

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 2252 of 2017

*Bhaktabandhu Pradhan and
others*

.....

Petitioners

Mr. P.K. Mohanty, Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. S. Jena, SC, S&ME Deptt

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

06.09.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. P.K. Mohanty, learned Counsel for the Petitioners and Mr. S. Jena, learned Standing Counsel for S&ME Department.

3. The Petitioners have filed this writ petition seeking to quash the provisional select list under Annexure-6 dated 19.06.2017 and to direct the opposite parties to select them against the post of Principals of Odisha Adarsha Vidyalayas in the State of Orissa pursuant to the advertisement dated 09.01.2017 within a stipulated time.

4. Mr. P.K. Mohanty, learned counsel for the Petitioners contended that out of 151 posts of Principals of Odisha Adarsha Vidyalayas only 30 posts have been filled up, which has been placed on record under Annexure-6 dated 19.06.2017. Therefore, he contended that the petitioners should be selected and appointed as Principals against the rest of the posts which are lying vacant, for which they have approached this Court in the present writ petition.

5. Mr. S. Jena, learned Standing Counsel for School & Mass Education Department contended that the contention made by learned counsel for the petitioners is totally different than the relief claimed by

the petitioners as because the petitioners have filed this writ petition seeking to quash the select list under Annexure-6 and to direct the Opposite Parties to select them against the post of Principals by issuing appointment orders. Therefore, he contended that the present writ petition is liable to be dismissed on the ground of *non-joinder* of parties since the candidates named in the select list under Annexure-6 have not been made parties to the present writ petition. Once the petitioners seek to quash the select list, it is incumbent upon the petitioners to implead such selected persons as party, since they are the necessary party to the proceeding itself. The same having not been done, the writ petition suffers from *non-joinder* of the parties. To substantiate his argument, reliance has been placed to the judgments of the apex court in the case of ***Arun Tewari and others v. Zila Mansavi Shikshak Sangh and others***, (1998) 2 SCC 332 and ***Public Service Commission, Uttaranchal v Mamta Bisht and others***, (2010) 12 SCC 204.

6. Having heard learned counsel for the parties and after going through the record, it appears that though the petitioners seek for quashing of the select list under Annexure-6 dated 19.06.2017, wherein the names of 30 selected candidates have been mentioned, they have not been made parties to the writ petition. Therefore, the writ petition suffers from *non-joinder* of parties and as such, the writ petition is not maintainable.

7. In ***Arun Tewari*** (supra), the apex Court held that all the original applications before the Tribunal who have challenged the provisions for recruitment of Assistant Teachers under the Operation Black Board Scheme did not possess the requisite qualifications for being selected under the said scheme as Assistant Teachers. Their names do not figure among the lists forwarded by the concerned District

Employment Exchanges. Surprisingly, the applications filed by all these persons and/or groups before the Tribunal did not make the selected/appointed candidates who were directly affected by the outcome of their applications, as party respondents. The Tribunal has passed the impugned order without making them parties or issuing notice to any of them. The entire exercise is seriously distorted because of this omission. Therefore, the decision of the tribunal is vitiated. Applying the said ratio to the present case, since the selected candidates have not been made parties to the present case, the writ petition is not maintainable.

8. In ***Mamta Bisht*** (supra) the apex court held that if the selection process is under challenge and all vacancies advertised have already filled up before the writ petition filed and not a single successful candidate has been impleaded before the High Court, then the last selected candidate in that category was a necessary party and *non-joinder* of necessary party was thus fatal. If a person who is likely to suffer from the order is not impleaded as a party, the principle of natural justice are violated and the principles enshrined in Order 1, Rule 9 CPC are applicable to writ proceedings.

9. In view of the above since the writ petition has been filed without impleading the selected candidates as parties to the writ petition, the writ petition suffers from *non-joinder* of parties and, therefore, this Court is not inclined to entertain the writ petition, which is accordingly dismissed.

(DR. B.R. SARANGI)
JUDGE

Arun