

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) Nos.34819, 34823 & 34824 of 2021

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

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W.P.(C) No.34819 of 2021

Santosh Kumar Sahoo **Petitioner**

-versus-

State of Odisha & Others **Opp.Parties**

For Petitioner : M/s. S. K.Das, P.K.Behera &
N.Jena.
M/s. K.K.Swain, P.N.Mohanty,
S.C.Dash, K.Swain, R.Samal &
S.Samal.
(Intervenor-Petitioner)

For Opp. Parties : M/s. R.N.Mishra
Addl. Government Advocate

W.P.(C) No.34823 of 2021

Binaya Ranjan Parija **Petitioner**

-versus-

State of Odisha & Others **Opp.Parties**

For Petitioner : M/s. S. K.Das, P.K.Behera &
N.Jena.
M/s. K.K.Swain, P.N.Mohanty,
S.C.Dash, K.Swain, R.Samal &
S.Samal.
(Intervenor-Petitioner)

For Opp. Parties : M/s. R.N.Mishra
Addl. Government Advocate

-AND-

W.P.(C) No.34824 of 2021

Jogendra Pradhan

....

Petitioner

-versus-

State of Odisha & Others

....

Opp.Parties

For Petitioner : M/s. S. K.Das, P.K.Behera & N.Jena.

M/s. K.K.Swain, P.N.Mohanty,
S.C.Dash, K.Swain, R.Samal &
S.Samal.
(Intervenor-Petitioner)

For Opp. Parties : M/s. R.N.Mishra
Addl. Government Advocate

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:08.08.2022 and Date of Judgment:23.08.2022

Biraja Prasanna Satapathy, J.

- 1.** This matter is taken up through Hybrid Mode.
- 2.** Since common issue is involved in all three cases and all the three cases have been filed challenging similar order, all the matters are heard analogously and disposed of by the present common orders.
- 3.** Heard Mr. S. K.Das, learned counsel for the Petitioners in all the three cases, Mr. R.N.Mishra, learned Addl. Government Advocate on behalf of the State-Opposite Parties and learned counsels appearing for the Intervenor-Petitioners.

4. All these Writ Petitions have been filed challenging the communicated dated 02.11.2021 issued by the Government- Opposite Party No.1 under Annexure-7 and consequential order dated 05.11.2021 passed by the C.D.M.O., Khurda- Opposite Party No.3 under Annexure-8.

5. It is submitted that an advertisement was issued by the Opposite Party No.3 to fill up 29 posts of Laboratory Technician both in Pathology and Malaria on 26.06.2013. Subsequently, an corrigendum was issued on 12.07.2013 under Annexure-2, wherein all the 29 posts were shown as regular created posts.

6. It is submitted that pursuant to the advertisement issued on 26.06.2013 under Annexure-2, the Petitioners made their applications with having qualification of +2 Vocational certificate in MLT Trade in Malaria from Govt. institution.

7. Learned counsel for the Petitioners further submitted that while in the advertisement issued by the Opposite Party No.3 under Annexure-2, only candidates with Diploma in Medical Laboratory Technician (DMLT) were allowed to make the application, but in respect of similar advertisement issued by the C.D.M.O., Rayagada as well as C.D.M.O., Nabarangapur, candidates with having Vocational certificate in MLT Trade were made eligible to apply for the post of Laboratory Technician (Malaria). However, it is submitted that the Opposite Party No.3 not only entertained the applications submitted by the Present Petitioners, but also they were selected and appointment as against the post of Laboratory Technician vide order dated 19.02.2014 under Annexure-4.

8. It is submitted that all the three intervenors-petitioners were also selected and appointed vide the self-same orders issued under Annexure-4.

9. Mr. Das, learned counsel for the Petitioners submitted that pursuant to the order of appointment issued in favour of the Petitioners all of them joined in their place of posting and the services of the petitioners were also extended in terms of the communication issued by the Government under Annexure-6.

10. It is submitted that while so continuing without any break in engagement, when the petitioners were terminated vide order dated 05.11.2021 under Annexure-8, basing on the communication issued by the Government-Opposite Party No.1 on 02.11.2021 under Annexure-7, the Petitioners approached this Court in the aforesaid three writ petitions.

