

(2023) 03 OHC CK 0106
In the Orissa High Court
Case No : Writ Petition (C) No.5947 Of 2023

Himani Bagh

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 15-03-2023

Acts Referred:

Citation : (2023) 03 OHC CK 0106

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

Bench : Single Bench

Advocate : K.K. Swain, R.N. Mishra

Final Decision : Disposed Of

Judgement

A.K. Mohapatra, J

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard the learned counsel appearing for the Petitioner as well as the learned Additional Government Advocate appearing for the State-Opposite Parties. Perused the writ petition as well as the affidavit filed on behalf of Opposite Party No.2-Odisha Sub-Ordinate Staff Selection Commission, Bhubaneswar.
3. The present writ petition has been filed by the Petitioner with a prayer to direct the Opposite Parties to allow her to re-register herself as per Clause-6 of the second advertisement dated 21.01.2023 issued by the Opposite Party No.2-Odisha Sub-Ordinate Staff Selection Commission, Bhubaneswar under Annexure-4, as she had already applied for the post of Nursing Officer pursuant to the first advertisement dated 09.05.2022 under Annexure-1 and further she may be allowed to appear in the written test for the post of Nursing Officer which is likely to be held on 19.03.2023 pursuant to the second advertisement dated 21.01.2023.
4. On perusal of the writ petition and upon hearing the learned counsel for the Petitioner, this Court observes that the grievance of the Petitioner in the present

writ petition is that in the recent past she was engaged as a Nursing Officer during Covid-19 pandemic on temporary basis. Thereafter, 4070 posts of Nursing Officer in District Cadre were advertised by the Opposite Party No.2 vide advertisement dated 9.5.2022 under Annexure-1. Pursuant to such advertisement, it is stated that, the Petitioner not only registered herself, but also submitted her online application. While the matter stood thus, the Opposite Party No.2 took no further steps pursuant to Annexure-1 although the Petitioner was waiting eagerly to participate in the selection process.

5. Finally, the advertisement under Annexure-1 was cancelled by a subsequent advertisement dated 21.1.2023 under Annexure-4. On perusal of the said advertisement, it appears that a total of 7483 posts of Nursing Officer in 30 districts of the State of Odisha belonging to District Cadre Group-C posts were advertised by cancelling the earlier advertisement under Annexure-1. Subsequent advertisement under Annexure-4 further reveals that the candidates were asked to register/re-register and submit their application, for which, the starting date was 27.01.2023 and the end date has been notified to be 17.02.2023. After submitting the applications, the candidates are required to appear in the written test, which is scheduled to take place on 19th March, 2023. The Petitioner who had applied under the first advertisement under Annexure-1 and had submitted her online application, however, she could not submit her application pursuant to the advertisement under Annexure-4.

6. Learned counsel for the Petitioner submitted that since there was a confusion as to whether the Petitioner is required to apply again or not under the subsequent advertisement, the Petitioner could not apply under the second advertisement dated 21.1.2023 under Annexure-4. It is further submitted that although the Petitioner fulfills all the eligibility criteria and she has been served on temporary basis during Covid-19 pandemic period by putting her life into danger, she has deprived of an opportunity to participate in the selection process for appointment to the post of Nursing Officer pursuant to advertisement under Annexure-4. Accordingly, the Petitioner has approached this Court by filing the present writ petition.

7. Mr. R.N. Mishra, learned Additional Government Advocate appearing for the State-Opposite Parties, on the other hand submits that the advertisement dated 21.1.2023 under Annexure-4 is very clear. He further submitted that the advertisement under Annexure-4 clearly indicates that the earlier advertisement dated 9.5.2022 under Annexure-1 has been cancelled and the candidates, who are desirous of being selected as Nursing Officer, were directed to apply afresh by submitting their application online. Since the Petitioner has not submitted her application within the time stipulation provided under Annexure-4, the Opposite Parties are under no legal obligation to accept such application at a belated stage. Mr. Mishra, further contended that the advertisement under Annexure-4 is very clear, therefore, there exists no ambiguity to understand the language of the advertisement under Annexure-4. Thus, the Petitioner should have submitted

her application pursuant to the advertisement under Annexure-4 by re-registering herself. He further contended that the necessity for cancelling the first advertisement and issuing the second advertisement arose as the concerned department found that the numbers of post of Nursing Officer throughout the State are lying vacant. Therefore, all those posts were clubbed together and under advertisement in the shape of Annexure-4 was published for recruitment of 7483 posts of Nursing Officer in 30 districts of the State of Odisha belonging to District Cadre Group-C posts.

8. In reply to the submission of Mr. Mishra, learned Additional Government Advocate, learned counsel for the Petitioner submits that the Petitioner had rendered services by putting her life into danger during the time of Covid-19 pandemic. Thereafter, she has a legitimate expectation that her services will be regularized against a regular post of Nursing Officer which are lying vacant. However, when such opportunity came in the shape of advertisement under Annexure-1, although the Petitioner applied by submitting her application, the said advertisement was subsequently cancelled. Due to the confusion, the Petitioner could not apply afresh under second advertisement. Learned counsel for the Petitioner further contended that the Petitioner was under the impression that since she had submitted her application under first advertisement, therefore, it was not necessary to apply afresh pursuant to subsequent advertisement under Annexure-4. In such view of the matter, learned counsel for the Petitioner urges before this Court that the Petitioner be given an opportunity to appear in the selection process by submitting her application and by re-registration herself either through online or through offline mode.

9. Mr. Mishra, learned Additional Government Advocate, in his usual fairness and on instruction, submitted that the Petitioner can be accommodated by providing her an opportunity provided the Petitioner submit her offline application by tomorrow. He further submitted that the aforesaid instruction is applicable to the Petitioner in the present case and shall not be treated as a precedent, otherwise the same would cause inconvenience to the Opposite Party No.2 to conduct the examination, since a number of 18000+ candidates throughout the State have applied to such posts and are likely to take the examination on 19th March, 2023.

10. Considering the submission made by the learned counsel for the respective parties and upon a careful consideration of the background facts of the present case, this Court directs the Petitioner to submit hard copy of her application along with her registration and application form submitted by her pursuant to advertisement under Annexure-1 before Opposite Party No.2 by 5.00 P.M. tomorrow, i.e., 16th March, 2023. In the event such application along with the other documents as directed hereinabove are submitted before the Opposite Party No.2 by tomorrow before 5.00 P.M., the Opposite Party No.2 shall do well to consider the same and allow the Petitioner to participate in the written test, which is likely to be conducted on 19th March, 2023. It is further clarified here that the selection of the Petitioner shall also be subject to her fulfilling other

criteria as provided under the advertisement and the relevant rules.

11. Before parting with this order, it is made clear that considering the extraordinary circumstances involved in the present case, the direction given hereinabove is confined to the present case and same shall not be treated as a precedent.

12. With the aforesaid observation and direction, this writ petition is disposed of.

13. A free copy of this order be handed over to Mr. R.N. Mishra, learned Additional Government Advocate appearing for the State-Opposite Parties for compliance.

14. Urgent certified copy of this order be granted on proper application in course of the day.

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