

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C. (O.A.) No.1488 of 2015

Ashok Kumar Biswal

....

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.1488 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.1488 of 2015.
3. The Petitioner in-service SEBC 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:

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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 26.08.2015, which reads as follows:

“Heard learned counsel for the petitioners Mr. H. Sethy and Mr. N. Praharaj, learned Govt. Advocate and Mr. B.K. Mohanty, learned counsel for the OPSC.

The applicants in all these cases have filed the Misc. Petitions to allow them to seat in the written examination to be held on 30.08.15 for the post of Asst. Executive Engineer in pursuance to Advertisement No.3 of 2015-2016 of Orissa Public Service Commission. All the petitioners had joined as Junior Engineers and are now in service candidates and in the O.A. they have sought for age relaxation to appear in the above mentioned recruitment test. As per the said advertisement and the minimum entry age was 21 years and maximum age was 32 years as on 1st January, 2015. Subsequently, a corrigendum was issued by the Government of Orissa, department of Water Resources vide Notification No.11194 dtd. 19.5.2015 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 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.”

Learned counsel for the applicant submitted that all the applicants have crossed 45 years of age and now the written test is scheduled to be held on 30.8.15 and therefore they be provisionally allowed to seat in the written test as well 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 Deptt. 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. To this learned counsel for the applicant has submitted 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.

Learned counsel for the applicant further submitted that in the Notification dtd.19th May, 2015 in-service candidate is allowed to compete for not more than five chances, but in the instant case these candidates are even not given once chance and therefore, they should be allowed to compete in the examination. To this, learned counsel for OPSC. Submitted that these five chances can be allowed to in-service candidate only even the age group of 45 years.

The Govt. of Odisha, Water Resources Department in its wisdom has already taken a lenient 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 Govt. service, the stipulation of minimum entry age and maximum entry age is a must. On the whims of the candidates, 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 dtd.29.12.12 and the consequent amendment made thereafter by the Water Resources Department.

Hence, the M.Ps. of the applicants to allow them to take part in written as well as viva voce test are of no merit and stand rejected. M.Ps. are accordingly disposed of."

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