

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.40212 of 2021

Sailendra Prasad Bissoyi

.....

Petitioner

Mr. S. Mallik, Adv.

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. S.K. Samal, AGA

CORAM: MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

28.09.2022

Order No.

05.

This matter is taken up through hybrid mode.

2. Heard learned Counsel for the Petitioner, so also learned Counsel for the State.

3. In the present Writ Petition, the Petitioner has prayed to direct the Opposite Party No.3 to accept his joining report, pursuant to his selection and appointment as Cook-Helper, in terms of Order dated 16.12.2021, as at Annexure-2, with further prayer to declare that the demand of the Opposite Party No.3 to submit Hotel Management & Catering Technology pass Certificate for selection and appointment in terms of the advertisement to be illegal and unwanted.

4. The factual matrix leading to filing of the present Writ Petition is that on 24.12.2018 an Advertisement was published by the Opposite Party No.3 inviting applications for appointment to different Posts for the Schools managed by the Opposite Parties, and pursuant to such Advertisement, the Petitioner submitted his application for the Post of Cook-Helper.

5. As per the said Advertisement, the minimum eligibility criteria prescribed for the Post of Cook-Helper was Class-VIII pass with knowledge of cooking and the criteria for selection was Cooking Skill 70% (Veg. and Non Veg.), Preferences 10% (Preferences will be given to Widow/Divorcee/Unmarried women of age 30 years or above) and Interview 20%.

6. It is further case of the Petitioner that though the only requirement was Class-VIII pass, since he was a student in the Hotel Management Catering Technology and Applied Nutrition at Bhubaneswar but he has not appeared the Examination and could not obtain the Certificate, in order to prove his skill in cooking he made a mention in his application regarding his prosecution of study in Hotel Management Catering Technology. In skill test, his skill in cooking was found highly satisfactory and he was selected.

7. The Petitioner became successful in the recruitment and selected for the Post of Cook-Helper. Accordingly, vide Order dated 16.12.2021, the Opposite Party No.2 appointed the Petitioner on contractual basis against the Post of Cook-Helper mentioning therein that he was selected in the interview, which was conducted on 30.09.2021, so also in the skill test held on 11.11.2021 and vide the said appointment Order dated 16.12.2021, as at Annexure-2, he was posted to the School for the Hearing Impaired (Deaf) Sunabeda and also directed to appear before the Opposite Party No.3 within 15 days from the date of issue of such appointment Order. That apart, he was instructed vide the said appointment Order to bring various documents as detailed in the appointment Order dated 16.12.2021.

8. In pursuance of the said Order dated 16.12.2021, the Petitioner submitted his joining report on 18.12.2021 along with the required documents, which were verified by the Opposite Party No.3 and found to be correct. However, the Opposite Party No.3 demanded the Hotel Management Catering Technology Certificate, which was not the requirement for selection to the Post of Cook-Helper as per the Advertisement dated 24.12.2018. Though Petitioner has conducted the course of Hotel Management Catering Technology, he has not appeared in the Examination and not obtained the Certificate to the said effect and in order to prove his skill in cooking, he made a mention in his application regarding the fact that he prosecuted the study in Hotel Management Catering Technology. That apart, it has been pleaded that in the skill test, his skill in cooking was found satisfactory. Accordingly, he was selected and the Opposite Party No.2/appointing Authority has issued the appointment Order.

9. Despite issuance of such appointment Order by the Competent Authority, the Opposite Party No.3 is not accepting the joining report of the Petitioner on the plea of failure to produce the Certificate in Hotel Management Catering Technology.

