

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**WPC(OAC) No. 3869 of 2011**

**Malati Majhi**

....

**Petitioner**

Mr. Biren Shankar Tripathy, Advocate

-versus-

**State of Odisha and others**

....

**Opp. Parties**

Mr. P.K.Rout, AGA.

**CORAM:**

**JUSTICE M.S.SAHOO**

**ORDER**

**6.7.2022**

**Order No.**

**4**

1. This matter is taken up through hybrid mode.
2. After hearing learned counsel for the parties, on 16.2.2022 the following order was passed :

*The writ petition having been transferred after abolition of the learned State Administrative Tribunal has been registered before this Court on 23<sup>th</sup> November, 2021.*

*On perusal of the order sheet available, it is found that the matter was never listed after 25.08.2014. By order dated 29.11.2011, learned Tribunal while issuing notice had passed interim order "it is directed that no appointment of Excise Constable in the district of Boudh shall be made without the leave of this Tribunal till the next date."*

*Counter affidavit on behalf of opposite parties was filed verified by the opposite party no.4, Superintendent of Excise, Boudh dated 19.04.2012, filed on 27.04.2012. In the counter, plea is taken that, one candidate who belongs to SCBC (Sic SEBC) category was finally approved for appointment by the Excise Commissioner appointed against the existing vacancy i.e. single post, though three posts were advertised as evident from the advertisement dated 20.07.2010 issued by the Collector, Boudh, wherein the number of vacancies advertised were three, SEBC-1, General Category-1(Women) and ST-1 (Women).*

*In the counter affidavit, it is not disputed that the applicant/petitioner stood 1<sup>st</sup> amongst the women candidate irrespective of the category i.e.*

*she can be treated as Women candidate of the General Category.*

*A far fledged plea has been taken in the counter affidavit that the actual number of vacancies were different to that as advertised on 20.07.2010. The more serious lapse that has been indicated in the counter affidavit that the said mistake came to the knowledge, when the approval of the appointment was sought for from the Excise Commissioner after due selection. This prevaricating stand on behalf of the State in the matter of selection for public employment is the last thing that can be accepted by this Court, much less from the Office of the Collector and the Directorate of Excise.*

*The further matter of concern, is that despite the interim order dated 29.11.2011, the authorities have proceeded to give appointment without seeking any leave from the learned Tribunal and are in contempt having violated the order dated 29.11.2011, as per the sworn affidavit of the Superintendent of Excise.*

*Mr. Mund, learned Addl. Govt. Advocate has sought for adjournment of the matter in order to obtain instructions.*

*Accordingly, the case is to be listed on 16<sup>th</sup> March, 2022.*

*This order be uploaded in the official Website.”*

3. On 16.3.2022, the matter was again adjourned to 29.4.2022. Affidavit dated 25.4.2022 in compliance of the order dated 16.2.2022 has been filed by the Superintendent of Excise, Boudh stating therein that the applicant/petitioner in the present case was appointed as Forest Guard (contractual) in the year 2007 was regularized as Forest Guard in the year 2013 and then she has already joined as Forester under the Department of Forest working as Forester in Badapadar section of Kantamal.

4. Learned counsel for the petitioners submits that he has no up-to-date instruction from the petitioner to pursue the matter at present.

5. Learned AGA submits that the grievance raised in the O.A. regarding non-selection of the petitioner as a constable in the Excise Department since she is already working as Forester which is a Group 'C' post, no cause of action would survive at present to pursue the litigation.

6. Having heard learned counsel for the parties, the writ petition is disposed of as not pressed.

**(M.S.Sahoo)**  
**Judge**

*dutta*

