
(2009) 03 OHC CK 0042
In the Orissa High Court

Nibas Prusty and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:

Citation : (2009) 107 CLT 790 : (2009) 1 OLR 895 Supp : (2009) 2 SLR 88

Hon'ble Judges : Pradip Mohanty, J;I.M. Quddusi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—These are four Writ Petitions filed against the common Judgment and Order Dated 10.1.2003 passed by the Orissa Administrative Tribunal dismissing the four Original Applications filed by these Petitioners registered as O.A. Nos. 1877 of 1988, 2347 of 2000, 2516 of 2000 and 565 of 2001.

2. The brief facts of the case are that pursuant to separate advertisements issued by the Orissa Staff Selection Commission during different years inviting applications for recruitment to various posts which were under the administrative control of different Heads of Departments, the Petitioners applied for different posts recruitment for which was conducted by the Staff Selection Commission. Anil Kumar Sahoo, the Petitioner in W.P.(C) No. 4043 of 2006 applied for the post of Assistant Jailor pursuant to advertisement No. 1643/OSSC dated 7.9.1995 whereas Nibas Prusti, the Petitioner in W.P.(C) No. 4946 of 2003 was a candidate for the post of Junior Correctional Officer pursuant to advertisement No. 299/OSSC dated 9.2.2000. Chitta Ranjan Das, the Petitioner in W.P.(C) No. 5824 of 2003 and Santosh Kumar Nayak, the Petitioner in W.P.(C) No. 4947 of 2003 applied respectively for the post of A.S.I./Operator Mechanic and Sergeant and Jamadar advertised by the Commission vide advertisement No. 2740/OSSC dated 23.12.1999. All the Petitioners appeared at the recruitment conducted by the Commission and became unsuccessful. They challenged the selection by filing four O.As. before the Tribunal on the ground that though the advertisements in

all the cases postulated that the select list shall be prepared in order of merit on the basis of sum-total of marks obtained in written test, viva voce test and career evaluation and keeping in view the reserved vacancies, the case of the Petitioners was excluded on the ground that they did not secure the minimum qualifying marks In the viva-voce test though the advertisements did not so require. Their grievance before the Tribunal was that the marks secured by them in viva voce test should have been added to prepare the select list in order of merit. The Commission in its reply did not deny to have applied minimum qualifying marks in the viva voce test while preparing the select list. Its plea was that the Commission is entitled to regulate the process of selection and no exception can be taken if the Commission considered the cases of those candidates who secured the minimum qualifying marks in the viva voce test. The Tribunal considering the facts and circumstances and relying upon a Judgment of this Court, i.e. O.J.C. Nos. 9905 and 10570 of 1998 (Ranjan Kumar Dash and Ors. v. State of Orissa and Ors. disposed of 4.5.2001) dismissed the O.As. filed by the Petitioners. The aforesaid two Writ Petitions were filed against the Judgment of the Tribunal in O.A. No. 1127 of 1996 in which the Tribunal quashed the selection of S.S.Os. and directed for a fresh selection holding that the minimum qualifying marks fixed by the Commission in the interview was illegal in absence of any stipulation to that effect in the advertisement. This Court on consideration of the matter held that the Commission had the authority to prescribe a minimum qualifying mark in the interview test. It was also just and proper to fix a minimum qualifying marks since in absence of any prescription of minimum qualifying marks in the interview, the interview test itself becomes redundant. So holding, it quashed the order of the Tribunal.

3. Relevant portion of the advertisement in W.P.(C) No. 4043 of 2006 reads as under

10. Viva Voce Test: - Candidates securing qualifying standard of marks in written test i.e. 33% and coming within about 3 times of the vacancies may be called for a viva-voce test at the discretion of the commission. A physical test of the candidates for the posts of Assistant Jailors will precede the viva voce.

11. Career Evaluation:- There shall be an evaluation of academic career of the candidates called for viva-voce from HSC onwards carrying 80 marks.

12. Select List:- Select list shall be prepared in order of merit on the basis of sum-total of marks obtained in written test, viva-voce test and career evaluation and keeping in view the reserved vacancies.

Perusal of the above indicates that the minimum qualifying marks of 33% in written test was fixed, but no qualifying marks was fixed for viva-voce test. However, it was mentioned that physical test of the candidates for the post of Assistant Jailor will precede the viva-voce test and select list shall be prepared in order of merit on the basis of written test, viva-voce test and career evaluation test.

The Petitioner of W.P.(C) No. 4946 of 2003, Nibas Prusty had applied for the post of Junior Correctional Officer vide Advertisement No. 299 OSSC dated 9.2.2000. The plan of examination of the same was given in paragraph 9 (B) of the advertisement and Career Evaluation and Viva-voce test and Select list was given in paragraphs 10 and 11 thereof. The same is quoted as below:

Junior M.V.I./Artist-Cum-Photographer/Junior Employment Officer/Junior Correctional Officer:

There shall be written examination for the post of Junior Motor Vehicle Inspector, Artist-cum-Photographer, Junior Correctional Officer and Junior Employment Officer consulting of one paper of General Knowledge carrying 150 marks of 2 1/2 hours duration. Out of 150 marks, questions for 100 marks will be of objective type and for the rest 50 marks shall be of subjective type. Question shall be English only and the candidates are required to answer them in English only. Separate written tests shall be held for each category of post.

