

(2022) 11 OHC CK 0111
In the Orissa High Court
Case No : Writ Petition (C) No. 30102 Of 2022

Arun Kumar Sahu And Others

APPELLANT

Vs

State Of Odisha And Another

RESPONDENT

Date of Decision : 14-11-2022

Acts Referred:

Citation : (2022) 11 OHC CK 0111

Hon'ble Judges : A.K.Mohapatra, J

Bench : Single Bench

Advocate : A.K. Pandey, P.K. Mohanty, B.P. Tripathy

Final Decision : Disposed Of

Judgement

A.K.Mohapatra, J

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. The present writ petition has been filed by a group of candidates, who had appeared in the recruitment test conducted by the Odisha Public Service Commission (OPSC) for appointment to the post of Assistant Section Officer (ASO) in Odisha Secretariat, alleging mala fide and lack of transparency and fairness in the selection procedure adopted by the OPSC.
3. The Petitioners have filed the present writ petition with a specific prayer for quashing the impugned Office Order No.1395/PSC dated 16.02.2022 under Annexure-5 to the writ petition as well as the merit list dated 07.11.2022, i.e., roll list of short listed candidates for document verification under Annexure-3 to the writ petition.
4. The factual matrix of the case in gist leading to filing the present writ petition is that the Petitioners are all meritorious students and have passed HSC, +2 and other higher qualification securing good marks. In the year 2021, the Petitioners, who were in search of the job, came across an advertisement in the newspaper regarding engagement of Assistant Section Officer in Group-B post of Odisha

Secretariat. The advertisement dated 31.12.2021 vide Advertisement No.26 of 2021-22 issued by the OPSC for recruitment to the posts of ASOs in Group-B of Odisha Secretariat Service under Home Department, inviting online applications from the prospective candidates through the Proforma application to be made available on the website of the OPSC with the link for registration/reregistration and payment of examination fees, is attached to the writ petition as Annexure-1. On perusal of the said advertisement, it appears that applications were invited from desirous and eligible candidates for recruitment to 796 posts of ASOs of Group-B in Odisha Secretariat. The scale of pay for the said post was Rs.35,400/- in Level 9, Cell 1 as per the Pay Matrix under the ORSP Rules, 2017 with usual Dearness and other Allowances as would be sanctioned by the Government of Odisha from time to time. On further scrutiny of the said advertisement, it is revealed that the link shall be available for registration/reregistration and payment of examination fee from 20.01.2022 to 19.02.2022. The last date for submission of Registered Online Application for recruitment to the aforesaid posts was 25.02.2022. The break-up of the posts as well as other eligibility criteria including educational qualification have been specifically laid down in the above advertisement under Annexure-1. It is alleged in the writ petition that the conduct of the OPSC in the entire recruitment process was not fair and transparent and that they have acted in a mala fide manner and, accordingly, the Petitioners have preferred this writ petition with a prayer to quash the merit list prepared by the OPSC for verification of document for appointment to the posts of ASO Group-B in the Odisha Secretariat.

5. Heard Mr. A.K. Pandey, learned counsel appearing for the Petitioners and Mr. P.K. Mohanty, learned Senior Advocate appearing for the Opposite Parties No.2 and 3 (OPSC) and Mr. B.P. Tripathy, learned Additional Government Advocate appearing for the State-Opposite Party No.1

6. Perused the writ petition as well the materials placed before this Court for consideration.

7. Mr. A.K. Pandey, learned counsel appearing for the Petitioners, at the outset, decries the opaque method followed by the OPSC in publication of results after conclusion of the merit based selection test. He further contends that the OPSC has changed the rules of the game while the game was on. He further contended that Resolution No.5395/PSC dated 3.9.2016 has been changed by the PSC while the selection process was continuing pursuant to the advertisement under Annexure-1. Further, learned counsel for the Petitioners has also made several other allegations with regard to acceptance of incomplete application and publication of result of persons in the merit list, who had not appeared in the examination, according to the learned counsel for the Petitioners. Therefore, learned counsel for the Petitioners alleges mala fide and nepotism on the part of the OPSC and presenting a view of the several latches on the part of the OPSC, learned counsel for the Petitioners also submits that the selection process was not fair and transparent and further alleged mala fide and nepotism in the

process of the selection cannot be ruled out, accordingly it was urged before this Court that the entire selection be declared void and the merit list prepared by the OPSC be quashed by this Court.