11. It is submitted that prior to such order of disengagement issued under Annexure-8, the petitioners were never issued with any show cause nor any opportunity of hearing was provided to them.

12. It is accordingly submitted that the said order of disengagement has been passed in complete violation of the principle of natural justice.

13. It is further submitted that vide the impugned communication dated 02.11.2021 under Annexure-7, Opposite Party No.1 directed the Opposite Party No.3 to disengage the petitioners and to appoint the three intervenors-petitioners as the petitioners have been appointed illegally violating the

Government guidelines as well as the order of this Court passed on 20.03.2008 in W.P.(C) No.3816 of 2008.

14. It is submitted that as per the guidelines, which has been indicated in the impugned communication dated 02.11.2021, the petitioners are eligible to submit their applications for the post of Laboratory Technician (Malaria) and their cases will be considered, if sufficient numbers of candidates with DMLT qualification are not available.

15. Mr. Das brought to the notice of this Court, the said guideline annexed under Annexure-1. In the said guideline, it is clearly indicated that in case of non-availability of DMLT pass out candidates from Government Medical Colleges of the State or from any AICTE approved institute and unavailability of retired Laboratory Technician / Junior Laboratory Technician (Malaria) with DMLT qualification, none DMLT candidates can be considered for their appointment as Junior Technician(Malaria).

16. It is submitted that since pursuant to the advertisement issued under Annexure-2 sufficient numbers of candidates indicated in Clause-1 and 2 of the guidelines dated 3.3.2012 were not available, the Petitioners with having qualification of +2 Vocational in MLT Trade (Malaria) were not only selected but also appointed along with the three intervenors-petitioners vide order under Annexure-4.

17. Mr. Das accordingly submitted that since as per the guideline sufficient numbers of candidates were not available for their appointment as against the total numbers of posts advertised vide advertisement issued under Annexure-2, the Petitioners were rightly selected and appointed in terms of the

said guidelines and there is no illegality with regard to such appointment of the petitioners.

18. It is also submitted that the order passed on 20.03.2008 in W.P.(C) No.3618/2008 has no application to the facts of the case as the case of the Petitioners is governed by a circular which is issued much after the order of this Court under Annexure-1 on 03.03.2012.

19. Mr. Das accordingly submitted that since there is no illegality or irregularity in the selection and appointment of the petitioners, the impugned communication issued under Annexure-7 by the Government-Opposite Party No.1 directing the Opposite Party No.3 to disengage the Petitioners and to appoint the intervenors-petitioners in their place is illegal.

20. It is also submitted that the consequential order of disengagement passed by the Opposite Party No.3 under Annexure-8 is also illegal and liable to be set aside by this Court.

21. Mr. Das also submitted that since all the intervenors-petitioners were appointed along with the present three petitioners vide order under Annexure-4, the direction to give appointment to the said three intervenors-petitioners in place of the writ petitioners is also illegal.

22. Mr. R.N.Mishra, learned Addl. Government Advocate for the State-Opposite Parties made his submission basing on the stand taken by the Opposite Party No.3 in the counter affidavit. It is submitted that since in the advertisement issued under Annexure-2 there was no provision for allowing the candidates with having +2 Vocational qualification with MLT

Trade as like the Petitioners, the applications of the petitioners should not have been entertained by the Opposite Party No.3 and accordingly the Petitioners should not have been selected and appointed violating the Government guidelines and the order of this court passed on 20.03.2008 in W.P.(C) No.3816 of 2008.

23. Accordingly, it is submitted that since in the advertisement there was no provision to appoint candidate with having +2 Vocational qualification with MLT Trade, the selection and appointment of the petitioners made by the Opposite Party No.3 was found to be illegal by the Government while issuing the impugned communication under Annexure-7. Accordingly, it is submitted that there is no illegality in disengaging the Petitioners vide order under Annexure-8.

