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**(2022) 04 OHC CK 0212**

**In the Orissa High Court**

**Case No :** Writ Petition (C) No. 8086, 8087, 8089 Of 2016

Ganeshwar Panda

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

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**Date of Decision :** 04-04-2022

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226, 227

**Citation :** (2022) 04 OHC CK 0212

**Hon'ble Judges :** Dr B.R.Sarangi, J;Savitri Ratho, J

**Bench :** Division Bench

**Advocate :** Sidheswar Mallik, P.C. Das, S.N. Nayak

**Final Decision :** Dismissed

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## Judgement

Dr. B.R. Sarangi, J

1. The petitioners, in all these writ petitions, have assailed the common order dated 30.06.2016 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. Nos 130 (C) of 2014, 131 (C) of 2014 and 140 (C) of 2014, by which the tribunal rejected the claim made by the petitioners holding that they have not secured 35% of mark in the written examination to be considered for promotion to the post of Assistant Revenue Inspector.
2. During the course of hearing, Mr. Mallik, learned counsel for the petitioners contended that the applicant in O.A. No. 131 (C) of 2014 since has in the meantime retired from service, he does not want to press W.P.(C) No. 8087 of 2016. Similarly, the applicant in O.A. No. 140 (C) of 2014 having been already promoted, he also does not want to press W.P.(C) No. 8089 of 2016. In view of such submission, W.P.(C) Nos. 8087 of 2016 and 8089 of 2016 stand disposed of as not pressed.
3. Therefore, this Court proceeded to decide W.P.(C) No. 8086 of 2016 filed by Ganeshwar Panda on merits. His case is that while he was serving as a Class-IV employee in Nandahandi Tahasil Office, on 13.12.2011, an advertisement was

issued inviting applications for direct recruitment to the posts of Revenue Inspector (RI)/Assistant Revenue Inspector (ARI)/Amin in Nabarangpur district. Total number of vacancies notified to be 45 (15 RIs + 20 ARIs + 10 Amins). Subsequent thereto, a corrigendum was issued on 29.03.2012, by which it was clarified that posts of 14 ARIs and 6 Amins would be filled up by way of promotion. Pursuant thereto, the petitioner applied for the post of ARI, as he was otherwise eligible for promotion to the said post in terms of the provisions of the Orissa District Revenue Service (Method of Recruitment and Conditions of Service) Rules, 1983 (for short "Rules, 1983"). After being qualified in the physical test, a common written test was conducted both for the direct recruits and the promotees, in which the petitioner appeared. Same set up questions were put for both the categories. The result of such examination was published and appointment orders were issued vide order no. 2113 dated 29.10.2013. As the petitioner could not come out successful, he applied for certain documents under Right to Information Act, 2005 and came to know that his candidature, as well as of other Group-D employees, was rejected to make room for the direct recruit candidates.

3.1 Mark sheets of the written test were published in the website without disclosing the marks obtained in the computer practical examination. The information obtained by the petitioner with regard to detailed mark sheet of the Class-IV candidates disclosed that he had secured 38 marks in the computer practical and more than 35% in total, and was eligible to be selected as per the terms of the Rules, 1983. But the opposite party no.2, however, had not included the marks obtained in the computer practical and declared the petitioner to be not selected. Though the total mark of the test was 250, the selection was made taking into account 200 marks, leaving aside the mark provided for computer practical test. Since the petitioner was not selected, he approached the tribunal by filing O.A. No. 130 (C) of 2014 alleging that all the posts were filled up only by direct recruitment candidates by denying promotion to the in-service candidates.

3.2 Pursuant to the notice issued by the tribunal, the opposite parties filed their counter taking a specific plea that the computer practical test was a qualifying test only and, therefore, the mark obtained by the petitioner in the computer practical test was not taken into account for computing the 35% requirement to be eligible for promotion to the post of ARI. The tribunal, by the impugned order, dismissed the original application by holding that the computer practical test was only qualifying and, as such, the marks secured in the said test should not have been added to the marks secured in written examination. Hence this writ petition.