8. On a careful consideration of the submission made by learned counsel for the Petitioners, this Court observes that the main and the sole grievance of the Petitioners is that the change of procedure with regard to publication of result as has been prescribed in Resolution No.5395/PSC dated 3.9.2016 by the OPSC vide their Corrigendum No.1395/PSC dated 16.02.2022 to OPSC Resolution No.5395/PSC dated 3.9.2016, is the bone of contention of Petitioners counsel's submission before this Court. It is further contended that under the Resolution dated 3.9.2016 in Clause-2 provides for a specific mode and manner of disclosure of information and publication of results. However, the same has been sought to be modified/varied vide Corrigendum dated 16.02.2022. In the Corrigendum, it is submitted that the Petitioners have objection to the provisions, which are as follows:-

- (i) The OPSC will provide marks to individual candidates only.
- (ii) Merit list of selected candidates will be published with names, category, gender etc. without mentioning marks.
- (iii) Cut off marks (category wise) and answer keys are to be published online by the Commission soon after publication of the results.
- (iv) The link regarding availability of marks secured by the individual candidate will be 30(thirty) days from the day of hosting in the website of the Commission.

9. Learned counsel for the Petitioners further contended that the change which are sought to be introduced through the Corrigendum dated 16.2.2022 was introduced for the first time while the selection/recruitment process for appointment to the posts of ASO was going on. Therefore, the learned counsel for the Petitioner argues that such Corrigendum amounts to change of the rules of the game while the game is on. He further submits that such an approach by the recruitment agency/board/commission has been deprecated by this Court as well as the Hon'ble Supreme Court in many judgments. He further contends that the Petitioners appeared in the examination under the impression that while publishing the resolution, the OPSC will follow the Resolution dated 3.9.2016. However, in the midst of the selection process, the same has been changed in a clandestine manner without any notice to the candidates who were appearing in the recruitment test. Therefore, it is submitted by the learned counsel for the Petitioners that the modification which the OPSC wants to introduce through the Corrigendum shall not be applicable to the result published pursuant to the recruitment under the advertisement under Annexure-1. The advertisement under Annexure-1 for recruitment in the present matter was published prior to the Corrigendum was issued. Therefore, it is argued that issuance of Corrigendum while the selection process is on is illegal and arbitrary exercise of power conferred upon the OPSC and, as such, the same is liable to be quashed.

10. It is relevant to note here that the principle of fairness and transparency in the recruitment process should not remain as a policy decision and every endeavour must be made by the recruitment agency, i.e., the OPSC to ensure that the same is actually followed in their conduct and action. Furthermore, it is act to reiterate the principle that the rules of the game cannot be changed while the game is on or after the game is played. Such principle has been adopted and followed consistently by the Public Service Commissions in the country. The leading judgment of the Hon'ble Supreme Court on the issue is in the matter of Secretary, A.P. Public Services Commission -Vrs.- B. Swapna and Ors., reported in (2005) 4 SCC 154 wherein an identical question arose for consideration, i.e., whether the rules of the recruitment process could be changed while the process is on. The Hon'ble Supreme Court referring to the aforesaid principle held that the changed rules must have prospective application. Therefore, the same should not have been applied to the recruitment process which was going on. In this context, there are several judgments of the Hon'ble Supreme Court like in cases of K. Manjusree -Vrs.- State of Andhra Pradesh & Anr., reported in (2008) 3 SCC 512; Bishnu Biswas & Ors. -Vrs.-Union of India & Ors., reported in (2014) 5 SCC 774; and Maharashtra State Road Transport Corpn. & Ors. -Vrs.- Rajendra Bhimrao Mandve & Ors., reported in (2001) 10 SCC 51 and of course a decision of the Hon'ble Supreme Court in the matter which went from this Court in the case of Durga Ch. Mishra v. State of Orissa & Ors., reported in (1987) 4 SCC 646. Therefore, there is no dispute with regard to the proposition that the change in the rules relating to recruitment are always prospective and as such, the rules of the game cannot be changed while the game is on or after the game is played.

