

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.31227 OF 2022

Dr. Sridhar Panda

.....

Petitioner

Mr. A. Mishra, Advocate

Vs.

State of Odisha & Anr.

.....

Opposite parties

*Mr. H.M. Dhal, AGA
(O.P.1)*

*Mr. P.K. Pasayat, Advocate
(O.P.2)*

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

23.11.2022

Order No.

01

The matter is taken up through hybrid mode.

2. Heard Mr. A. Mishra, learned counsel appearing for the petitioner and Mr. H.M. Dhal, learned Additional Government Advocate appearing for the State-opposite parties.

3. The petitioner has filed this writ petition seeking to quash the order dated 01.07.2021 under Annexure-7 passed by opposite party no.1 and to issue direction to opposite party no.2 to recommend the name of the petitioner for appointment to the post of Assistant Professor in the department of Medicine pursuant to advertisement no.12 of 2018-19 under Annexure-1, as the petitioner is placed at the 5th position in the merit list and further to issue direction to opposite party no.1 to issue letter of appointment forthwith against the vacancies arising out of non-joining of two candidates out of five candidates recommended by OPSC at Annexure-5.

4. Mr. A. Mishra, learned counsel appearing for the petitioner contended that pursuant to advertisement no.12 of 2018-19 under Annexure-1, the petitioner appeared before opposite party no.2-OPSC and was selected. Though his name was placed at the 5th position in the merit list, but he was not given appointment.

Therefore, he approached this Court by filing W.P.(C) No.13115 of 2021, which was disposed of, vide order dated 11.06.2021, with a direction to opposite party no.1 to take a decision on the representation filed by the petitioner and pass appropriate order in accordance with law within a period of three months from the date of production of certified copy of the order. In compliance thereof, opposite party no.1 rejected the representation of the petitioner stating that with due consideration of similar type of representations, the OPSC was requested, vide Health & Family Welfare Department letter dated 11.06.2020 to recommend the names of waiting list candidates, pursuant to the advertisement no.12 of 2018-19, in lieu of candidates who have not joined. But the OPSC in its letter dated 25.08.2020 intimated that as per the requisition of the Government in H & FW Department, the Commission made recommendation to the Department after conducting the recruitment test and no further cause of action arose at their end. The name of the petitioner had not found place amongst ten recommended candidates, pursuant to advertisement no.12 of 2018-19. Furthermore, in response to H & F.W. Department's letter dated 11.06.2020 to recommend names of waiting list candidates, pursuant to the advertisement no.12 of 2018-19, in lieu of candidates who have not joined as Assistant Professor, the OPSC regretted such requisition, vide their letter dated 25.08.2020. It is further contended that similarly situated person, namely, Dr. Rabindra Naik had approached this Court by filing W.P.(C) No.16984 of 2020, which was disposed of, vide order dated 12.05.2022 with a direction that since the name of the petitioner therein was in the select list, as per the recommendation made by the OPSC, pursuant to advertisement no.12 of 2018-19, he shall be given notional benefit of pay and seniority after he actually joins service. Thereby, it is contended that since the name of the petitioner herein finds place in the merit list, he should be

extended the similar benefit, as has been granted to Dr. Rabindra Naik in W.P.(C) No.16984 of 2020.

5. Mr. H.M. Dhal, learned Additional Government Advocate appearing for the State-opposite parties contended that as per requisition made by the Government, OPSC has already recommended the names of the candidates and even though some of the candidates did not join that itself cannot accrue any right in favour of the petitioner to join in the unfilled vacancies. More so, OPSC has not maintained any waiting list and, as such, giving benefit to the petitioner does not arise. It is further contended that the petitioner was selected pursuant to advertisement no.12 of 2018-19 and, as such, the validity of the select list has been over after lapse of one year. Therefore, the petitioner cannot have any right to join against the vacancies due to non-joining of candidates, whose names were recommended by the OPSC. After all, the petitioner is a fence sitter and he has approached this Court, as because one Dr. Rabindra Naik had approached this Court well within the time during the validity of the select list and this Court adjudicated the matter and granted benefit to him.

6. Mr. P.K. Pasayat, learned counsel appearing for opposite party no.2-OPSC contended that even though the petitioner was selected, his name was not recommended by the OPSC, as it has not maintained any waiting list. Thereby, the relief sought cannot be admissible to the petitioner and, therefore, the writ petition should be dismissed.

7. Considering the contentions raised by learned counsel for the parties and after going through the records, it appears that the petitioner seeks relief at par with the relief granted to Dr. Rabindra Naik in W.P.(C) No. 16984 of 2020, but the same is not admissible to him, because Dr. Rabindra Naik had approached this Court during validity of the select list, whereas the petitioner is a fence sitter, who waited and observed what happened in Dr.

Rabindra Naik's case. Thereafter, the petitioner approached this Court by filing this writ petition, after lapse of the validity of the select list, which has been expired after one year. Therefore, the claim of the petitioner at par with Dr. Rabindra Naik cannot be sustained in the eye of law.

8. Hence, the writ petition merits no consideration and the same is accordingly dismissed.

Alok

DR. B.R. SARANGI, J.