10. Being noticed, the contesting Opposite Party Nos. 2 and 3 have filed their Counter basically opposing to the prayer made in the Writ Petition on the ground that the term “Knowledge of Cooking” mentioned in the Advertisement indicates that a candidate, who applied for the post, should have any experience or any course/studies/knowledge related to cooking. The Petitioner admitted that he joined in the Course of Craftsmanship Course in

Food Production and Patisserie in the Institute of Hotel Management Catering Technology and Applied Nutrition, Bhubaneswar, but not appeared in the Examination and obtained the Certificate, which indicates that the Petitioner is a disqualified/drop out student of that Institution. It has also been stated in the Counter Affidavit that the Petitioner has not attended the cooking skill test, which was held on 11.11.2021. It is further stated that the Petitioner along with other two candidates were exempted from cooking test due to having cooking course/experience document and that was decided during the Selection Committee Meeting presided over by the Collector, Koraput-Cum-President, Red Cross & Rotary Society for Handicapped, Koraput. During the time of advertisement, the Petitioner was a student but after about three years, he should have passed the course. But, he failed to qualify the course and submit the pass Certificate. Hence, the Opposite Party No.3 is justified in not accepting the joining report of the Petitioner though he was appointed as Cook-Helper vide Office Order dated 16.12.2021.

11. In view of such stand taken by the State in its Counter Affidavit, this Court vide Order dated 06.09.2022, directed the learned Counsel for the State to produce application of the Petitioner along with enclosures, as submitted by the Petitioner for appointment to the Post of Cook-Helper, pursuant to advertisement dated 24.12.2018. In obedience to the Order dated 06.09.2022, the learned Counsel for the State produces before the Court the written instructions supplied by the DSSO-Cum-Secretary, RC & RSH, Koraput vide his letter dated 13.09.2022, to which photocopies of a bunch of documents have been annexed as

Annexures-I, II, III, IV, V, VI, VII and VIII.

12. Annexure-III is the photocopy of the application of the Petitioner, wherein it has been clearly indicated that the Petitioner has appeared in the Examination of H.S.C. and Certificate Course in Food Production and there is no declaration to the effect that he has already passed the said Course. That apart, it is amply clear from the photocopy of the Proceedings of the Selection Committee Meeting held on 01.11.2021 that as at Annexure-VII the said Selection Committee Meeting was held on 01.11.2021 for finalization of candidates for filling up of 7 number of vacancies in the School for Visually Impaired, Koraput, and two number of vacancies in the School for the Hearing Impaired, Sunabeda, through interview conducted on 01.11.2021, at 4.00 P.M., in the Conference Hall of Collector, Koraput, wherein the name of the present Petitioner does not find place. It may not be out of place to mention that in the said Proceedings of the Selection Committee Meeting, it has been observed as follows:

“ It is also seen that during the interview of Cook Helper post there is No Cooking Skill test was done by the Committee Member except interview. Hence during the meeting the Esteemed Collector, Koraput has order to conduct the Cooking Skill test (Practical) for the candidates who were attend the interview which was held on 30.09.2021 and the candidates who have cooking experience or any qualification relates to cooking shall be exempted from the cooking test and the Cooking skill test shall be held at Skill Development Training Centre, Near Govt. High School, Koraput on 11.11.2021 (Thursday) in presence of all the selection committee members.

This Meeting was ended with vote of thanks to the Chair.”

(Emphasis supplied)

13. However, as is revealed from the Proceedings of the Selection Committee Meeting held on 04.12.2021, as at Annexure-VIII, produced along with the letter of instructions dated 13.09.2022 filed before this Court, another Selection Committee Meeting for finalization of candidate for filling up one number of Post of Cook-Helper in the School for the Hearing Impaired, Sunabeda (after completion of interview and Cooking Skill Test) was conducted on 04.12.2021, at 5.00 P.M., in the Conference Hall of the Collector, Koraput. The Meeting was presided over by the District Magistrate & Collector, Koraput, as the Chairman of the Selection Committee. It is revealed from the said Proceedings of the Selection Committee Meeting held on 04.12.2021 that Cooking Skill Test was conducted by the Jury Member and Selection Committee Member and the weightage sheet was prepared as per the criteria in advertisement, pursuant to which the present Petitioner was selected for the Post of Cook-Helper and the Committee resolved to issue appointment Order in favour of the present Petitioner, which reads as follows:

“ As per the direction of Esteemed Collector, Koraput & unanimously agreed by the committee member in the meeting held on 01.11.2021, the Cooking Skill Test for the said post has been conducted on 11.11.2021 at School for the Visually Impaired, Koraput and the Candidates who have any cooking knowledge or experience they are exempted from the skill test & they shall be awarded full marks. So out of the 13 candidates total 10 candidates are called for the Skill Test and out of the 10 candidates 8 candidates attended skill test as per the schedule.

