Petitioner had not applied pursuant to the first advertisement and applied pursuant to the corrigendum whereby the upper age limit was enhanced. At that time, she applied along with a valid registration certificate issued on 19th January, 2016, which is prior

to the last date of submission of online applications, i.e. 22nd January, 2016. Shri Ojha further argues that the stand taken by Opposite Party No.3 that she did not possess a valid Employment Exchange Registration Certificate as on the cut-off date i.e. on 6th April, 2015, cannot be accepted because the original advertisement does not prescribe any such cut-off date and so also the subsequent advertisement. Cut-off date has been indicated only in relation to the age of the applicants. Shri Ojha has relied upon certain decisions of the Hon'ble Supreme Court to contend that the object of Article 16 of the Constitution of India cannot be frustrated and that in public employment, restrictions should not be imposed allowing only candidates from the employment exchange within the zone of consideration.

6. Per contra, Shri R.N. Acharya has argued that the Petitioner was eligible to apply pursuant to the original application, but she chose not to apply mainly because she did not fulfil the condition of possessing a valid employment exchange registration number. It is further contended by Shri Acharya that the Petitioner was not eligible to apply pursuant to the corrigendum because the same was meant only for those candidates who could not have applied because of the restrictions of age laid down in the original

advertisement. In so far as the cut-off date i.e. 6th April, 2015 is concerned, it is submitted that the same being the last date of submission of application as per the original advertisement read with the corrigendum dated 6th January, 2015 has to be treated as the cut-off date for all the eligible candidates. The fact that the Petitioner did not apply despite being eligible was obviously because she did not possess the required employment exchange registration certificate. Even though she obtained a certificate in 2016, the same cannot nullify the condition of the previous advertisement in view of the specific mention in the corrigendum that except for the age limit, all other conditions mentioned in the original application shall remain intact.

7. Having regard to the rival submissions as noted above, this Court is required to consider whether rejection of the candidature of the Petitioner on the ground of non-submission of a valid registration certificate is justified. However, before delving into that issue, it would be proper for this Court to first examine whether the Petitioner was eligible to apply pursuant to the corrigendum because the same goes to the root of the matter and since a specific strand has been taken in the counter as well as the affidavit filed by the Opposite Party No.2 that the 2nd

Advertisement was not meant for candidates like the Petitioner. If the Petitioner was eligible then the question of justifiability and legality of rejection of her candidature only on the ground of non-submission of valid employment registration number has to be considered. But if she was not eligible in the first place, the above question becomes redundant. In such respect, the original advertisement, which is enclosed as Annexure-1, clearly lays down that the candidates shall be under 32 years of age and above 21 years of age as on 30th September, 2014 and in case of SC/ST/Women/OBC/SEBC/Ex-servicemen Military persons, the upper age shall be relaxed by five years. Though it is stated that the Petitioner did not apply pursuant to the original advertisement and did so only because she became eligible in view of the notification enhancing the upper age limit, this Court finds that as per the copy of Matriculation Certificate of the Petitioner enclosed under Annexure-A/3 series to the counter filed by Opposite Party No.2 on 6th January, 2022, her date of birth is 14th March, 1978. Such being the position, it is obvious that as on 30th September, 2014, i.e. the cut-off date fixed in respect of age for the candidates as per the original advertisement, the petitioner was aged 36 years 6 months and 16 days. Being a woman/SEBC candidate, the upper

age limit for the Petitioner was 37 years. Therefore, the Petitioner was certainly eligible to apply for the post of Classical Teacher (Contractual) pursuant to the original advertisement. Be it noted here that the cut-off date in respect of age i.e., 30th September, 2014 remained unaltered even after publication of the 1st corrigendum on 6th January, 2015 and the 2nd corrigendum on 6th January, 2016. It is not disputed that the petitioner did not apply at that time. It is presumed by the Opposite Parties that she did not apply because she did not have a valid registration certificate at that time. Whatever may have been the reason, fact remains that she did not apply. The question of eligibility being raised during arguments, Shri Ojha, while fairly admitting that the Petitioner was eligible as per the 1st advertisement would contend that paragraph-2 of the guidelines issued pursuant to the 2nd advertisement (7th January, 2016), makes it clear that the same was made open for all of the candidates. Paragraph-2 of the guidelines, which is enclosed as Annexure-3, reads as follows:

“Consequent upon issuance of this corrigendum no.284 date 6.1.16 of Govt. in School and Mass Education Department, Odisha On-line applications are invited from intending candidates for the posts of contract teachers in Govt. and upgraded High Schools of Odisha for the year 2014-15.”

