

(2024) 01 OHC CK 0011
In the Orissa High Court
Case No : RVWPET No.303 Of 2023

Mohan Kanhar Vs State Of Odisha & Others ?

Date of Decision : 05-01-2024

Acts Referred:

Code of Civil Procedure, 1908 — Order 47 Rule 1

Citation : (2024) 01 OHC CK 0011

Hon'ble Judges : Biraja Prasanna Satapathy, J

Bench : Single Bench

Advocate : S. Jena, M.K. Balabantaray, S.K. Das

Final Decision : Dismissed

Judgement

Biraja Prasanna Satapathy, J.

1. This Review Petition has been filed seeking review/recalling of order dated 10.04.2023, so passed by this Court in W.P.C(OAC) No.2105 of 2017 and with a further prayer to direct Opp. Party Nos.1 to 3 to select and give appointment to the Review-Petitioner as against the post of Asst. Section Officer in place of Opp. Party No.4.

2. It is the case of the Review-Petitioner that pursuant to the advertisement issued by the Odisha Public Service Commission (in short "Commission") vide Advertisement No.08 of 2012-13 for recruitment of Asst. Section Officer of Governors' Secretariat and State Secretariat, the Review-Petitioner made his application as a S.T. candidate. It is contended that in terms of the advertisement issued by the Commission, the Written Test was held on 29.11.2015 & 30.11.2015 in respect of all the subjects in different sitting and different centers of the State.

2.1. After conducting the Written Examination, provisional select list was issued by the Commission on 06.08.2016. Thereafter, vide notice dated 08.08.2016 all the candidates who were provisionally selected, were directed to appear for verification of documents to be held w.e.f. 12.08.2016 vide notice on 08.08.2016. But vide another notice issued on 15.08.2016, the date of

verification of documents was fixed from 19.08.2016 to 26.08.2016.

2.2. It is contended that challenging the process of selection so adopted by the Commission, various original applications were filed before the Tribunal. The Tribunal vide a common order dated 09.12.2016 in O.A. No.925(C) of 2016 and batch, while disposing all the original applications passed the following order in Para-23:-

"23. In view of the above analysis, we do not find any ground to quash the entire process of examination, but one has to keep in mind that when recruitment process is conducted by a constitutional body, like respondent No.2 i.e. OPSC, the entire process of examination needs to be viewed transparently and considered to be beyond reproach. Accordingly, respondent No.2 is directed to publish the code of answer of all the written examination papers including English and General Awareness in their website within seven days of receipt of copy of this order, if the same has not been published so far. Further reasonable opportunities shall be given to the applicants and other candidates to submit their objections/grievance, if any, relating the marks awarded to them. Upon a fresh evaluation of such objection, if the applicants and other candidates are found to have secured more marks than the cut off marks, they shall be permitted to appear in the skill test and the remaining process of selection. In the event they are found suitable, they be offered appointment from the date their juniors got such appointment, with all service and financial benefits. The entire exercise be completed within a period of two months from the date of receipt of copy of this order."

2.3. It is contended that in terms of the order passed by the Tribunal on 09.12.2016, Commission reviewed the examination process and published a fresh merit list vide notice dated 25.07.2017. As in the notice issued on 25.07.2017 the name of Opp. Party No.4/Petitioner (in W.P.C(OAC) No.2105 of 2017) was not included, Opp. Party No.4 approached this Court in W.P.C(OAC) No.2105(C) of 2017. Since by the time a fresh merit list was issued on 25.07.2017, wherein name of Opp. Party No.4 was not included, taking into account the fact that Opp. Party No.4 had already been appointed, the Tribunal while issuing notice of the matter on 11.08.2017, passed an interim order to the effect that no consequential action be taken pursuant to the notice dated 25.07.2017 issued by the Commission, wherein the selection of the Opp. Party No.4 was cancelled.

2.4. It is contended that in the meantime Govt. in the Department of Home issued a notice on 19.05.2018 vide Annexure-4, wherein Opp. Party No.4 was issued with a show-cause calling upon him to submit his explanation, as to why he shall not be removed from his service with immediate effect. It is also contended that while the Review-Petitioner secured 271.412 marks, Opp. Party No.4 inspite of securing 265.178 marks was not only appointed but also allowed to continue by virtue of the interim order passed by the Tribunal on 11.08.2017 and final order passed by this Court on 10.04.2023.