4. Mr. S. Mallik, learned counsel for the petitioner contended that an advertisement was issued on 13.12.2011 under Annexure-1 for filling up of the posts of Assistant Revenue Inspector in the scale of pay of Rs.5200-20200/- with Grade Pay of Rs.1900/-. In Clause-A of the advertisement, it was prescribed that the candidates must have passed Higher Secondary Examination (10+2)

conducted by the Council of Higher Secondary Education, Odisha or equivalent thereto from a recognized Board and must possess knowledge in computer operation in case of Amin and Assistant Revenue Inspector. In Clause-A-III of the advertisement, it was prescribed that candidates, who qualify in the test of physical fitness, shall be eligible to appear in the written test comprising of the Arithmetic-100 marks, Computer (Written test)-50 marks, Computer (Practical Test)-50 marks and handwriting in Odia-50 marks. The above eligibility criteria were prescribed in consonance with proviso to Rule-10 of Rules, 1983. It is also admitted by learned counsel for the petitioner, by referring to the documents which have been placed on record under Annexure-5 series, that the petitioner belongs to UR category and he had secured 34 marks in Mathematics out of 100, 15 marks in computer written out of 50, and 13 marks in Odia out of 50, total 62 marks out of 200 marks in the written examination. So far as computer practical test is concerned, the petitioner had secured 38 out of 50. According to learned counsel for the petitioner, if the marks both in the written examination as well as computer practical test would be taken together, the petitioner, having secured more than 35% of marks, would be eligible for consideration for promotion to the post of ARI.

5. Mr. S.N. Nayak, learned Additional Standing Counsel appearing for the opposite parties contended that the petitioner, having not qualified in the written examination, has not satisfied the requirement made in the advertisement vis-à-vis the Rules, 1983 applicable to such recruitment. He contended that clause-A-III of the advertisement dated 13.12.2011 specifies that the candidates who qualify in the test of physical fitness shall be eligible to appear in the written test comprising of the Arithmetic-100 marks, Computer (written test)-50 marks, Computer (practical test)-50 marks and handwriting in Odia-50 marks. The above criteria were incorporated in the advertisement, by way of amendment to Rule-7 of Rules, 1983 made in the year 2011. Therefore, the advertisement was issued in consonance with the Rules, 1983. The above apart, proviso to Rule-10 of the Rules, 1983, which has not undergone any amendment, specifically prescribes that the candidates should possess the required physical fitness and come out successful in the written test conducted in accordance with Rule 7 by obtaining at least 35% of the marks. Therefore, the petitioner was well aware of the fact that he has to appear in the written examination having full marks 200, and out of that he has to secure minimum 35% of marks to be eligible for consideration for appointment to the post of ARI. The computer practical is qualifying in nature and that cannot be included to the mark secured in the written examination. On the basis of the documents filed by the petitioner himself, admittedly the petitioner had secured 62 marks in the written examination and, as such, he had not secured minimum 35% of marks to be eligible for consideration for the post of ARI. Even though he had secured 38 marks out of 50 in the computer practical test, that itself cannot enure to the benefit of the petitioner to claim promotion to the post of ARI. Therefore, the claim of the petitioner cannot sustain in the eye of law and, as such, the tribunal

has not committed any error on the face of the record so as to warrant interference by this Court.

6. This Court heard Mr. S. Malik, learned counsel for the petitioner; and Mr. S.N. Nayak, learned Additional Standing Counsel for the State by hybrid mode, and perused the record. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

7. On the basis of the facts delineated above and after going through the records, it is evident that the advertisement so issued in Annexure-1 pertaining to the post of Asst. Revenue Inspector, so far as pay band and vacancies are concerned, read thus:-

Sl.

Name of

Pay

Band

Category-wise Vacancies.

No.

the Post

&

Grade

pay

(in

Rs.)

U.R.

U.R.

S.T.

S.T.

S.C.

S.C.

S.E.B.C

S.E.B.

Grand

(W)

(W)

(W)

C (W)

Total

1

2

3

4

5

6

7

8

9

10

11

12

2.

Asst.

Rs.5200/-

03

01

02

-

01

01

08

04

20

Revenue

20200/-

Inspector

&

Grade

pay1900

So far as qualification prescribed under Clause-A of the advertisement under the eligibility criteria provides as follows:-

"e. Qualifications: xxx xxx xxx and must have passed a Higher Secondary Education (10+2) conducted by the Council of Higher Secondary Education, Odisha or equivalent, thereto from a recognized Board and must possess knowledge in Computer Operation in case of Amin and Assistant Revenue Inspector."