According to Shri Ojha, the expression ‘intending candidates’ implies all candidates. In order to appreciate the above contention, it is necessary to refer to the corrigendum dated 6th January, 2016 since the same is the source. The Notification dated 6th January, 2016, which is enclosed to the counter filed by Opposite Party No.3, reveals that the upper age stipulation as per the Resolution dated 27th October, 2014 as 32 years stood modified as 42 years. It implies all those candidates who had not applied being over-aged as per the original advertisement, but became eligible because of the aforementioned revision of the upper age limit from 32 years to 42 years could now apply. Since it is mentioned in the Corrigendum dated 6th January, 2016 that all other terms and conditions outlined in the resolution dated 27th October, 2014 read with Corrigendum dated 6th January, 2015 shall remain unaltered it obviously means that except for the upper age limit all other conditions remained intact. In the advertisement issued in this regard, it was clearly mentioned that the candidates who ‘could not apply’ pursuant to the 1st advertisement for being over-aged could apply. In other words the first advertisement was meant for those candidates who had not completed the age of 32 or 37 years, as the case may be, as on 30th September, 2014. Such

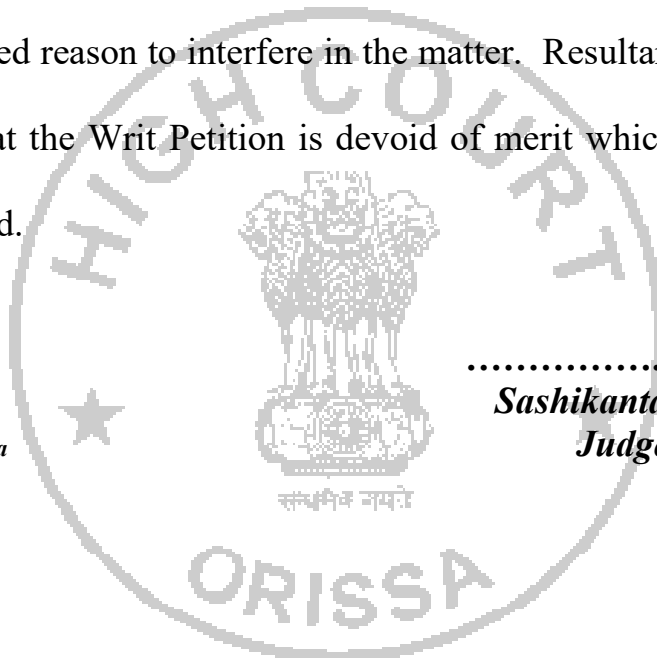
being the case, obviously, the guidelines which have themselves emanated from the corrigendum dated 6th January, 2016 cannot be given a meaning contrary to it. Evidently, the Petitioner was eligible in view of her age being 36 years 6 months 16 days as on the cut-off date. In so far as the Corrigendum and the second advertisement based thereon is concerned, the same, as already stated, specifically relate to only those candidates who were not eligible being more than 32 years or 37 years, as the case may be, pursuant to the corrigendum dated 6th January, 2016 at the time of cut-off date of the first advertisement, but became so eligible being within the age limit of 42 years or 47 years, as the case may be by such cut-off date i.e., 30th September, 2014. Obviously, the Corrigendum and the second advertisement basing thereon was not meant for candidates like the present Petitioner, but for those candidates who had become over aged and had, therefore, not applied. In other words, those candidates who were aged more than 32/37 years but less than 42/47 years as on the cut-off date only could apply pursuant to the second advertisement. The Petitioner was, however, not aged more than 37 years as on the cut-off date and hence, cannot be treated as a candidate who 'could not apply' due to over-age. The Petitioner, as already stated, had not

applied for reasons best known to her. There is a subtle but fundamental difference between the two categories of candidates. Therefore, this Court is of the considered view that the Petitioner was not eligible to apply pursuant to the second advertisement. Consequently, the Petitioner's averment in the Writ Petition that she became eligible pursuant to the modified eligibility criteria is factually incorrect and hence, not acceptable. Likewise, the alternative argument that the 2nd Advertisement was open to all candidates like the Petitioners who were below the upper-age limit of 42/47 years is also not tenable. Such being the finding, the other aspect i.e. justifiability of rejecting her application on the ground of invalid Employment Exchange Registration Number becomes redundant. True, what the Opposite Party No.3 has stated in the counter filed on 6th January, 2022 could also have been stated in the order of rejection, but instead of mentioning so, it has been simply stated that her application was rejected on the ground of absence of valid registration certificate. Be that as it may, fact remains that when a person is not eligible to apply in the first place, she cannot claim equity on the ground that her application was initially accepted and then rejected on the ground of absence of valid Employment Exchange Certificate. This Court is, therefore,

unable to accept the contentions advanced by Shri Ojha. On the other hand, notwithstanding the correctness or otherwise of the reason cited by the authorities for rejecting the Petitioner's candidature, this Court finds that she was not eligible to apply and therefore, she cannot question such decision of the authority.

8. For the foregoing reasons, therefore, this Court finds no valid or justified reason to interfere in the matter. Resultantly, this Court holds that the Writ Petition is devoid of merit which is, therefore, dismissed.

Ashok Kumar Behera



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Sashikanta Mishra,
Judge





