IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C(OA) No.290 of 2019

Sashi Sekhar Rath .... ***Petitioner***
Mr. J.N. Jena, Advocate

-versus-

State of Odisha and others ....

Opposite Parties
Mr. A. Tripathy, AGA

CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
17.12.2024

Order No.

05. **1.** This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Learned counsel for the petitioner contended that he does not intend to file rejoinder to the counter affidavit filed by O.P. No.2.

3. Perused the Tracking Report. Since notice has been duly served on O.P. Nos.4 and 5 and nobody has entered appearance, notice against the O.P. Nos.4 and 5 is treated as sufficient.

4. Heard Mr. J.N. Jena, learned counsel for the petitioner and Mr. A. Tripathy, learned Addl. Govt. Advocate for the State.

5. The present Writ Petition has been filed *inter alia* with the following prayer:-

> *"(i) Issue appropriate writ direction or order quashing Annexure-9 and Annexure-14.*
>
> *(ii) Direct the Respondent No.2 to consider the case of the applicant for appointment to the post of Research Assistant by convening a fresh Departmental Selection Committee."*

6. It is contended that initially vide notice dated 11.06.2014 so issued by O.P. No.2, applications were invited to fill up 2 (two) Ex-cadre post of Research Assistant (Non-Gazetted). It is contended that pursuant to the advertisement issued under Annexure-1, petitioner not only made the application but also his application was forwarded to O.P. No.2 vide letter dated 21.06.2014 under Annexure-2.

6.1. It is contended that O.P. No.4 who never made any application pursuant to Annexure-1, when made a representation before O.P. No.3 to enroll his name as a candidate for the post of Research Assistant, in respect of the notice issued by O.P. No.2 under Annexure-1, in order to accommodate him, a fresh notice was issued by O.P. No.2 on 08.09.2016 under Annexure-5. Vide the said fresh notice issued on 08.09.2016, applications were once again invited to fill up 2 (two) Ex-cadre post of Research Assistant (Non-Gazetted).

6.2. It is contended that in terms of the 2nd notice issued on 08.09.2016 under Annexure-5, petitioner again made

his application which was duly forwarded vide letter dated 07.09.2016 under Annexure-6. It is however contended that even though petitioner was otherwise eligible for his selection and appointment against the post in question pursuant to Annexure-5, but O.P. No.4 and 5 were appointed vide order dated 14.03.2017 so issued by O.P. No.2 under Annexure-9.

6.3. It is the main contention of the learned counsel for the petitioner that O.P. No.4 and 5 never made any such application to get the benefit of appointment pursuant to the 2nd notice issued on 08.09.2016 under Annexure-5. Such a stand is taken by the petitioner in Para-6.7 of the Writ Petition which reads as follows:-

> *"6.7. That the applicant who was also fulfilling the requisite qualification & service experience in terms of Annnexure-6 document applied for the post under Annexure-6 dtd.17.09.2016 through proper channel within the stipulated date. Under Annexure-6, the last date of receipt of application was on or before 23.09.2016. the applicant came to know through RTI communication, that pursuant to the present advertisement for the second time, he was only single applicant for the post, as is evident from Annexure-7 dtd.11.10.2017. Thus it is clear that pursuant to the advertisement under Annexure-5, the applicant was the only candidate for the post of Research Assistant and nobody else, not even the Respondents 4 & 5 were the applicants."*

6.4. It is contended that pursuant to the Advertisement under Annexure-5, applicant was the only candidate for the post of Research Assistant and nobody else, not even O.P. Nos.4 and 5 were the applicants. It is contended that in order to substantiate his stand that O.P. Nos.4 and 5

never made the application pursuant to Annexure-5 when information was sought for under RTI, the PIO working in the office of O.P. No.2 vide Annexure-7 only indicated that letter No.439 dated 17.09.2016 has been issued by the Sub-Collector, Sadar, Cuttack in that regard.

6.5. It is contended that since O.P. Nos.4 and 5 never made their applications to get the benefit of appointment pursuant to the notice issued on 08.09.2016 under Annexure-5, they should not have been selected and appointed in place of the petitioner who was the only applicant pursuant to the earlier notice issued on 01.06.2014 under Annexure-1 and subsequent notice issued on 08.09.2016 under Annexure-5.

6.6. It is contended that challenging the selection and appointment of O.P. Nos.4 and 5, petitioner initially approached the Tribunal by filing O.A. No.2159 of 2017. The Tribunal vide order dated 18.12.2017 under Annexure-13, when directed to O.P. No.1 to consider the petitioner's grievance with regard to selection and appointment of O.P. Nos.4 and 5, ignoring the claim of the petitioner, vide order dated 18.12.2017 under Annexure-13, claim of the petitioner has been rejected by O.P. No.1 vide the impugned order dated 21.02.2018 under Annexure-14.

6.7. It is contended that O.P. No.1 by taking a plea that due to non-availability of CCR/NRC for the last 4 (four)

years, claim of the petitioner was not considered. It is contended that since the recruitment is against 2 ex-cadre post of Research Assistant by way of direct recruitment, non-availability of CCR is not a ground to reject the claim of the petitioner. It is also contended that in the notice issued under Annexure-5, there is no such stipulation that CCRs of the candidates who made the application are required to be taken into consideration for such selection and appointment.

