

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) No. 25280 of 2019*****Prasanta Kumar Das* *Petitioner******-versus-******State of Odisha and others* *Opposite Parties*****Appeared in this case:*****For the Petitioner* : Dr. J.K. Lenka, Advocate*****For the Opposite Parties* : Mr. P.K. Muduli,
Additional Government Advocate****CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK****JUDGMENT
20.05.2022****Dr. S. Muralidhar, CJ.**

1. The Petitioner who applied for the post of Junior Clerk-cum-Copyist in the Unreserved (UR) Category in the Judgeship of District Kendrapara has questioned his non-appointment as such despite figuring in the Select/Merit List, published on 14th May, 2019.

2. Notice was issued in the present petition on 13th December 2019, pursuant to which the Registrar (Civil Courts), Kendrapara has filed a counter affidavit on 9th January, 2020.

3. The case of the Petitioner is that in the Merit List published on 14th May 2019, his name finds place at Serial No.2 against the UR Category. Yet he was not appointed despite there being vacancies in the UR Category. He states that pursuant to an application made under the Right to Information Act (RTI Act), the Public Information Officer (PIO) by a letter dated 4th November 2019, informed him that against the seven vacancies in the post of Junior Clerk-cum-Copyist, advertised vide Advertisement No.1/2018, three candidates had been issued appointment letters on 30th July 2019, one of whom, belonging to the Scheduled Caste (SC) did not join and the other two were appointed against the Scheduled Tribe (ST) vacancies. The Petitioner contends, on the strength of the reply received through the RTI Act, that according to the Advertisement, 3 vacancies were required to be filled up under the UR category and yet none was appointed from that Category.

4. The Petitioner claims that the information further given under the RTI Act that the 80 point model roster was followed and that the number of existing vacancies for the UR category was nil, was both confusing and contradictory as far as the UR posts were concerned. It is further submitted that as per Rule-7(3) of the Odisha District and Subordinate Courts Non-Judicial Staff Service Recruitment Rules, 2008 ('Rules'), one merit list for the General candidates and a separate list for each of the reserved categories was required to be prepared. As per Rule-7(4) of the Rules, a final merit list for General and reserved category shall be prepared according to the descending order of the total marks.

5. It is submitted by Dr. Lenka appearing for the Petitioner that when two persons belonging to the ST and one belonging to the SC were given appointment, not appointing the Petitioner against the UR vacancy despite being placed at Serial No.2 in the merit list was illegal, arbitrary and discriminatory.

6. In reply to the petition, Mr. Muduli, learned AGA for the Opposite Parties pointed out that the challenge to his non-appointment was raised by the Petitioner nearly one year after the publication of the result and the petition was therefore hit by laches. On merits he referred to the counter affidavit in which it is stated that after completion of the recruitment process for the Recruitment Year 2018, six Candidates including the Petitioner were selected for the post of Junior Clerk-cum-Copyist. By that time, the Promotional Committee of the Kendrapara Judgeship was asked to submit a report for giving promotion to eligible candidates from the post of Junior Clerk-cum-Copyist to the post of Bench Clerk Gr-III after taking into consideration their seniority in the gradation list, the CCRs and the performance report so as to fill up the base level posts by giving appointment to the newly selected candidates. Accordingly, it is submitted that the correct 80 point model roster register for promotional as well as base level posts was taken into consideration and deployed in the Judgeship.

7. As far as not appointing the Petitioner is concerned, it is submitted that this was because of "lack of vacancy in the base

level post i.e., Junior Clerk-cum-Copyist for the candidate coming under the UR category". It is submitted that notwithstanding that the Petitioner's name may have figured in the merit list, he does not have right to be appointed. The advertisement, according to the Opposite Parties, inadvertently indicated two vacancies in the UR category. Meanwhile, Advertisement for recruitment for the Year 2019 had already been published. It is pointed out that the appointment of the Petitioner to the post has not been ignored deliberately or with malafide intention.