2.5. Learned counsel for the Review-Petitioner further contended that since as per the information provided by the Commission on 10.06.2020 under Annexure-6, cut off mark for S.T. (Male) category was fixed at 272.504 marks and Review-Petitioner having secured 271.412 marks, Review-Petitioner after being communicated with the information under Annexure-6, never took any further step with regard to his selection and appointment. However, when Review-Petitioner came to know that Opp. Party no.4 in terms of the interim order passed by the Tribunal on 11.08.2017 and final order passed by this Court 10.04.2023 has been allowed to continue as Assistant Section Officer, Review-Petitioner being aggrieved by such continuance of Opp. Party No.4 is before this Court seeking review of order dated 10.04.2023.

2.6. Learned counsel for the Review-Petitioner contended that since the Review-Petitioner admittedly has secured more mark than Opp. Party No.4 and both belong to S.T.(Male) category, Opp. Party No.4 having secured 265.178 mark, his appointment and continuance as against the post of Asst. Section Officer is not permissible and accordingly the order dated 10.04.2023 so passed by this Court is liable to be reviewed.

3. Mr. S.K. Das, learned counsel for O.P. No.4/Petitioner (in W.P.(OAC) No.2105 of 2017) made his submission basing on the stand taken in the counter affidavit, so filed in the present Review Petition. It is contended that pursuant to the advertisement issued by the Commission vide Advertisement No.08 of 2012-13, the name of Opp. Party No.4 was reflected in the final select list published by the Commission on 10.09.2016. Pursuant to the merit list so published on 10.09.2016, Opp. Party No.4 was issued with the order of appointment as against the vacancy meant for S.T. category vide order of appointment issued on 05.10.2016. It is contended that since at the relevant point of time, Opp. Party No.4 was serving as an Engineer in TCS, he tendered his resignation and on being relived from TCS on 31.10.2016, he joined as an Assistant Section Officer on 01.11.2016 in terms of order of appointment issued on 05.10.2016.

3.1. It is contended that while so continuing pursuant to the order passed by the Tribunal on 09.12.2016 in O.A. No.925(C) of 2016 and batch, when in the notice dated 25.07.2017, the name of Opp. Party No.4 was not reflected and name of one Abhiram Bhoi was indicated in the merit list as against S.T. (Male) category, Opp. Party No.4 challenging notice dated 25.07.2017 filed O.A. No.2105(C) of 2017. The Tribunal while issuing notice of the matter vide order dated 11.08.2017 passed an interim order by holding that no consequential action be taken against the Opp. Party No.4 pursuant to the notice issued on 25.07.2017, wherein the selection of the Opp. Party No.4 has been cancelled.

3.2. It is also contended that order of appointment issued in favour of Opp. Party No.4 was cancelled vide notice dated 25.07.2017 on the ground that one Abhiram Bhoi when was found to have secured more marks than Opp. Party No.4, the order of appointment issued in favour of Opp. Party No.4 was cancelled. However, basing on the order passed by this Court in W.P.(C)

No.33586 of 2018, Sri Abhiram Bhoi was appointed against the post of Asst. Section Officer vide order dated 11.05.2020. It is also contended that since Opp. Party No.4 had no fault with regard to his selection and appointment as against the post of Asst. Section Officer vide order dated 05.10.2016, O.P. No.4 in view of such long continuance, became entitled to continue as against the post in which he was so appointed on 05.10.2016. It is also contended that this Court taking into account long continuance of Opp. Party No.4 w.e.f. 01.11.2016 and the decision in the case of Bikash Mahalik Vrs. State of Odisha and Others as well as the appointment of Abhiram Bhoi vide order dated 11.05.2020, while disposing the Writ Petition allowed the Opp. Party No.4 to continue.

3.3. It is also contended that the Review-Petitioner was never a party to the Writ Petition filed by the Opp. Party No.4 in W.P.C(OAC) No.2105 of 2017, nor Review-Petitioner at any point of time challenged the selection and appointment of Opp. Party No.4, when the Opp. Party No.4 was so appointed vide order dated 05.10.2016 basing on the final merit list published on 10.09.2016.

3.4. It is also contended that Review-Petitioner at no point of time either challenged the initial final merit list published by the Commission on 10.09.2016 or consequent merit list published on 25.07.2017 basing on the order passed by the Tribunal on 09.12.2016 in O.A. No.925(C) of 2016 and batch. The petitioner all through remained silent and since at no point of time, the selection and appointment of the Opp. Party No.4 was challenged by Review-Petitioner or by any other person having belong to S.T.(Male) category, the prayer made in Review-Petition is completely misconceived and not at all entertainable after such long lapse of time.

