

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No. 3385 of 2012

Elina Priyadarshini

.... Petitioner

Mr. S.K.Swain, Advocate

-versus-

State of Odisha and others

.... Opposite Parties

Mr. T.K.Praharaj, SC

CORAM:

JUSTICE M.S.SAHOO

ORDER

29.3.2022

Order No.

2. 1. This matter is taken up by hybrid mode.
2. On 21.2.2022, following order was passed after considering the matter in some detail :

"The writ petition has been registered before this Court on 2nd December, 2021, after the original application was transferred from the learned State Administrative Tribunal upon its abolition.

On perusal of the available order sheets of the learned Tribunal, it is indicated that the matter was never taken up after 09.12.2014.

The applicant before the learned Tribunal had prayed for a direction to appoint to the post of Food Inspector pursuant to the advertisement dated 29.01.2011 (Annexure-3) issued by the Director of Health Services, Bhubaneswar, Odisha.

Mr. Swain, learned counsel for the petitioner submits that since the matter is pending for a long time, he has no up-to-date instruction and may be permitted to contact the petitioner for instruction.

Learned Addl. Govt. Advocate submits that since the matter involves to an advertisement of the year 2011, nothing much would survive after lapse of 10 years.

Considering the submissions of the learned counsel, list on 29th March, 2022 as prayed for

by the learned counsel for the applicant/petitioner.”

3. The Original Application was filed in the year 2012 by the applicant before the learned Tribunal who was aged about 24 years challenging the advertisement dated 1.9.2012 (Annexure-4) for recruitment to the post of Food Safety Officer published in Oriya Daily “The Dharitri” dated 1.9.2012.

4. The principal contention raised in the Original Application is that the advertisement dated 1.9.2022 (Annexure-4) cancelling earlier advertisement dated 29.1.2011 for the post of Food Inspector under the Prevention Of Food Adulteration Act, 1954 is bad in law for the fact that after the amendment of the Act, 1954 which is substituted by the Food Safety Standard Act, 2006, the posts those were lying vacant could not have been filled, it is contended that the posts should be filled by following the repealed Act, 1954.

5. Learned Standing Counsel referring to the counter affidavit submits that the petitioner was duly considered and her name finds place in the merit list having given a position ‘73’ (Annexure-J to the writ petition).

It is submitted that the petitioner’s candidature was duly considered in accordance with her merit and as per the conditions specified in advertisement and she has challenged the selection process after participating in it after she was unable to get selected on the basis of determination of inter se merit amongst the candidates.

6. It is further submitted by learned Standing Counsel that the contention that the advertisement should have been

made indicating the earlier vacancies is misconceived, inasmuch as the petitioner applied for being considered for selection pursuant to the advertisement, she was considered and her *inter se* merit position was '73'.

7. It is emphasized by learned Standing Counsel that in the present case, the petitioner in fact has been considered and has been found to be eligible but she could not get through the selection process as per her *inter se* merit position, therefore, no illegality or irregularity can be attributed to the selection process or the advertisement to which the petitioner has responded.

8. The contention raised by learned counsel for petitioner that the post should be filled by following repealed Act of 1954 needs to be considered in view of the law laid down by the Hon'ble Supreme Court.

In ***M.I. Kunjukunju v. State of Kerala*, (2015) 11 SCC 440** after considering earlier decisions, the Hon'ble Supreme Court has observed :

16. *The learned counsel for the appellants submitted that the Special Rules cannot take away the vested right of the appellants. If they are eligible as per the Government Order dated 23-8-1962, their vested right to be considered against the post, cannot be taken away. They placed reliance on the decisions of this Court in A.A. Calton v. Director of Education [A.A. Calton v. Director of Education, (1983) 3 SCC 33 : 1983 SCC (L&S) 356] , N.T. Devin Katti v. Karnataka Public Service Commission [N.T. Devin Katti v. Karnataka Public Service Commission, (1990) 3 SCC 157 : 1990 SCC (L&S) 446 : (1990) 14 ATC 688] , T.R. Kapur v. State of Haryana [T.R. Kapur v. State of Haryana, 1986 Supp SCC 584 : (1987) 2 ATC 595] , Union of India v. Tushar Ranjan Mohanty [Union of India v. Tushar Ranjan Mohanty, (1994) 5 SCC 450 : 1994 SCC (L&S) 1118 : (1994) 27 ATC 892] and Railway Board v. C.R.*

Rangadhamaiah [Railway Board v. C.R.Rangadham aiah, (1997) 6 SCC 623 : 1997 SCC (L&S) 1527].

The Hon'ble Supreme Court at paragraphs-19 & 20 further held :

19. *Therefore, it is clear that a candidate on making application for the post pursuant to an advertisement does not acquire any vested right for selection. If he is eligible and is otherwise qualified in accordance with the relevant rules, he does acquire right for being considered for selection as per existing rules.*

20. *In N.T.Devin Katti [N.T. Devin Katti v. Karnataka Public Service Commission, (1990) 3 SCC 157 : 1990 SCC (L&S) 446 : (1990) 14 ATC 688] the Court made clear that if the recruitment rules are amended with retrospective effect during the pendency of the selection, in that event the selection must be held in accordance with the amended Rules.*

9. Applying the principles laid down in *M.I.Kunjukunju (supra)* it has to be held that for selecting the candidates, the repealed Act, 1954 cannot be followed.

10. It is borne out from the pleadings of the respective parties that the petitioner's candidature was accepted pursuant to the advertisement and she was considered and her merit was determined which was '73' in the list of successful candidates amongst the total number of 199 candidates.

11. In view of the above, the writ petition is dismissed being devoid of any merit. In the facts and circumstances of the case, there shall be no order as to costs.

(M.S.Sahoo)
Judge