8. Since the above reply was not very clear and after examining the rejoinder affidavit dated 3rd September, 2021 which indicated that for the Year 2018, there were in fact seven vacancies of which three had to be earmarked for the UR, this Court on 22nd November 2021, issued a direction to the Opposite Parties to file an additional affidavit answering the following questions:

i. What is the sanctioned strength in the base level post of Junior Clerk-cum-Copyist, after creation of Kendrapara Judgeship and category-wise such as UR, SC, ST etc.?

ii. What is the working strength year wise from 2016 onwards up to 2019 in each of the above categories?

iii. Consequently, what is the vacancy position vis-à-vis each of the categories, viz., UR, SC, ST etc.?

iv. How has the 80-point roster been actually worked in respect of the above categories?

v. Has any vacancy meant for one category utilized for filling up the other vacancy of

another category? For e.g., has the UR vacancy been utilized for being filled up by an SC candidate?”

9. Pursuant to the above order, an additional affidavit has been filed by the Opposite Parties on 8th February 2022 stating *inter alia* as under:

“5. That, in compliance to Point No.(i) of the Order dtd.22.11.2021, it is submitted that the base level post of Junior Clerk-cum-Copyist, after creation of Kendrapara Judgeship is 32 and category wise of such Posts in UR-16, SEBC-04, SC-05 & ST-07.

6. That, in compliance to Point No.(ii) of the Order dtd.22.11.2021, it is submitted that the working strength year wise from 2016 onwards up to 2019 in each of the category is as follows:

2016

Working strength- 32 out of sanctioned strength of 39 (after creation of Kendrapara Judgeship on 26.06.2012, Courts of Judge, Family Court, Kendrapara & Additional District and Sessions Judge, Kendrapara have opened during the year 2013 and the Court of Senior Civil Judge, Pattamundai has opened during the year 2015. Due to creation of such Courts, additional 07 nos. of Posts of Junior Clerk-cum-Copyist have been created)

UR	SEBC	SC	ST	Total
16	04	04	08	32

2017

Working Strength- 33 out of the sanctioned strength of 41 (during the year 2017, the Court of Addl. Senior Civil Judge at Kendrapara has

been opened. Due to creation of such Court, additional 02 nos. of Posts of Junior Clerk-cum-Copyist have created)

UR	SEBC	SC	ST	Total
17	04	05	07	33

2018

Working strength- 34 out of sanctioned strength of 41

UR	SEBC	SC	ST	Total
19	04	05	06	34

2019

Working strength- 35 out of sanctioned strength of 41

UR	SEBC	SC	ST	Total
21	05	04	05	35

7. That, in compliance to Point No.(iii) of the Order dtd.22.11.2021, it is submitted that the vacancy position vis-à-vis each of the category working strength year-wise from 2016 onwards up to 2019 in each of the category, namely, UR, SC and ST etc. is as follows:

2016

Vacancy position- 07 out of sanctioned strength of 39

UR	SEBC	SC	ST	Total
04	-	02	01	07

2017

Vacancy Position- 08 out of sanctioned strength of 41

UR	SEBC	SC	ST	Total
04	01	01	02	08

2018

Vacancy Position- 07 out of sanctioned strength of 41

UR	SEBC	SC	ST	Total
02	01	01	03	07

2019

Vacancy position- 06 out of sanctioned strength of 41

UR	SEBC	SC	ST	Total
-	-	02	04	06

8. That, in compliance to Point No.(iv) of the Order dtd.22.11.2021, it is submitted that the 80% roster is maintained as per letter No.15702/TW, dtd.16.05.1994 of Tribunal Welfare Department, Government of Odisha (**Annexure-A/3**).”

