

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.C. (OA) No.1377 of 2015

Sri Ashok Kumar Rout & Another ***Petitioners***
Mr. Ajit Kumar Samantaray, Advocate
on behalf of Mr. R.K. Bisoi, Advocate
-versus-
State of Odisha & Others ***Opposite Parties***
Mr. M.K. Khuntia, AGA

CORAM:
JUSTICE M.S. RAMAN

Order No.

ORDER
21.06.2022

- 01.
1. This matter is taken up through virtual/physical mode.
 2. The Original Application No. 1377 of 2015 was filed before the State Administrative Tribunal, Bhubaneswar. After its abolition, the same has been transferred to this Court which is renumbered as WPC (OA) No. 1377 of 2015.
 3. Heard Mr. Ajit Kumar Samantaray, Proxy Counsel on behalf of Mr. R.K. Bisoi, counsel for the Petitioner and Mr. M.K. Khuntia, learned Additional Government Advocate for the Opposite Parties.
 4. The Brief fact as stated by the Petitioners as adumbrated in the petition shows that the Applicants-Petitioners, in-service candidates, while working as Assistant Engineer completed their degree course in Civil Engineering and claim to have been eligible to appear in the recruitment test as per the advertisement issued by the Odisha Public Service Commission (OPSC) for filling up the Post of Assistant Executive Engineer. Since, the Petitioners at the time of said advertisement were 50 years of age and the age

limit for in-service candidates was fixed at 45 years as on 1st January, 2015 by virtue of State Government resolution No.11194, dated 19th May, 2015, the Petitioners sought for relaxation by condoning the upper age limit so as to enable them to have the benefit of enjoying the Post of Assistant Executive Engineer.

5. The learned Odisha Administrative Tribunal vide Order No. 4, dated 4th August, 2015 was pleased to pass the following order:-

“We have heard Mr. R.K. Bisoi, learned counsel for the applicant, learned Govt. Advocate, Sri N. Praharaj and learned counsel for the O.P.S.C. Mr. B.K. Mohanty.

The applicant is a Junior Engineer under Respondent No.1 and during his service period completed degree in Civil Engineering. Respondent No.3 of 2015-16 for the post of Assistant Executive Engineer (Civil) and (Mechanical) in Group-A of Orissa Engineering Service under Water Resources Department and in the said advertisement the age was stipulated as above 21 years and under 32 years as on 1st January, 2015 and relaxable to reserved category candidates as per rules. Subsequently, a corrigendum was issued by the Government of Orissa, Department of Water Resources vide Notification No.11194 dated 19th May, 2015 under the provision of Art.309 of Constitution of India amending the Orissa Engineering Service (Method of Recruitment and Conditions of Service) Rules, 2012 by which in Rule-6 after proviso Clause(C) it was added as follows:-

“Provided further that the Maximum age limit shall be relaxed to 45 years in respect of the candidates who have entered the Diploma Engineers ‘Service as Junior Engineers whether promoted to the post of Assistant Engineer or not within the prescribed age limit without the qualification prescribed under Clause(b) of Rule-6 and have subsequently acquired the same while service as such or have acquired such qualification prior to entering the State Government Service as Junior Engineers subject to availing of not more than 5 chances”.

Learned counsel for the applicant has submitted that this Tribunal vide order dated 26th May, 2015 had allowed the applicant who aged more than 45 years to apply for the said post and now the O.P.S.C. has fixed the date for written Examination which is scheduled to be held on 30th August, 2015 and therefore by this Misc. Petition, he has prayed to direct the OPSC to allow the Petitioner to sit in the written examination as well as Viva Test.

Learned counsel for the OPSC has vehemently challenged the submission of the learned counsel for the applicant and has submitted that the Govt. of Odisha Water Resources Department has already by taking recourse to Art.309 of the Constitution has relaxed the upper age limit to 45 years and under no circumstances, candidates above 45 years should be allowed to participate in the Examination in pursuance to advertisement No.3 of 2015-16 (Annexure-3). To this learned counsel for the applicant has submitted that there was no examination for last 10 years and as per that there was no examination for last 10 years and as per the Orissa Engineering Service Rules, 1941, there was no age bar for the in-service candidates to appear in such examination.

In the earlier order dated 26th May, 2015, it was mentioned that the applications of the applicants be accepted by Respondent No.3 if submitted within the stipulated period, but no action be taken on those applications without further order from the Tribunal. In the original advertisement the upper age limit was 32 years and even if the contention of the applicant that there was no recruitment in last 10 years is accepted, still then, if 10 years will be added to 32 years than it comes to 42 years whereas the Govt. of Odisha Water Resources Department in its wisdom has already taken view and has relaxed the upper age limit to 45 years and the said order has been passed under Article-309 of the Constitution of India. In every government service, the stipulation of minimum entry age and maximum entry age is a must. On the whims of candidate, the age criteria cannot be relaxed. We are to go by the Orissa Engineering Service (Method of Recruitment and Conditions of Service) Rules, 2012 which came into force vide Notification No.34600 dated 29th December, 2012 and the consequent

amendment made thereafter by the Water Resources Department vide Annexure-4.

Hence, this M.P. of the applicant to allow him to take part in written as well as viva voce test is of no merit and stands rejected. M.P. is accordingly disposed of.”

6. Perusal of the order dated 4th August, 2015 passed by the Odisha Administrative Tribunal shows that the said Tribunal declined to allow the Petitioners to take part in written as well as Viva Voce test and the interim application was rejected.

7. At the time of hearing of this writ petition today, Mr. Ajit Kumar Samantaray, Proxy Counsel on behalf of Mr. R.K. Bisoi, counsel for the Petitioner submitted that he does not have instruction.

8. In view of the aforesaid fact situation, there remains nothing to be adjudicated as the petition relates to process of recruitment for the year 2013.

9. In such view of the matter, the writ petition stands dismissed.

Issue urgent certified copy as per rules.

(M.S. Raman)
Judge

Laxmikant