3.5. It is also contended that Review-Petitioner is a fence sitter and in view of his inaction in challenging the merit list published by the Commission on 09.10.2016, wherein Opp. Party No.4 was found selected, and fresh merit list published on 25.07.2017, Review-Petitioner has no Locus Standi to seek for review of order dated 10.04.2023, so passed in W.P.C(OAC) No.2105 of 2017.

4. To the submission made by the learned counsel for the Opp. Party No.4, learned counsel for the Review-Petitioner contended that since as per the information provided to him by the Commission on 10.06.2020 under Annexure-6, it was indicated that the cut off mark in S.T. (Male) category is fixed at 272.504 marks and Review-Petitioner has secured 271.412 marks, he did not take any further action after receipt of the information from the Commission. However, since Opp. Party No.4 having secured 265.178 mark was selected and appointed as against S.T. (Male) category and is now being allowed to continue, Review-Petitioner having secured 271.412 mark, the order passed by this Court on 10.04.2023 in allowing Opp. Party No.4 to continue as usual in terms of the order of appointment issued in his favour on 05.10.2016 is not sustainable in the eye of law and it needs to be reviewed.

5. Learned Addl. Govt. Advocate on the other hand made his submission basing

on the stand taken by the State in its counter filed in W.P.C(OAC) No.2105 of 2017. It is contended that pursuant to the advertisement issued by the Commission vide Advertisement No.08 of 2012-13, final merit list was published by the Commission on 10.09.2016. Basing on his position in the merit list, Opp. Party No.4 was appointed vide order dated 05.10.2016, where he joined on 01.11.2016. But in terms of the common order passed by the Tribunal on 09.12.2016 in O.A. No.925(C) of 2016 and batch, the Commission while preparing a fresh merit list when found that one Abhiram Bhoi even though has secured 272.471 mark and has not been selected, name of Opp. Party No.4 was not reflected in the fresh merit list published by the Commission on 25.07.2017. However, challenging the exclusion of name of Opp. Party No.4 in the fresh merit list published by the Commission on 25.07.2017, Opp. Party No.4 approached the Tribunal in O.A. No.2105(C) of 2017. The Tribunal while issuing notice of the matter vide order dated 11.08.2017 passed an interim order by holding that no consequential action be taken against the Opp. Party No.4, pursuant to the notice issued by the Commission on 25.07.2017.

5.1. It is contended that Opp. Party No.4 since 01.11.2016 continued as against the post of Asst. Section Officer and Mr. Abhiram Bhoi who was found more meritorious than Opp. Party No.4 in the meantime was appointed as against the post of Asst. Section Officer vide order dated 11.05.2020 in terms of the order passed by this Court in W.P.(C) No.33586 of 2018.

5.2. Learned Addl. Govt. Advocate further contended that Review-Petitioner at no point of time has challenged the final merit list published on 10.09.2016 or the subsequent merit list published by the Commission on 25.07.2017.

6. To the submission made by the learned Addl. Govt. Advocate, learned counsel for the Review-Petitioner contended that the petitioner along with another had in fact approached the Tribunal in O.A. No.1962(C) of 2018 seeking publication of their result by the Commission. The Tribunal vide order dated 23.07.2018 while disposing the matter though directed the Commission to consider the grievance of the Review-Petitioner, but the said order when was not implemented, the Review-Petitioner approached this Court in W.P.(C) No.2916 of 2020 inter alia with the following prayer:-

"It is therefore most respectfully prayed that, this Hon'ble Court may be pleased to give a direction to the Opp. Party No.1 to 3 to shortlist and give appointment to the present petitioner Assistant Section Officer in pursuance to the Advertisement No.8/2012-13 published by Odisha Public Service Commission (Opp.Party No.2) in place of Opp. Party No.4."