10. However, Mr. P.K. Muduli, learned Additional Government Advocate (AGA) further sought leave to file yet another affidavit and pursuant to the leave so granted, a further additional affidavit was filed on 25th April 2022, in which it was clarified as under:

“3. That, the Petitioner has applied for the post of Junior Clerk-cum-Copyist as per

Advertisement No.1/2018, dated 28.07.2018 and the said advertisement was made to fill up the posts of 07 Nos. of Junior Clerk-cum-Copyist (UR-02, SEBC-01, SC-01 & ST-03) through direct recruitment. The aforesaid vacancy was determined on the basis of 80 point model roster. The result of aforesaid recruitment examination was published vide this Office Notice No.1136, dated 14.05.2019 and the Petitioner was selected under UR Category. The Select List dtd. 14.05.2019 prepared pursuant to Rule-6 of Rules, 2008 (amended in 2010) has expired w.e.f. 17.09.2019 upon publication of the Advertisement dtd.17.09.2019.

4. That, in the meantime, the Departmental Promotion Committee of this Judgeship held on 01.07.2019 pointed out that the vacancy should be determined as per respective percentage applicable for reservation rule in the cadre strength of each unit as per the ration decided by Hon'ble Apex Court in **M. Nagaraj** Case.

5. That, considering the report of the Departmental Promotion Committee, vacancy position was re-assessed and it was found that only backlog vacancy are available. No UR post was in existence. The vacancy position was as follows:

UR	SEBC	SC	ST
Nil	Nil	02	06 (including women)

Relevant to mention here that the vacancy position of the years 2016, 2017 & 2018 as stated in Paragraph- 7 of the Affidavit dtd.

08.02.2022 is on the basis of the old/non-revised 80 point model Roster.”

11. Dr. J.K. Lenka, learned counsel for the Petitioner referred to the earlier information provided to the Petitioner under the RTI Act which appeared to indicate that there were 3 vacancies earmarked for the UR category. He referred to the decision in ***LT. CDR. M. Ramesh v. Union of India (2018) 16 SCC 195*** and *inter alia* to the following observations therein:

“23. Having held so, we must also note that the law is well settled that even though the candidates may not have a vested right of appointment and the State is not under any duty or obligation to fill up the vacancies, the State has to act fairly and it cannot act in an arbitrary manner. The decision, not to fill up the vacancies pursuant to the selection process, must be taken bona fide and for justifiable and appropriate reasons. In this regard, we may make reference to *Shankarsan Dash v. Union of India* (1991) 3 SCC 47: 1991 SCC (L&S) 800.”

12. Mr. P.K. Muduli, learned AGA on the other hand, clarified that after the affidavits filed by the Opposite Parties, it becomes clear that under the 80 point new model roster, post the decision of the Supreme Court in ***M. Nagaraj v. Union of India (2006) 8 SCC 212***, there were in fact no vacancies for UR in the recruitment for the post of Junior Clerk-cum-Copyist 2018.

13. The above submissions have been considered. It is unfortunate that the Petitioner was initially provided information by the PIO under the RTI Act which did not reflect the correct position in

terms of the Rules and the new 80 point model roster. If the vacancies had been correctly determined, the advertisement itself would have made it clear that the recruitment was being made only for two vacancies in the SC category and 6 in the ST category (including women). In that event, the Petitioner need not have applied at all or sat for the exam in the UR category. He could have taken his chance in the subsequent years.

14. However, notwithstanding the inconvenience to the Petitioner with his having qualified in exam, the position remains that there were no vacancies against which the Petitioner could have been accommodated in the UR category. This appears to be a genuine mistake on account of the changed legal position and it was realized later on by the Opposite Parties that there were in fact no vacancies in the UR category.

15. Even before this Court only with the further additional affidavit filed on 25th April 2022 did the position become clear. Now with it becoming unambiguously evident that there are no UR vacancies available in the post in question for the recruitment of 2018 for the Petitioner to be accommodated, the mandamus as sought by the Petitioner cannot be issued. In other words, the Court finds no error in the Opposite Parties declining to give appointment to the Petitioner against the UR vacancy notwithstanding, his having figured in at Sl. No. 2 in the merit list dated 14th May, 2019.

16. For all of the aforementioned reasons, the Court finds no merit in the present petition and it is dismissed as such but in the circumstances with no orders as to costs.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S. Behera