6.8. It is further contended that even though while approaching the Tribunal in O.A. No.2159 of 2017, a stand was taken that O.P. Nos.4 and 5 do not have the eligibility criteria nor they had made their applications pursuant to Annexure-5, but the said fact has not been taken into consideration by O.P. No.1, while rejecting petitioner's claim vide the impugned order dated 21.02.2018 under Annexure-14.

6.9. It is accordingly contended that since O.P. Nos.4 and 5 never participated in the selection process pursuant to Annexure-5, their selection and appointment vide order dated 14.03.2017 under Annexure-9 and consequential rejection of the petitioner's claim vide order dated 21.02.2018 under Annexure-14 are not sustainable in the eye of law.

7. Mr. A. Tripathy, learned Addl. Govt. Advocate on the other hand placing reliance on the counter affidavit filed

by O.P. No.2, contended that since CCRs of the present petitioner for last 4 years was not available with the O.P. No.3 nor any NRC was issued in that respect, case of the petitioner was not considered by the Departmental Selection Committee for selection the post of Research Assistant. Stand taken in Para-6 of the counter affidavit reads as follows:-

> *"6. In Reply to Para-6.9 of O.A., it is submitted that, the applicant had outstanding C.C.R. for the year 2007-08, 2008-09 (01.04.2008 to 05.02.2009) and 2010-11 (13.08.2010 to 31.03.2011). Since, the Departmental Selection Committee held on 27.02.2017 to consider selection of eligible candidates against 2 nos. of vacancies in the post of R.A., C.C.Rs. ratings for the last 5 years i.e. for 2011-12, 2012-13, 2013-14, 2014-15 & 2015-16 were verified by the Committee for consideration. As the C.C.Rs of the applicant for last four years was not available with the Registrar of Co-operative Societies, Odisha nor any NRC was issued in that respect as reported by the Administrative officer of the Registrar of Co-operative Societies, Odisha, so the case of the applicant was not considered by the Departmental Selection Committee for selection to the post of Research Assistant."*

7.1. Learned Addl. Govt. Advocate accordingly contended that since CCRs of the petitioner for the last 4 years was not made available, the departmental selection committee did not found the petitioner eligible to get the benefit of appointment while recommending the names of O.P. Nos.4 and 5 for the said post and consequential order of appointment issued in their favour vide order dated 14.03.2017 under Annexure-9.

7.2. It is accordingly contended that on due consideration of the petitioner's claim pursuant to the

order passed by the Tribunal under Annexure-13, claim of the petitioner has been rightly rejected vide order issued under Annexure-14.

8. Since nobody has entered appearance on behalf of O.P. Nos.4 and 5 in spite of due service of notice, this Court has got no occasion to know their stand, as to whether they have made any applications pursuant to Annexure-5.

9. Having heard learned counsel for the parties and considering the submissions made, this Court finds that to fill up 2 ex-cadre post of Research Assistant (Non-Gazetted), O.P. No.2 issued a notice on 11.06.2014 under Annexure-1. As found, petitioner's application pursuant to Annexure-1 was forwarded vide letter dated 21.06.2014 under Annexure-2. But thereafter when a fresh notice was issued by O.P. No.2 on 08.09.2016 under Annexure-5 to fill up the said 2 ex-cadre post of Research Assistant (Non-Gazetted), petitioner again made the application which was duly forwarded vide letter dated 17.09.2016 under Annexure-6.

9.1. As found, in the notice issued under Annexure-5, there is no such requirement that for consideration of the application to be made by the respective candidates, availability of CCRs is a requirement. It is also found that even though petitioner made the application under RTI to get the names of the candidates who made their

applications pursuant to Annexure-5, but such information was not provided while providing such information vide Annexure-7.

9.2. It is also found that in the counter affidavit filed by O.P. No.2, no contrary stand has been taken regarding the stand taken by the petitioner in Para-6.7 of the Writ Petition that O.P. No.4 and 5 never made their applications pursuant to Annexure-5. Since no document has been filed by O.P. No.2, showing that O.P. No.4 and 5 participated in the selection process pursuant to Annexure-5, this Court in absence of any such documents, is inclined to accept the contention raised by the learned counsel for the petitioner that O.P. Nos.4 and 5 never made their applications pursuant to Annexure-5.

9.3. Since O.P. Nos.4 and 5 never participated in the selection process pursuant to Annexure-5 nor they are appearing before this Court in spite of due service of notice on 2 occasion (before the Tribunal and before this Court), this Court in absence of any such document available on record that O.P. No.4 and 5 had participated in the selection process, is inclined to quash the order of appointment issued in their favour vide order dated 14.03.2017 under Annexure-9 and so also rejection of the petitioner's claim vide the impugned order dated 21.02.2018, so passed by O.P. No.1 under Annexure-14. While quashing both the orders, this Court directs O.P.

No.2 to take a decision on the petitioner's claim to get the benefit of appointment pursuant to Annexure-5, if he is otherwise eligible. Such a decision be taken within a period of 2 (two) months from the date of receipt of this order with due communication to the petitioner.

10. With the aforesaid observations and direction, the Writ Petition accordingly stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Basudev

Signature Not Verified
Digitally Signed
Signed by: BASUDEV SWAIN
Designation: SR. STENO
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 23-Dec-2024 16:20:09