Career Evaluation and Viva-voce test:

There shall be an evaluation of academic career at the discretion of the commission and Viva-voce test for all such posts.

Select list: Select list shall be prepared in order of merit on the basis of sum total marks obtained in written test. Practical test (for the post of Accompanist only), viva-voce test and career evaluation, keeping in view the reserved vacancy.

The above quoted part of the advertisement shows that there was no minimum qualifying marks fixed for the written test as well as the viva-voce test and the select list was to be prepared in order of merit on the basis of sum total of marks obtained in the written test, practical test for the post of (Accompanist only) viva-voce test and career evaluation keeping in view the reserved vacancy.

The Petitioner in W.P.(C) No. 4947 of 2003, Sri Santosh Kumar Nayak and the Petitioner in W.P.(C) No. 4043 of 2006, Sri Chittaranjan Das who had applied for the posts of Sergeant & Jamadar and A.S.I. Operator (Mechanic) respectively have filed Advertisement No. 2740/OSSC dated 23.12.1999. In that advertisement in paragraph 12 Physical test and in paragraph 13 Viva-voce test, Paragraph 14 Career Evaluation and in paragraph 15 Select List have been mentioned which are reproduced as under:

12. Physical Test: Candidates retaining qualifying marks as may be fixed at the discretion of the Commission & topping within about 5 times for men candidates & 7 times for Women candidates of the vacancies against each category may be called for the physical test, at the discretion of the Commission. The Physical test apart from measurements regarding physical standard shall consist of the following for the post. The physical test shall be of qualifying standard only. The commission does not take any responsibility nor accept any liability for the safety of the candidate during the physical test. The date, time and place of physical test, Psychological test shall be intimated in due course. (Men) candidates for the

post of Sergeant, Jamadar, A.S.I. Operator and Mechanic:

(a) Running one mile in 8 Minutes (b) Cycling one Mile in 5 minutes, (c) Low hurdles in 2'6" height, 100 metres with 10 flights in 25 Seconds, (d) Broad Jump 12" Length.

(Women) candidates for the post of A.S.I. (Operator & Mechanic: (a) Running one mile in 10 minutes, (b) Cycling one mile in 7 Minutes (c) 80 metres low hurdles in 30 seconds,(d) Broad Jump 9" length.

Besides the following physical tests shall be conducted for the post of Sergeant & Jamadar only (i) High Jump (41 height), (b) Swimming, (iii) Hockey and Foot ball.

13. Viva-Voce test: The candidates qualifying in the physical test & psychological test/trade test shall be called to appear the viva-voce test.

14. Career evaluation: There shall be an evaluation of academic career of the candidates called for viva-voce test, at the discretion of the commission.

15. Select List: Select list shall be prepared in order of merit on the basis of sum total of marks obtained in written test, Viva-voce test and career evaluation and keeping in view the reserved vacancies.

It was specifically laid down therein that the candidates qualifying in the physical test & Psychological test/trade test shall be called to appear the viva-voce test. However, no minimum qualifying marks for viva-voce test, written test and career evaluation test were fixed and the select list was to be prepared in order of merit on the basis of written test, viva-voce test and career evaluation.

4. No minimum qualifying marks was fixed for viva voce test in respect of all these four posts. The Petitioners who had qualified in the written test, had been called for interview. Therefore, their plea is that no minimum qualifying marks could have been fixed, after the selection process started or at the time when the Petitioners were called for interview.

5. The Petitioner in W.P.(C) No. 4946 of 2003 Nibas Prusti who belongs to SEBC category had applied for the post of Junior Correctional Officer only. Since he was declared successful in the written examination, he was called for the viva voce test. But he was not selected for the said service as only two candidates, namely, Sri Debabrata Jena and Sri Samarendra Kumar Samal who belong to SEBC category were selected as they secured higher marks than the Petitioner. It may be noticed here that in all nine posts of Junior Correctional Officer were advertised out of which two posts were reserved for SEBC category. But in the meantime, three vacant posts of Junior Correctional Officer were abolished and as such only six candidates were given appointment. Out of that six posts, only two SEBC were given appointment as under:

1. Roster Point No. 34-ST(W)- Kumari Aparna Kuanr.
2. Roster Point No. 35-SEBC-Sri Debabrata Jena

3. Roster Point No. 36-SC- Sri Rajat Ku. Jena
4. Roster Point No. 37-UR-Sri Manoj Narayan Sarangi
5. Roster Point No. 38-ST-Sri Manoj Ku. Dora
6. Roster Point No. 39-SEBC-Sri Samarendra Ku. Samal.