As the Cooking Skill Test conducted by the Jury Member and Selection committee member the weight age sheet has been prepared as per the criteria in advertisement and the candidate whose name is mentioned below is selected for the post & the appointment order shall be issued later

accordingly.

Name of the Post	Name of the Selected Candidate	Address	Place of Posting
Cook Helper	SAILENDRA PRASAD BISSOYI	AT-DURG INSPECTOR OFFICE BACK SIDE PO-NABARANGPUR, VIA/DIST: NABARANGPUR, PIN-764 059	School for Hearing Impaired (Deaf), Sunabeda

(Emphasis supplied)

14. In the Proceedings of the Selection Committee Meetings held on 01.11.2021, it was resolved that a candidate, who has cooking experience or any qualification relating to cooking shall be exempted from the cooking test and the cooking skill test. Further, in the Proceedings of Selection Committee Meeting held on 04.12.2021, it was also resolved that the candidates, who have any cooking knowledge or experience, are exempted from the skill test and they shall be awarded full marks.

15. Though a stand has been taken in the Counter Affidavit filed by the Opposite Party Nos. 2 and 3 that the Petitioner has not attended the cooking test, which was held on 01.11.2021, and he did not appear in the Examination and obtain Certificate with regard to Course in Hotel Management and catering Technology, to the contrary, it is well revealed from the Proceedings of the Selection Committee Meeting held on 04.12.2021 that a Cooking Skill Test was conducted by the Jury Member and Selection Committee Member pertaining to the present Petitioner and weight age sheet has been prepared as per the criteria in advertisement and pursuant to the same, he was selected for the

Post of Cook-Helper and Committee took a decision to issue appointment Order in favour of the Petitioner.

16. Admittedly, as per the terms and conditions of the Advertisement dated 24.12.2018 for the Post of Cook-cum-Helper, the eligibility criteria is Class-VIII pass with knowledge of cooking. Knowledge of cooking does not mean as to acquiring any qualification in cooking. Though the Petitioner in his Application Form dated 28.12.2018 made a mention with regard to appearing in the Examination in the Course of Food Production as an additional qualification/experience in his favour, but that was never the minimum eligibility criteria for applying to the post of Cook-Helper in terms of the Advertisement dated 24.12.2018.

17. Hence, this Court is of the view the Opposite Party No.3 was not justified to put a note in Annexure-4 mentioning a condition therein to submit the pass/valid Certificate and Mark Sheet from the mentioned Institution, as detailed in the remarks columns of Annexure-4 as one of the pre-condition to accept the joining report of the Petitioner.

18. Had that been one of the pre-conditions, enable the Petitioner to join in the Post of Cook-Helper, he would not have been asked to appear in the cooking skill test conducted by the Jury Member and Selection Committee Member as is being revealed from the Proceedings of the Committee Members held on 04.12.2021.

19. Needless to reiterate that it is well evident from both the Proceedings of the Selection Committee Meeting held on

01.11.2021 and 04.12.2021, candidates having knowledge in cooking experience and qualification relating to cooking are exempted from the cooking test/cooking skill test, whereas the Petitioner was asked to face the cooking skill test, wherein he was found to be qualified in pursuance of which Committee took a decision to appoint him as Cook-Helper, vide Proceedings of the Selection Committee Meeting dated 04.12.2021.

20. In view of such admitted facts, as revealed from the documents produced before this Court by the learned Counsel for the State today, this Court is inclined to allow the Writ Petition.

21. Accordingly, the Writ Petition is allowed and stands disposed of.

22. The Opposite Party No.3 is directed to allow the Petitioner to join in his Post of Cook-Helper immediately on communication of this Order and perform his duty as such.

23. A photocopy of the instructions in form of letter dated 13.09.2022 along with its enclosures received by the learned Counsel for the State from the concerned Authority, be kept on record.

Urgent certified copy of this Order be granted on proper application.

padma

(S.K. MISHRA)
JUDGE