

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OA) No.890 of 2019

Nabhendu Mullick

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

05.12.2022

Order No

03. I.A. No. 417 of 2022

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Learned counsel for the Petitioner submitted that he does not want to press this I.A.
3. Accordingly, I.A. is dismissed as not pressed.

(Biraja Prasanna Satapathy)
Judge

04. W.P.(C)(OA) No.890 of 2019

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. P.K. Mahapatra, learned counsel for Petitioner and Mr. A.P. Das, learned Addl. Standing Counsel for the State-Opposite Parties.
3. The present Writ Petition has been filed with the following prayer:-

“(i) That the Hon’ble Tribunal may please to direct the State Respondents to review the DPC held on 22.12.2018 and promote the applicant to the post of Assistant Director against an unreserved vacancy from the date of promotion of respondent no. 4 to 8, if required, by quashing the notification at Annexure-4 in respect of them.

(ii) The Hon’ble Tribunal may please to direct to extend the applicant all consequential service and financial benefits.

(iii) Any other relief(s), the Hon’ble deem fit and proper.”

4. Learned counsel for the Petitioner submitted that the Petitioner though was senior to the private Opposite Party Nos.4 to 8, but he was not considered for promotion in the D.P.C held on 22.12.2018.

5. Learned counsel for the Petitioner further submitted that even though during the relevant time, the Petitioner was eligible for promotion to the post of Assistant Director, but his case was not taken up for consideration by the D.P.C in its proceeding held on 22.12.2018.

6. Learned counsel for the Petitioner submitted that only when the order of promotion was issued in favour of the private Opposite Party Nos.4 to 8, the Petitioner could come to know that his case has not been considered and he has been denied promotion, even though persons junior to him i.e. private Opposite Party No.4 to 8 have been given promotion vide Notification dated 01.01.2019.

7. Mr. Mahapatra, learned counsel for the Petitioner submitted that during pendency of the matter before this Court, the Petitioner was extended with such benefit of promotion to the post of Assistant Driver vide Notification dated 07.07.2022 under Annexure-6.

8. Learned counsel for the Petitioner submitted that similar issues as involved in the present case was considered by the learned Tribunal in its order dated 16.11.2018 passed in O.A. No.701/2018 vide Annexure-5. Learned Tribunal in the said case while considering similar nature of dispute directed the Opposite Parties therein to conduct a review D.P.C and observed that if the applicants therein are found suitable they be given promotion from the date their juniors were given such promotion. Mr. Mahapatra, learned counsel for the Petitioner prayed for extension of similar relief.

9. Mr. Das, learned State Counsel on the other hand made his submission basing on the stand taken in the counter affidavit.

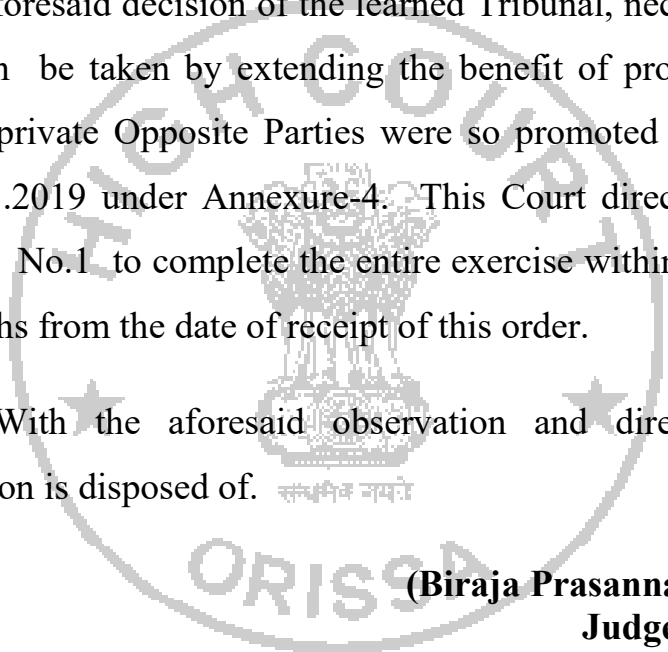
10. Learned counsel for the State submitted that as the Petitioner belongs to Scheduled Caste category, his case was not considered as by the time the D.P.C was conducted on 22.12.2018, 2 posts meant for Scheduled Caste category were filled up by persons placed above the Petitioner in the gradation list in the said category.

11. Mr. Mahapatra, learned counsel for the Petitioner on the other hand taking into account the stand taken by the learned State counsel submitted that in view of his position in the gradation list and the Petitioner being admittedly senior to the private Opposite Party Nos.4 to 8, his case should have been considered as against U.R vacancy and similar issue after being considered by the learned Tribunal in the above mentioned Original Application, direction was issued to Opposite Parties to conduct review D.P.C.

12. Heard learned counsel for the Parties.

13. Perused the materials available on record. This Court after going through the same finds that the claim made by the Petitioner in the present Writ Petition is covered by the decision rendered by the learned Tribunal on 16.11.2018 in O.A No.701/2018.

14. Therefore, this Court while holding so directs the Opposite Party No.1 to conduct a review D.P.C and take a fresh decision with regard to eligibility of the Petitioner to get the benefit of promotion and if it is ultimately found that the Petitioner is in fact senior to the private Opposite Party Nos.4 to 8 and is covered by the aforesaid decision of the learned Tribunal, necessary follow-up action be taken by extending the benefit of promotion from the date private Opposite Parties were so promoted vide order dated 01.01.2019 under Annexure-4. This Court directs the Opposite Party No.1 to complete the entire exercise within a period of four months from the date of receipt of this order.

15. With the aforesaid observation and direction, the Writ Petition is disposed of. 

(Biraja Prasanna Satapathy)
Judge

Sneha