8. Needless to mention, the advertisement was issued in consonance with the rules applicable, i.e. The Orissa District Revenue Service (Method of Recruitment and Conditions of Service) Rules, 1983. Rule-7(3) of the Rules, 1983 had undergone amendment vide notification dated 01.11.2021 to the following effect:-

"Rule-7(3). the following items shall be substituted, namely:-candidates who qualify in the test of physical fitness shall be eligible to appear in tests comprising the following papers namely:-

- |                               |                                          |
|-------------------------------|------------------------------------------|
| (a) General Awareness         | - 100 marks (for Revenue Inspector only) |
| (b) Arithmetic                | - 100 marks                              |
| (c) Computer (written test) - | 50 marks                                 |
| (d) Computer (practical test) | - 50 marks                               |
| (e) Handwriting in Oriya      | - 50 marks"                              |

Therefore, in consonance with Rule-7(3) of Rules, 1983, as amended in the year 2011, the advertisement was issued.

9. Proviso to Rule 10 of 1983 Rules prescribes as follows:-

"Provided they possess the required physical fitness and come out successful in the written test conducted in accordance with rule-7 by obtaining at least thirty-five per cent of the marks."

As such, there is no amendment to Rule-10. Rather the selection and appointment has been made pursuant to the advertisement issued in Annexure-1 in terms of the proviso to Rule-10, which clearly speaks that the candidates who possess the required physical fitness and come out successful in the written test conducted in accordance with Rule-7 by obtaining at least thirty-five per cent of

the marks, can only be considered for promotion. In that view of the matter, if Rule-7 is looked into vis-à-vis the advertisement issued, it would clearly indicate that the candidate has to appear in the written test comprising of the Arithmetic-100 marks, Computer (Written test)-50 marks, Computer (Practical Test)-50 marks and handwriting in Odia-50 marks, i.e. total mark 200. So far as computer practical test is concerned, the same has not been included in the written test as the same was qualifying in nature, which is also in consonance with proviso to Rule-10 of the 1983 Rules.

The petitioner, who belongs to UR category, had secured 34 marks out of 100 in Mathematics, 15 marks out of 50 in Computer Written and 13 marks out of 50 in Odia. Thereby, the petitioner had secured 62 marks out of 200. The petitioner, though had secured 38 marks out of 50 in computer practical, the practical mark cannot be taken into consideration as per the proviso to Rule 10 of 1983 Rules. If that will be excluded, then the petitioner has not secured minimum 35% marks, i.e., 70 marks out of 200 as required to be obtained in the written test to be considered for promotion. As a matter of fact, the petitioner had secured 62 marks, which cannot be construed to be 35% mark in the written examination so as to be considered for the promotional post.

10. Therefore, since the petitioner secured less than 35% of mark in the written examination out of total marks of 200, as per the rules applicable to the petitioner read with the advertisement issued in Annexure-1, he was otherwise ineligible for consideration for promotion to the post of ARI. Even if by adding the marks secured in computer practical test the petitioner's mark comes to more than 35%, the petitioner cannot be treated to have come out successful in the written examination, as the marks secured in the computer practical test cannot be added to the marks secured in the written examination, in view of the rules applicable vis-à-vis the advertisement issued.

11. In the case of *State of Haryana v. Shakuntala Devi*, (2008) 15 SCC 380: AIR 2009 SC 869, the apex Court held that recruitment in deviation of the published qualifications would amount to arbitrary exercise of power and be hit by Articles 14 and 16 of the Constitution. But the non-deviation principle must itself be applied reasonably. Thus, it has been held that when minimum qualifications are prescribed, it is not obligatory for the State to invite applications only on the basis of the minimum qualifications.

Although a candidate must fulfill the requisite qualifications, for being considered for recruitment, difficulties often arise with regard to the interpretation of the requisite qualifications. Since the qualifications vary from case to case, decisions have turned upon the construction of the specific requirements provided by the rules or administrative instructions in the particular cases before the Court. In such situation, laying down or applying general principle is hardly possible.

12. In view of such position, this Court is of the considered view that no error has been committed by the tribunal in not extending the benefit of promotion to

the petitioner to the post of ARI. Thus, this writ petition (W.P.(C) No. 8086 of 2016) merits no consideration and the same stands dismissed. No order as to costs.

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