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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. Nos.938 and 968 of 2021

In W.A. No.938 of 2021

Odisha Public Service Commission* *Appellant

Mr. S.B. Jena, Advocate

-versus-

Varsachala Chetan and another* *Respondents

Mr. D.N. Pattnaik, Advocate

In W.A. No.968 of 2021

Odisha Public Service Commission* *Appellant

Mr. S.B. Jena, Advocate

-versus-

Mamali Madhusmita Patra and others* *Respondents

Mr. D.N. Pattnaik, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH**

ORDER

12.10.2022

Order No.

Dr. S. Muralidhar, C.J.

01. 1. Both these appeals are directed against the common judgment dated 18th November 2021 passed by the learned Single Judge allowing W.P.(C) Nos.18119 and 18127 of 2019. By the impugned judgment, a direction was issued to the Odisha Public Service Commission (OPSC) (the Appellant herein) to call upon writ petitioners i.e., the Respondent No.1 in each of the appeals, to appear in the interview for the post of Dental Surgeon in Group-A (Jr.) of the Odisha Medical Service (Dental) cadre for SC and ST

candidates under the Health and Family Welfare Department pursuant to the Advertisement No.6 of 2018-19 before a Special Selection Committee and to complete the exercise within a period of three months.

2. Notice. Mr. D.N. Pattnaik, learned counsel accepts notice on behalf of Respondent No.1 in both the appeals. Since the entire pleadings before the learned Single Judge is already before this Court and arguments have been heard at length, the Court proceeds to dispose of the present appeals at this stage itself.

3. The background facts are that Respondent No.1 in both the writ appeals applied pursuant to the aforementioned advertisement for the post of Dental Surgeon (Group-A) (Junior). In the advertisement as far as the requirement of “Educational Qualification” was concerned, the stipulation was as under:

“ **EDUCATIONAL QUALIFICATION:** (i) A candidate must have possessed a Bachelors Degree in Dental Surgery (BDS) or equivalent Degree from a Medical College or Medical Institution recognized by the Dental Council of India (DCI).

(ii) Have possessed a registration certificate under the Dentists Act-1948.

(iii) Have possessed required Conversion Certificates recognized by Dental Council of India (DCI) in case of candidates having Degree from Universities of Foreign Countries.”

4. The closing date was 11th October 2018 for submission of the completed application forms. Under the heading “Other Eligibility Conditions” *inter alia* it was stated in Sub Clause-(vii) as under:

“(vii) Only those candidates, who possess the requisite qualification and within the prescribed age limit etc by the closing date of receipt of online application, will be considered eligible;”

5. The application had to be accompanied by certain documents. Clause-10 of the advertisement set out 17 documents to be enclosed with the application. It must also be noted here that under Clause 10 (v) of the advertisement, one of the documents to be submitted was the “Compulsory Housemanship Completion Certificate” and in Sub Clause (vi) the Medical Registration Certificate under the Dentist Act, 1948. Note-2 below Clause 10 read as under:

“Note-2: Degree certificate, caste certificate, odia test pass certificate, discharge certificate of ex-Servicemen and disability certificate of PWD candidates (indicating % of permanent disability) must have been issued by the competent authority within the last date fixed for receipt of online applications.”(emphasis in original)

6. As far as both the candidates are concerned, the admitted position is that they did not ‘possess’ the registration certificate under the Dentists Act, 1948 (Act) by the last date of submission of the completed application form i.e. 11th October, 2018.

7. As far as Respondent No.1 in W.A. No.938 of 2021 is concerned, the provisional certificate as regards completion of the final examination in the BDS course was issued by the Utkal University

on 11th July 2019 and the Odisha Dental Council issued its certificate under the Act on 12th July, 2019.

8. As regards Respondent No.1 in W.A. No.968 of 2021 is concerned, the provisional certificate by the Utkal University was issued on 30th January 2019, and the certificate of the Odisha Dental Council was issued only subsequently.

