

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C. (O.A.) No.1489 of 2015

Damodar Mallick

....

Petitioner

None

-versus-

State of Odisha and others

....

Opposite Parties

Mr. L. Samantaray,

Additional Government Advocate

CORAM:

JUSTICE M.S. RAMAN

ORDER

21.06.2022

Order No.

01.

1. This matter is taken up through virtual/physical mode.
2. The Original Application No.1489 of 2015 was filed before the Odisha Administrative Tribunal, Bhubaneswar. After its abolition, the same has been transferred to this Court which is renumbered as WPC (OA) No.1489 of 2015.
3. The Petitioner, in-service SC candidate, in this writ petition has challenged the upper age limit specified in the advertisement No.3 of 2015-16, dated 17.04.2015 for recruitment to the post of Assistant Executive Engineer (Civil) and Assistant Executive Engineer (Mechanical) in Group-A.
4. The Odisha Administrative Tribunal while issuing notice vide order dated 10.06.2015 has passed the following interim order:

“XX

XX

XX

XX”

So far as prayer for interim order is concerned, let the application of the applicant be accepted by OPSC through on line, if submitted within the stipulated period i.e. 15.6.2015, but no action be taken on the application without further order from the Tribunal. The applicant is however at liberty to move the Tribunal for any appropriate orders, if any, recruitment examination pursuant to the advertisement is conducted prior to disposal of the O.A.”

5. Further order has been passed vide order dated 14.08.15, which reads as follows:

“Heard learned counsel for the petitioner and Learned counsel for O.P.S.C.

The petitioner is an in-service candidate working as Assistant Engineer under the Chief Engineer, Public Health and belongs to Sch. Caste category. He has filed the O.A. to allow him to appear in the examination of Assistant Executive Engineer (Civil) pursuant to advertisement No.3 of 2015-16 published by the O.P.S.C. Initially upper age limit was fixed 32 years for all the candidates, but a corrigendum was issued by the Govt. of Odisha, Department of Water Resources vide Notification No.11194 dtd.19.5.15 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 Asst. 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 serving 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.”

This Tribunal vide its order dtd.10.5.15 as per the interim order had directed the OPSC to receive the application of the applicant if submitted within the stipulated period, but no action be taken on the application without further order from the Tribunal and liberty had been to the applicant to move the Tribunal if any recruitment examination is conducted prior to disposal of the O.A. Hence, the applicant has filed this M.P. taking the stand that as per the upper age limit has been relaxed to 45 years of age and there was no recruitment test for 8 years, a Sch. Caste candidate is eligible to apply for the post even to the maximum age limit of 58 years (45+8+5).

On the other hand learned counsel for the OPSC submitted that this dispute had already been settled by two Division Bench of this Tribunal in M.P. No.419 of 2015 arising out of O.A. No.1377 of 2015 vide order No.4 dtd.4.8.15 and order No.3 dtd.5.8.15 passed in O.A. No.1547/2015.

Learned counsel for the applicant strenuously argued that he being an S.C. candidate should be allowed

5 years relaxation as per the age relaxation given to S.C. and S.T. candidates at the entry level in Govt. job. This argument of learned counsel for the applicant cannot be accepted because in the corrigendum it is specifically mentioned that xxxxxx xxxxxx

xxxxxx xxxxxx xxxxxxxx

“Age limit shall be relaxed to 45 years in respect of the candidates who entered the Diploma Engineer Service as Junior Engineers whether promoted to the post of Assistant Engineer or not within the prescribed age limit”.

xxxx xx

xxxxxxxxxx

xxxxxxxxxxxxxx

xxxxxxxxxxxxxx

When the applicant is a in-service candidate, he cannot be allowed further age relaxation of 5 years on the ground that he is a schedule caste candidate which will be violative of the above mentioned corrigendum issued vide Notification No.11193, dtd. 09.05.15 under the provision of Art. 309 of the Constitution of India.

Hence, M.P. is rejected being devoid of any merit.”

6. Mr. Samantaray, learned Additional Government Advocate pointed out that since the Petitioner was not allowed to take part in the written examination as well viva-voce-test by observing that the stipulation of minimum and maximum entry age cannot be relaxed, the matter has been rendered infructuous.
7. In view of such submission, it seems that the Petitioner is not interested to pursue the matter any further.
8. Accordingly, this writ petition is dismissed as infructuous.

(M.S. Raman)
Judge

Jyostna