6.1. It is contended that this Court vide order dated 06.02.2020 while disposing the Writ Petition, directed the Commission to consider the request made by the petitioner as directed by the Tribunal in its order dated 23.07.2018 in O.A. No.1962(C) of 2018. Pursuant to the order passed by this Court on 06.02.2020, Review-Petitioner was provided with the information vide letter dated 10.06.2020

under Annexure-6. Since in the said notice it was indicated that the Review-Petitioner having belong to S.T. Category has secured 271.412 mark and the cut off mark in S.T. (Male) category having been fixed at 272.504 marks, Review-Petitioner did not take any further action after being communicated with the information. However, on coming to know that Opp. Party No.4 having secured 265.178 marks has been allowed to continue in terms of the order passed by this Court on 10.04.2023, Review-Petitioner being aggrieved by such selection and appointment as well as continuance of Opp. Party No.4 has filed the Review Petition seeking review of order dated 10.04.2023.

7. I have heard Ms. S. Jena, learned counsel for the Review-Petitioner, Mr. M.K. Balabantaray, learned Addl. Govt. Advocate for the State and Mr. S.K. Das, learned counsel appearing for O.P. No.4/Petitioner in W.P.C(OAC) No.2105 of 2017.

8. Having heard learned counsel for the parties and after going through the materials available on record, this Court finds that the Commission issued the advertisement vide Advertisement No.08 of 2012-13 for recruitment of Asst. Section Officer. In the said recruitment process, final merit list was published by the Commission on 10.09.2016. Basing on the position of the Opp. Party No.4 in the final merit list so published on 10.09.2016, Opp. Party No.4 was provided with appointment vide order dated 05.10.2016.

8.1. However, pursuant to the common order passed by the Tribunal on 09.12.2016 in O.A. No.925(C) of 2016 and batch when in the fresh merit list published by the Commission on 25.07.2017, name of Opp. Party No.4 was not reflected and in his place the name of one Abhiram Bhoi was included, Opp. Party No.4 challenging the notice dated 25.07.2017, so issued by the Commission, approached the Tribunal in O.A. No.2105(C) of 2017. The Tribunal while issuing notice of the matter on 11.08.2017 passed an interim order indicating therein that no consequential action be taken against Opp. party No.4 pursuant to the notice issued by the Commission on 25.07.2017. In terms of the interim order passed by the Tribunal on 11.08.2017 in O.A. No.2105(C) of 2017, Opp. Party No.4 was allowed to continue as against the post of Assistant Section Officer to which he was appointed vide order dated 05.10.2016 with his date of joining as 01.11.2016.

8.2. As found from the record, Review-Petitioner at no point of time has challenged the final merit list published by the Commission on 10.09.2016, basing on which Opp. party No.4 was appointed vide order dated 05.10.2016. Review-Petitioner also never challenged the order of appointment of Opp. Party No.4 at any point of time nor he filed any application seeking his intervention in O.A. No.925(C) of 2016 which was disposed of vide order dated 09.12.2016. Review-Petitioner has also not challenged fresh merit list published by the Commission on 25.07.2017 in terms of the common order passed by the Tribunal on 09.12.2016.

Review-Petitioner only for the first time approached the Tribunal along with another person in O.A. No.1962(C) of 2018 inter alia with a prayer to direct the Commission to publish his result. The Tribunal vide order dated 23.07.2018 disposed of the O.A. by directing the Commission to consider the grievance of the Review-Petitioner.

8.3. Review-Petitioner after disposal of the matter by the Tribunal on 23.07.2018, never take any further step till he approached this Court in W.P.(C) No.2916 of 2020. Even though in the Writ Petition, Review-Petitioner made a prayer to direct Opposite Parties therein to provide appointment to the Review-Petitioner, but the said prayer was not accepted by this Court. This Court vide order dated 06.02.2020 while disposing the Writ Petition, directed the Commission to comply with the order passed by the Tribunal on 23.07.2018 in O.A. No.1962(C) of 2018. Even though in terms of the order passed by this Court on 06.02.2020, Review-Petitioner was intimated about the decision of the Commission vide letter dated 10.06.2020 under Annexure-6, but Review-Petitioner after receipt of the said letter also did not take any further action to raise his claim for his appointment as against S.T. (Male) category.

8.4. Since the Review-Petitioner at no point of time has challenged the initial merit list published by the Commission on 10.09.2016 and the order of appointment issued in favour of the Opp. Party No.4 on 05.10.2016 nor the fresh merit list published by the Commission on 25.07.2017, it is the view of this Court that the prayer of the Review-Petitioner seeking review of order dated 10.04.2023, so passed in W.P.C(OAC) No.2105 of 2017 is not at all entertainable in view of such conduct.

9. Accordingly, prayer for Review of order dated 10.04.2023 so prayed for is rejected. The Review Petition is accordingly dismissed.

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