

(2007) 07 OHC CK 0088
In the Orissa High Court
Case No : Writ Petition (C) No. 14085 of 2007

Mrutunjaya Nyak

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 16-07-2007

Acts Referred:

Constitution of India, 1950 — Article 15, 15(1), 16, 16(1), 16(4)

Citation : (2007) 07 OHC CK 0088

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

Bench : Division Bench

Advocate : Tapan Kumar Mandal and M.M. Swaien, for the Appellant;

Judgement

1. Heard Shri. T.K. Mandal learned Counsel for the Petitioner and Mr. B.K. Mahanti, learned Advocate General for the Respondents.

2. This writ petition has been filed by the Petitioner as a Public Interest Litigation alleging himself to be a member of Scheduled Caste. He claims to possess the Law Degree and is eligible to appear in the examination scheduled to be held from 20th July, 2008 for Orissa Superior Judicial Service (Senior Branch) for which The Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 have been published in the Official Gazette by notification dated 17th August, 2007.

3. The only grievance raised by the Petitioner is that in view of the provisions contained in Articles 15 and 16 of the Constitution some relaxation of marks should have been granted to the candidates belonging to reserved categories, as had been done on earlier occasions. Therefore, this Court should issue a direction to grant relaxation of marks at least to the extent of 5% for qualifying in the said examination.

4. Learned Counsel for the Petitioner Shri. T.K. Mandal submitted that considering the backwardness of the candidates belonging to reserved categories relaxation of marks at least of 5% should have been granted while framing the

aforesaid Rules as had been granted on earlier occasions. Therefore, direction should be issued for making similar relaxation considering the provisions of Articles 15 and 16 of the Constitution.

5. On the other hand, Mr. B.K. Mahanti, learned Advocate General has opposed the petition vehemently contending that Articles 15 and 16 of the Constitution are merely enabling provisions and nobody can claim reservation or any kind of relaxation under the said Articles as a matter of right. Therefore, the relief sought cannot be granted and the writ petition is liable to be dismissed.

6. We have considered the rival submissions made by the learned Counsel for the parties and perused the writ petition.

7. The provisions contained in Articles 15 and 16 of the Constitution are merely enabling provisions which empower the statutory authorities to grant relaxation, if they so consider. Therefore, it is for the authorities concerned to take a decision as to whether it is desirable to grant any kind of reservation or relaxation. Only because a person belongs to the reserved category the cannot claim such relief. If in the past such relaxation had been granted and taking into account the past experience the authorities have changed the criteria, this Court cannot sit in appeal against it.

8. Article 335 of the Constitution of India specifically provides for maintenance of efficiency of Administration. The benefit of vertical reservation can be denied to Scheduled Castes, Scheduled Tribes and Other Backward Classes if it adversely affects the maintenance of efficiency of Administration. Reservation in educational institution and in employment can be provided under Article 15(1) or 16(1), or 16(4) of the Constitution of India. Both the said provisions enable the Competent Authority to provide for reservation, they are merely enabling provisions while Article 335 is in mandatory language. (Vide *Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others*, ; *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, ; *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, and *Indira Sawhney Vs. Union of India and Others*,).

9. A Constitution Bench of the Hon"ble Supreme Court in *E.V. Chinnaiah Vs. State of Andhra Pradesh and Others*, , held as under:

Furthermore, the emphasis on efficient administration placed by Article 335 of the Constitution must also be considered when claims of Scheduled Castes and Scheduled Tribes to employment in the services of the Union are to be considered.

10. A Constitution Bench of the Apex Court in *M. Nagaraj and Others Vs. Union of India (UOI) and Others*, , examined the validity of the Constitution (Seventy Seventh Amendment) Act, 1995; the Constitution (Eighty First Amendment) Act 2000; the Constitution (Eighty Second Amendment) Act 2000; and the

Constitution (Eighty Fifth Amendment) Act 2001, providing for reservation to Scheduled Castes in promotions, which also provided for relaxation of qualifying marks etc. and held that constitutional limitation of efficiency under Article 335 can be relaxed but not obliterated. The Court observed as under:

If the appropriate government enacting a law providing for reservation without keeping in mind the parameters in Article 16(4) and Article 335 then this Court will certainly set aside and strike down such legislation. It is for the State concerned to decide in a given case, whether the overall efficiency of the system is affected by such relaxation. If the relaxation is so excessive that it ceases to be qualifying marks then certainly in a given case, as in the past, the State is free not to relax such standards. In other cases, the State may evolve a mechanism under which efficiency, equity and justice, all three variables could be accommodated.

11. Thus, only in exceptional cases, in compelling circumstances and in the interest of the reserved category candidates, the State may relax the qualifying marks after identification by weighing the comparable data, without affecting general efficiency of service as mandatorily provided under Article 335 of the Constitution.

12. In view of the above, when the opposite parties have taken a decision not to grant relaxation though in the past it had been so granted, no fault can be found with the said decision.

13. Be that as it may, Selection process starts with issuance of advertisement and vacancies have to be filled up as per the eligibility etc. as applicable on the said date. (Vide Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, ; A.A. Calton Vs. Director of Education and Another, ; P. Ganeshwar Rao and Others Vs. State of Andhra Pradesh and Others, , and P. Mahendran and others Vs. State of Karnataka and others,).

14. It is settled legal position that the criteria of selection cannot be changed by any means whatsoever after commencement of the selection process (Vide Hemani Malhotra. High Court of Delhi: AIR 2008 SCW 3205).

15. In the instant case vacancies stood advertised long back and in view of the above, as criteria for selection cannot be changed after commencement of the selection process, the writ petition is liable to fail. The writ petition lacks merit and it is accordingly.