

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C(OAC) No.1985 of 2013

**In the matter of an application under Section 19 of
the Administrative Tribunals Act, 1985**

Dipak Kumar Nath

....

Petitioner

-versus-

State of Odisha & Others

....

Opp. Parties

For Petitioner : M/s. Asim Amitav Das,
Advocate

For Opp. Parties: M/s. N.K. Praharaj,
Standing Counsel

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 29.4.2022 & Date of Order: 13.5.2022

- 1.** This matter is taken up through Hybrid Mode.
- 2.** Heard Mr. Dash, learned counsel appearing on behalf of the Petitioner and Mr. N.K. Praharaj, learned counsel for the State-Opp. Parties.
- 3.** The Petitioner has filed the present Writ Petition with the following prayer :-

“In view of the facts stated in paragraph-6 above, the applicant prays for following relief(s):

- (i) *To correct the marks in the answer script of the applicant and declare the applicant successful un-reserved male candidate for the post of Jail Warder in Sambalpur Circule.*

- (ii) *And such other order(s)/direction(s) as the Hon'ble Tribunal may deem just, proper in the circumstances of the case.*

4. It is submitted by Mr. Dash, learned counsel appearing for the Petitioner that pursuant to the advertisement issued for recruitment to the post of Jail Warder in the year 2012, the Petitioner made his application for the said post. It is submitted that though the advertisement under Annexure-1 was issued to fill up 486 posts of Jail Warder but in respect of Sambalpur Circle, the vacancy was indicated as 144. It is also submitted that on receipt of application, the petitioner was issued with an intimation to appear the test . It is also submitted that the Petitioner not only appeared in the said test but also his name was reflected in the list of candidates under UR male category vide Roll No.284. In the said recruitment test, the petitioner though secured 74 marks, but was not selected, even though the last such selected candidate i.e. Opp. Party No.4 has scored 77 marks. Mr. Dash, learned counsel appearing for the Petitioner submitted that subsequent to the publication of the result, when the petitioner finds that his answer papers have not been properly evaluated, he made an application under the R.T.I and he was provided with the answer scripts of the

said recruitment test. On being provided with the answer scripts under R.T.I, the Petitioner found that in Question Nos.4 (b) to 4(d), though the petitioner has given the correct answer, but he has not been awarded any mark. The said fact is clearly reflected in Page No.25 of Annexure-4. Mr. Dash, further submitted that by giving similar answer in respect of Question No.4(b) to 4(d), Opp. Party No.4 has been awarded 15 marks and the said fact is clearly reflected at page 27 of Annexure-4. Mr. Dash, accordingly submitted that since by giving similar answer, Opp. Party No.4 has been awarded 15 marks in respect of question No.4 (b) to 4(d), the petitioner has been illegally denied from being awarded with 15 marks in respect of the said Question Nos.4 (b) to 4(d). It is further submitted that if the petitioner would have been allowed 15 marks, his total marks would have come to 89 and accordingly, he would have been selected ahead of Opp. Party No.4. Taking into account the discrepancy shown with regard to award of mark in respect of Question No.4(b) to 4(d) to the petitioner vis-à-vis Opp. Party No.4, this Court vide order dated 15.2.2022 passed the following order.

“1. *“This matter is taken up through hybrid mode.*

2. *Mr. M. Balabantaray, learned Standing Counsel for the State seeks some time to obtain instruction on the basis of the*

information received under RTI Act, whether the petitioner can be awarded further marks in the recruitment process or not.

3. *Call this matter after three weeks.”*

5. Even though this Court vide order dated 15.2.2022 allowed the learned Standing Counsel three weeks time to obtain instruction as to whether the petitioner can be awarded further marks in the recruitment process or not, but no reply came forth from the said opposite party in spite of further opportunity given by this Court vide order dated 11.4.2022. Learned counsel for the State-Opp. party instead submitted that since there is no provision for evaluation of the answer scripts, the prayer made by the Petitioner is not maintainable.

6. Heard learned counsel for the Parties. Perused the material available on record.

7. It is not disputed that the Petitioner has scored 74 marks and the Opp. Party No.4 got selected and appointed by securing 77 marks in aggregate.

8. Perused the answer scripts provided to the petitioner under RTI vide Annexure-4 to the Writ Petition. While Opp. Party no.4 by giving similar answer was awarded 15 marks in respect of question No.4(b) to 4(d), the petitioner was awarded “0” mark even though answer given by him in

respect of question No.4(b) to 4(d) is similar to the answer given by Opp. Party No.4. Therefore, in view of such admitted illegality apparent on the face of the record, the submission made by Mr. Praharaj that this Court lacks jurisdiction to entertain the prayer as made by the petitioner in the writ petition cannot be accepted since on a bare reading of page 25 vis-a-vis page 27 of Annexure-4 clearly shows that the petitioner has been awarded “0” marks in respect of question No.4(b) to 4(d) whereas by giving similar answer, Opp. Party No.4 has been awarded 15 marks. If the petitioner would have been awarded 15 marks in respect of Question No. 4(b) to 4(d), his total marks would have been 89 and he would have been selected ahead of Opp. Party No.4.

9. In view of such position as indicated hereinabove, this Court deems it fit and proper to direct Opp. Party No.3 to award 15 marks to the Petitioner in respect of Question Nos.4 (b) to 4(d) and provide him appointment as against any available vacancy in the post of Jail Warder under Samabalpur Circle.

10. Since Opp. Party No.4 has already been provided with appointment and he is continuing in the said post, this Court without disturbing his appointment directs the Opp.

Party No.3 to provide appointment to the petitioner as against any available vacancies in the rank of Jail Warder under Sambalpur circle. This Court directs Opp. party No.3 to complete the exercise within a period of four weeks from the date of receipt of this order.

11. With the aforesaid observation ad direction, the Writ Petition is disposed of.

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(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 13th May, 2022/sangita