9. Unless, a candidate completes the housemanship, the provisional degree certificate for the BDS course cannot be issued. Without the provisional certificate being issued by the University, the Odisha Dental Council cannot issue the registration certificate under Section 34 of the Act. In terms of the Note-2 under Clause-10 of the advertisement, these certificates had to be issued “within the last date fixed for receipt of online applications”.

10. Even otherwise in terms of the wording in Clause-3 pertaining to “Educational Qualification”, the words used are that the candidate “must have possessed” the BDA certificate and in Sub Clause-(ii) “have possessed” a registration certificate under the Act”. The words “have possessed” means that by the time of last date of submission of application form, a candidate should already have in hand both these certificates i.e, the BDS certificate (even if it is provisional) and the registration certificate under the Act. This is definitely a mandatory requirement of the advertisement.

11. The learned Single Judge has accepted the plea of Respondent No.1 in both the appeals that since they were called to appear in the

written examination, it must be taken that they had satisfied the requirements of the advertisement. Invoking Section 115 of the Evidence Act 1872, the learned Single Judge has opined that the Appellant OPSC was estopped from rejecting their candidature once they had been allowed to sit for the examination. In para 21 of the impugned judgment, it has been observed as under:

“21. It is of relevance to note that, the petitioner has not violated any of the conditions and instructions issued by the Orissa Public Service Commission, which is mandatory. Though it was stated that the candidates were allowed provisionally, mere mentioning of the word ‘provisional’ cannot debar the petitioner from satisfying the requirement of conditions stipulated in the advertisement itself. If the petitioner has satisfied the requirement issued in the advertisement and by the time of verification of the documents, the petitioner had possessed the required documents, in that case, rejection of his candidature on the ground that he does not possess the minimum qualification as on the last date of submission of application, cannot sustain in the eye of law.”

12. Having heard learned counsel for the parties, the Court is of the view that the learned Single Judge was in error in coming to the above conclusion since factually by the time of the last date for submission of the completed applications neither candidates possessed a provisional BDS degree or the registration certificate under the Act, both of which are compulsorily required to be possessed by them. The crucial date for determining eligibility is the last date for submission of applications i.e., 11th October, 2018. Factually, by that date, neither candidate possessed the requisite qualification.

13. It is a well settled proposition that there is no estoppel against law. If the candidate does not possess the requisite educational qualification by the date of submission of the application, such candidate cannot be considered for the post in question notwithstanding that such candidate may have been allowed to sit for the written examination.

14. In *Bedanga Talukdar v. Saifudullah Khan (2011) 12 SCC 85*, it was held that:

“29. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.”

15. In *State of Bihar v. Madhu Kant Ranjan 2021 SCC OnLine SC 1262*, the Supreme Court reiterated that:

“16. As per the settled proposition of law, a candidate/applicant has to comply with all the conditions/eligibility criteria as per the advertisement before the cut-off date mentioned therein unless extended by the recruiting authority. Also, only those documents, which are submitted along with the application form, which are required to be submitted as per the advertisement have to be considered. Therefore, when the respondent No. 1 - original writ petitioner did not produce the photocopy of the NCC ‘B’ certificate along with the original application as per the advertisement and the same was submitted after a period of three years from the cut-off date and that too after the physical test, he was not entitled to the additional five marks of the NCC ‘B’ certificate. In these circumstances, the Division Bench of the High Court has erred in directing the appellants to appoint the respondent No. 1 - original writ petitioner on the post of Constable considering the select list dated 08.09.2007 and allotting five additional marks of NCC ‘B’ certificate.”

16. In the instant case, the advertisement makes it abundantly clear that “application/candidature of a candidate shall be rejected at any stage of the recruitment process when discrepancies noticed/detected”. Therefore, merely because the candidate was allowed to sit for the examination would not preclude the OPSC from rejecting the candidature if it is found, even at the stage subsequent to the result of the written examination, a candidate was in fact not qualified by the last date for submission of the application form.

17. Consequently, this Court is unable to sustain the impugned judgment of the learned Single Judge and it is hereby set aside. The writ appeals are allowed, but in the circumstances, with no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S.K. Guin

