

(2008) 11 OHC CK 0028

In the Orissa High Court

Case No : Writ Petition (C) No. 3544 of 2003

Kumari Kalpana Rani Rout

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:

Orissa District and Subordinate Courts Ministerial Services (Method of Recruitment and Conditions of Service) Rules, 1969 — Rule 6, 6(5)

Citation : (2008) CLT 141 Supp : (2009) 1 ILR (Ori) 20

Hon'ble Judges : B.S. Chauhan, C.J;B.N. Mahapatra, J

Bench : Division Bench

Judgement

B.S. Chauhan, C.J.—This writ petition has been filed for quashing Annex-4 by which opposite party Nos. 2 to 8 have been appointed to the post of Jr. Typist in the District Judgeship of District, Balasore- Bhadrak, Balasore.

2. The facts and circumstances giving rise to the case are that six posts of Junior Typists were advertised vide Annex-1 inviting applications for the aforesaid posts by 15.7.2002. The Petitioner submitted her application along with others. She belongs to Socially Economically Backward Classes (hereinafter called SEBC) for which category only one post had been advertised. As per the Orissa District and Subordinate Courts, Ministerial Services (Method of Recruitment and Condition of Service) Rules, 1969, (hereinafter called the Rules), the aforesaid posts had to be filled up giving strict adherence to the reservation policy of the State by holding competitive examination which included written test, typing test and interview.

3. It is submitted by Mr. S.P. Mishra, learned Sr. Advocate that selection had not been made according to the Rules. Petitioner must had been ignored and posts reserved for SEBC had been filled up by general category candidate.

Learned Counsel for the opposite parties opposed the petition.

4. In order to understand the case in correct prospective and resolve the claims

and counter claims, we have called for the original record. Petitioner qualified in the written test securing 198 marks out of 300 marks. She appeared in the type test and secured 88 marks out of 100 marks. She was called for interview in which she secured 53 1/2 marks out of 100 marks. Therefore, her total marks came to 339 1/2 or 340 marks. Thus she had secured 340 marks out of 500 marks. Merit list was prepared category wise for the reason that out of six posts, one vacancy had to be filled up by Scheduled Caste, one by Scheduled Tribe; one by Scheduled Tribe (W); one by the SEBC; and two by General Category. The Selection Committee prepared a select list wherein Petitioner was placed on sixth rank in SEBC category for which only one post was available. While making appointments, it appears from the original record that as two candidates namely, Manoj Kumar Pradhan and Sumantanath Nayak belonging to reserved category (SEBC) secured very high marks, were appointed in general category and one Saroj Kumar Sutar was appointed against one post reserved for SEBC. As we are concerned only with the category of the Petitioner i.e. SEBC she was placed at serial No. 3 in the waiting list of SEBC category after offering appointments to the aforesaid three candidates from her category.

5. There is nothing on record to show that any person in her category securing lesser marks had been offered appointment. Therefore, the Petitioner could not have any grievance whatsoever regarding the appointment of the contesting party Nos. 2 to 7. So far as opposite party No. 8 is concerned, it appears that he had been appointed in view of the provisions contained in Clause (5) of Rule 6 which provides for filling up of the vacancy which occurs subsequent to the selection process but before declaration of the result of next years examination if he possesses all requisite qualification.

6. In view of the above, Petitioner's claim is not acceptable. Appointments had been made strictly on merit giving strict adherence to the statutory provisions and no interference is called for.

7. Mr. S.P. Mishra, learned Counsel appearing for the Petitioner has submitted that no selection has been held subsequent to the selection under challenge, as no vacancy has been advertised subsequent thereto, and still vacancies are available, thus Petitioner may also be offered appointment as she is the only person who has approached this Court.

8. Dr. A.K. Rath, learned Counsel appearing for the contesting opposite party Nos. 2 to 8 has submitted that such a course is permissible only if strict adherence is given to Clause (5) of Rule 6. Mr. Khuntia, learned Addl. Standing Counsel appearing for the learned District Judge has submitted that he is not in a position to make a statement regarding the availability of the vacancy or as to whether any fresh selection has been held subsequent to the selection in question. However, he has submitted that in case any vacancy is there it may be offered strictly in view of the provisions of Rule 6(5) of the Rules, and it can be filled up only after determining the category by which the vacancy is to be filled up and then offering the appointment strictly in accordance with the merit list

dated 22.3.2003 prepared by the Selection Committee. In case, the person occupying the higher position does not accept the offer of appointment the same can be made to the next candidate of the same category in the said list, but merit list cannot be ignored. A person cannot be appointed ignoring the claim of the person above him in the said list. We are in full agreement with Mr. Khuntia. Equity Court should not restrict the relief only to the parties before it. Such course is permissible only before the Labour Courts and Industrial Tribunal.

9. In the State of Kerala Vs. Kumari T.P. Roshana and Another, , the Hon''ble Supreme Court considered this aspect and observed as under:

The root of the grievance and the fruit of the writ are not individual but collective and while the "adversary system" makes the Judge a mere umpire, traditionally speaking, the community orientation of the judicial function, so desirable in the Third World remedial jurisprudence, transforms the Court's power into affirmative structuring of redress so as to make it personally meaningful and socially relevant. Frustration of invalidity is part of the judicial duty; fulfillment of legality is complementary. Selection of these thirty students will not be confined to those who have moved this Court or the High Court by way of writ petition or appeal. The measure is academic excellence, not litigating persistence. It will be thrown open to the first thirty strictly according to merit measure by marks secured.

10. The same view has been expressed by the Apex Court in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, ; and Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, .

11. In Thaper Institute of Engineering and Technology, Patiala (Deemed University) Vs. Abhinav Taneja and others, , the Apex court considered a case where the High Court had issued directions to admit the students who had approached the writ Court, ignoring the merit of the students who had not approached the Court. The Hon''ble Supreme Court observed as under:

The High Court should have directed only two students to be admitted and that too on merit. Admittedly, there were more meritorious students than the Respondents, waiting in queue. The High Court, thus, traveled beyond its jurisdiction and not only directed more students than the institute could absorb but also students who were less meritorious, to be admitted. No reasons whatsoever have been given by the High Court for exercising its extraordinary writ jurisdiction so peremptorily which has resulted in injustice, both to the Appellant -institution as well as to the students who stood higher in merit than all most all the Respondent-students. We refrain from making any further comment on the impugned judgment.

12. Similarly, general directions were issued to give benefit to the students strictly in accordance with the merit, in Sharwan Kumar and etc. Vs. Director General of Health Services and another, . In K.C. Sharma and others Vs. Union of India and others, , a Constitution Bench of the Hon''ble Supreme Court has

considered the aspect of giving benefit to a particular person and refusal to grant such benefit by the High Court to other similarly situated only on the ground that they had approached the Court at a belated stage. The Apex Court held that in such a case the judgment has to be rendered in rem and benefit of the judgment should be given to all other similarly situated persons.

13. Thus, in view of the above, we do not agree with the submissions made by Mr. Mishra that if the post is vacant, it may be offered to the Petitioner being the only Petitioner before this Court, as the merit of other candidates cannot be ignored.

14. In view of the above, we dispose of the writ petition requesting the learned District Judge, Balasore that in case there is any vacancy, to consider as to whether it may be filled up in view of the provisions of Rule 6(5) and if it is so, he may proceed to fill up the same under the said Rule. No costs.