24. Learned counsels appearing for the Intervenors-Petitioners on the other hand submitted that the intervenors-petitioners also submitted their applications pursuant to the advertisement issued under Annexure-2 and they on being found suitable were appointed vide order dated 19.02.2014 under Annexure-4.

25. It is further submitted that pursuant to the order of disengagement passed under Annexure-8, the Petitioners have been appointed / adjusted against the vacant post of Laboratory Technician vide order dated 11.11.2021.

26. Accordingly, it is submitted that while deciding the claim of the Petitioners, the interest of the intervenors-petitioners be protected as they were selected and appointed initially vide

under Annexure-4 and after disengagement of the petitioners they have been adjusted against their posts.

27. Heard learned counsel for the Parties.

28. Perused the materials available on record. This Court after going through the same finds that even though in the advertisement issued under Annexure-2 there was no provision for submission of applications by the candidates, save and except candidates with having Diploma in Medical Laboratory Technician (DMLT) from any of the three Government College and Hospital of the State or from any other AIET approved institute, but the applications of the petitioners were not only entertained, but also they were selected and provided with the appointment vide order under Annexure-4.

29. This Court further finds that all three petitioners and three intervenors-petitioners were all appointed on contractual basis vide order dated 19.02.2014 under Annexure-4. This Court further finds that in the guidelines dated 03.03.2012, there is provision for consideration of non-DMLT candidates as like the petitioners in case required numbers of candidates with DMLT qualification and retired Laboratory Technician with DMLT qualification are not available for their selection. In the impugned communicated under Annexure-7, the Government-Opposite Party No.1 relying on the guideline dated 03.03.2012 held the selection and appointment of the petitioner is illegal. But in the counter affidavit filed by the State-Opposite Party No.3, it is averred that since in the advertisement only candidates with DMLT were eligible to apply, the petitioners have been selected without having the said qualification. But it is found from the record that for the

self-same post of Laboratory Technician (Malaria) separate advertisement have been issued by the C.D.M.O, Sundargarh, Jharsuguda, Koraput, Nabarangapur and Bolangir and in all these advertisements issued under Annexure-3-Series, there is provision for selection of candidates in case of non-availability of required DMLT candidates.

30. Therefore, even though in the advertisement under Annexure-2, no such prescription is there, the Opposite Party No.3 basing on the guidelines issued on 03.03.2012 under Annexure-1 entertained the application of the petitioners and appointed them along with the intervenors-petitioners vide order under Annexure-4. The selection and appointment of the petitioners have also not been challenged by any person and the grounds taken by the Opposite Party No.1 that the said selection is contrary to the guidelines dated 03.03.2012 under Annexure-1, cannot be accepted as in the said guidelines there is a clear provision for considering the candidates with having no DMLT qualification. The other grounds taken in the impugned communication to appoint the intervenors-petitioners in place of the petitioners is also not sustainable as the said three intervenors-petitioners were also appointed along with the petitioners vide order under Annexure-4. This Court also finds that prior to issuing the order of disengagement under Annexure-8, the petitioners were never given a show cause nor any opportunity of hearing was given.

31. Hence in any view of the matter, this Court finds that the impugned communication under Annexure-7 and consequential order under Annexure-8 have been issued in violation of the principle of natural justice and without following the guideline issued on 3.3.2012 under Annexure-1.

32. Therefore, this Court has got no hesitation in quashing the impugned communication dated 02.11.2021 under Annexure-7 and the consequential order dated 05.01.2022 under Annexure-8. While quashing the same, this Court directs the Opposite Parties to take steps for reinstatement of the Petitioners.

33. Since the intervenors-Petitioners were also selected and appointed along with the writ petitioners vide order under Annexure-4 and they have been absorbed regularly in the meantime, the reinstatement of three writ petitioners will no way cause prejudices to the said intervenors-petitioners. The Opposite Parties are directed to take steps for reinstating the Petitioners within a period of one month from the date of receipt of this order but without prejudice to the rights of the intervenors-petitioners.

34. With the aforesaid observations and directions, these Writ Petitions stand disposed of. There shall be no order as to costs.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 23rd of August, 2022/Subrat