11. Mr. P.K. Mohanty, learned Senior Advocate appearing for the Opposite Parties No.2 and 3 (OPSC) submitted that the Opposite Parties No.2 and 3 have not committed any illegality at all. He further submits that a fair and transparent procedure is consistently followed by the OPSC in all recruitment test conducted by it including the present selection. Therefore, the allegation against the OPSC is far-fetched and baseless. Mr. Mohanty further submits that the Corrigendum dated 16.2.2022 was issued pursuant to a judgment of the Hon'ble Supreme Court. Therefore, no fault can be found with the OPSC in issuing the Corrigendum and applying the same to the current recruitment process. So far other allegation made by the learned counsel for the Petitioners, it is emphatically submitted by Mr. Mohanty that those allegations are all baseless and vague and not supported any material at all.

12. Mr. B.P. Tripathy, learned Additional Government Advocate appearing for the State-Opposite Party No.1 supported the argument advanced by Mr. Mohanty, learned Senior Advocate appearing for the Opposite Parties No.2 and 3 (OPSC), also contended that the OPSC is a body created under the Constitution and it has been discharging its duties sincerely over the years. Therefore, the Petitioners are not justified in their approach in making wild allegations against a Constitutional Body without any basis and materials to substantiate their

allegations. Therefore, Mr. Tripathy, learned Additional Government Advocate urges before this Court that the writ petition is devoid of merit and should be rejected at the threshold. It is also contended by Mr. Tripathy that any interference by this Court at this stage would only delay the process of recruitment which would cause a great inconvenience in the smooth functioning of the Odisha Secretariat.

13. Having heard the learned counsel appearing for the respective parties and upon a careful consideration of the rival contentions, this Court is of the opinion that out of the several allegations made by the learned counsel for the Petitioners, the only allegation with regard to issuance of the Corrigendum while the recruitment process was on, has some substance and all other allegations are found to be not supported by any material. This Court also examining the issue from the point of view of fairness and transparency that is required to be maintained by the OPSC while conducting the recruitment test. This Court is also of the view that the OPSC being a creature of the Constitution of India, the Members and Officers manning such an important institution must conduct themselves in the most fair and transparent manner. Further, the OPSC shall conduct itself in such a manner that the faith and trust of the candidates who are appearing in the test conducted by it are retained, i.e., it is important to uphold the institutional integrity of a sacred institution like the OPSC by its conduct. Every action taken by the OPSC has to be above suspicion so that the public trust and faith in the institution could be retained for all time to come. No doubt, the duty that is being performed by the OPSC is humongous and it has been working round the clock to provide suitable candidates to the Government and other institutions in a time bound manner. However, this Court is only disturbed by the Corrigendum, which was issued while the selection process was on, i.e., on 16.02.2022. At this stage, this Court would refrain for making any comment on the changes likely to be introduced through the Corrigendum. However, it would have been desirable to implement the same to subsequent advertisement for recruitment after the Corrigendum was issued.

14. Mr. P.K. Mohanty, learned Senior Advocate appearing for the OPSC and Mr. B.P. Tripathy, learned Additional Government Advocate appearing for the State-Opposite Party No.1 very fairly submitted at this juncture that the Corrigendum dated 16.02.2022 under Annexure-5 shall not be insisted upon and followed for the recruitment to the posts of ASOs in Group-B to Odisha Secretariat pursuant to advertisement under Annexure-1. Therefore, they are ready and willing to follow the procedure provided in Resolution No.5395/PSC dated 3.9.2016 without the Corrigendum dated 16.02.2022.

15. Accordingly, this Court without expressing any opinion on the Corrigendum dated 16.02.2022 under Annexure-5 to the writ petition, disposes of the writ petition by directing the Opposite Parties to follow the Resolution No.5395/PSC dated 3.9.2016 in its letter and spirit without following Corrigendum dated 16.02.2022. Further, it is made clear that it is open for the OPSC to follow the

procedure laid down in the Corrigendum under Annexure-5 to all subsequent advertisement for recruitment. It is further directed that the Opposite Parties No.2 and 3 shall do well to follow the procedure as has been prescribed in Resolution No.5395/PSC dated 3.9.2016 forthwith.

16. With the aforesaid observations and directions, the writ petition is disposed of.

17. Urgent certified copy of this order be granted on proper application.

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