

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OAC) No.4365 of 2012

Nirmal Chandra Nayak Petitioner

-versus-

State of Odisha & Ors. Opposite Parties

CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
02.12.2022

Order No

05. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. D.K. Sahu, learned counsel for the Petitioner and Mr. A.P. Das, learned Addl. Standing Counsel appearing for the State- Opp. Parties and Mr. P.K. Behera, learned counsel appearing for O.P. No. 4.
3. The present writ petition has been filed inter alia with the following prayer:-

“Let the Original Application be admitted, notices be issued to the respondents calling upon them to show cause as to why they shall not be directed to appoint the applicants as Multi Purpose Health Worker (MPHW(M)) against one of the three post reserved for SEBC (men) after quashing the selection of respondent no-4 under Annexure-4, or against any other vacancy out of the selection(Merit) list vide Annexure-3. In the event the respondent fail to show cause or show insufficient cause said relief be granted in favour of the applicant.

And for this act of kindness the petitioner shall as in duly bound ever pray.”

4. It is contended that pursuant to the advertisement issued under Annexure-2 the Petitioner made his application for the post of

MPHW(M). It is further contended that in the final merit list published by the O.P. No. 3 the Petitioner was placed at Sl. No. 64 with having secured 64.810 percentage of mark. It is also contended that the Petitioner had made his application as SEBC candidate and in the advertisement issued under Annexure-2, 12 posts were reserved for SEBC candidate.

5. However, it is contended that in spite of availability of the vacancies in SEBC category the Petitioner was never provided with such appointment, whereas the private Opp. Party No. 4 though had secured less percentage of mark i.e.64.524, but he was provided with such appointment. It is also contended that the Petitioner since had no knowledge about his position in the final merit list, he made his application under the RTI and on being supplied with the same vide letter dtd.03.11.2012 under Annexure-4, he approached the O.P. No. 2 under Annexure-5 to consider his claim for his appointment as against the SEBC vacancies. But when the said claim of the Petitioner was not considered, the present writ petition was filed.

6. Learned Tribunal vide order dtd.17.06.2013 when directed the State Counsel to obtain instruction in the matter it was intimated that since the Panel prepared pursuant to the advertisement issued under Annexure-2 has expired the Petitioner cannot be provided with the appointment.

7. Mr. Das, learned ASC on the other hand submitted that even though the Petitioner was admittedly placed above the private Opp. Party, but he was not provided with such appointment because of the advice by the District Welfare Officer, Bargarh. In Para 4 of the counter it has been stated as follows:-

“That with regards to contents of Para (m) to 6(v) & Para 7,8,9 it is submitted that the District Welfare Officer, Bargarh who is the proper and competent authority to suggest and comment on the 80 point roster and ORV Act in a district, has been endorsed to give his opinion in posting of candidates in different reserved category and as per his advise the posting of the candidates were done. Hence the respondent No.3 has nothing to say beyond his suggestion in the regard & issued the posting order to the bonafide candidates after due approval of proper authority. Further Respondent No.4 who is a general candidate has been posted in UR category in subsequent vacancies as per the suggestion of District Welfare Officer, Bargarh.”

8. Mr. Behera, learned counsel appearing for the private Opp. Party on the other hand submitted that pursuant to the selection and appointment, O.P. No. 4 is continuing as against the post for last 10 years and he will be seriously prejudiced, if any adverse order will be passed against him by this Court.

9. Having heard learned counsel for the Parties and after going through the materials available on record this Court finds that the Petitioner is admittedly placed above the private Opp. Party in the final merit list and in view of the admitted position that 4 posts in SEBC category remained unfilled, the Petitioner should have been provided with such appointment in consideration of representation submitted under Annexure-5. Since this Court finds from the proceeding dt.15.12.2011 under Annexure-A that the selection committee recommended for filling up the unfilled vacancies which include 4 (four) vacant post in SEBC, this Court while disposing the writ petition directs the O.P. No. 3 to consider the claim of the Petitioner and provide him appointment as MPHWM as against any available vacancies in the district of Bargarh. Such an exercise shall be taken up and completed within a period of one month from the date of receipt of this order.

10. The writ petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Sneha