6. The Tribunal dismissed the Original Applications on the ground that in the past in a similar case where the advertisement was made for Gram Panchayat Extension Officer and Small Savings Officer, Junior Grade, this Court had laid down that if the marks for the viva voce test was fixed according to the qualifying marks in the written examination, there was no illegality. This Court had relied upon the decision in the case of Majeet Singh, UDC and others Vs. Employees' State Insurance Corpn. and another, . In the said decision it was observed that the advertisement for selection of Insurance Inspector/Manager Grade-II did not-prescribe any pass marks in the interview though for the written examination 40% was prescribed. Selection was however made on the basis of 40% in the interview test and those who did not secure 40% in the interview were not selected. The Supreme Court had held that in absence of any prescription of qualifying marks for the interview test the same prescription of 40% as applicable for the written examination seemed to be reasonable.

7. Learned Counsel for the Petitioners have relied upon a latest decision of the Hon'ble Apex Court in the case of Secretary, A.P. Public Service Commission Vs. B. Swapna and Others, in which the Hon'ble Apex Court has held that once a process of selection starts, the prescribed selection criteria cannot be changed. The relevant paragraph 14 thereof is reproduced hereunder:

The High Court has committed an error in holding that the amended rule was operative. As has been fairly conceded by Learned Counsel for Respondent 1 applicant it was the unamended rule which was applicable. Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criterion e.g. minimum percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the rules showing the intention to affect existing rights the rule must be held to be prospective. If the rule is expressed in a language which is fairly capable of either interpretation it ought to be considered as prospective only.

8. In all the advertisements, it has been mentioned that the Select List shall be prepared in order of merit on the basis of sum-total of marks obtained in written test, viva voce test and career evaluation and keeping in view the reserved

vacancies. In all the cases except the post of Assistant Jailor, even no minimum qualifying marks for the written test was prescribed. Therefore, the Selection Committee was bound to follow the conditions given in the advertisement i.e. preparation of select list in order of merit on the basis of sum total marks obtained in written test, viva voce test and career evaluation and it had no jurisdiction to fix minimum qualifying mark for viva voce test after the process of selection started.

9. Pursuant to the direction of this Court, only the records concerning preparation of select list for the post of Junior Correctional Officer was produced. The record shows that the Petitioner Nibas Prusti as well as the selected candidates Debabrata Jena and Samarendra Ku. Samal, who belonged to SEBC category got the following marks:

Name	Written	Career	Viva Voce	G. Total	Test Mark	Total
Nibas Prusti	122	41	06			
Debabrata Jena	120	36	15	171		
Samarendra Ku. Samal	106	41	16	163		

10. From the aforesaid it appears that though Nibas Prusti secured higher marks in the written test than the other two candidates and secured equal mark as Samarendra Kumar Samal in the career evaluation, he was not selected since the marks secured by him in the viva voce test was not added. Had the marks secured by him in the viva voce test been added, as mentioned in the advertisement, to the marks secured by him in the written test and career evaluation, the sum total of marks secured by him would have been 169 marks and resultantly he would have been placed above Samarendra Kumar Samal in the merit list of SEBC candidates and could have been appointed.

11. In view of the above mentioned facts and circumstances, since we have perused the record in the case of Nibas Prusti and found that Nibas Prusti had got more marks in total in comparison to the marks obtained by one of the selected candidates i.e. Samarendra Ku. Samal and it was the condition in the advertisement that the select list should be prepared in order of merit on the basis of sum total of marks obtained in the written test, viva test and career evaluation marks, we allow his Writ Petition (W.P.(C) No. 4946 of 2003) and quash the impugned order passed by the Tribunal in respect of Nibas Prusti and direct the Opposite Parties to appoint Nibas Prusti keeping his name above the name of Samarendra Ku. Samal on merit though he shall not get any financial benefit prior to the date of appointment. But he should be shown senior to and his position in the merit list shall be above the name of Samarendra Ku. Samal.

12. With regard to the Petitioner in the other three Writ Petitions, since the record was not made available, the marks obtained by each of them could not be verified. Therefore, we quash the impugned order passed by the Tribunal in O.A. No. 1877 of 1998, O.A. No. 2516 of 2001 and O.A. No. 565 of 2001 and remit the matter to the Opposite Parties 1 to 3, who shall calculate the total marks secured by each of them and if after adding the marks secured by each of them in the viva voce test, it is found that candidates securing lesser marks than them

have been appointed, they shall be given appointment against the post applied for by them and their position in the merit list shall be fixed according to the norms fixed in the advertisement. This exercise shall be done within a period of three months from the date of production of a copy of this order. We make it clear that by the above direction we do not intend to quash the selection or disturb the posting of the candidates who were given appointment and have been continuing since the date of their appointment.

The Writ Petitions are accordingly allowed. There would be no order as to costs.

Pradip Mohanty, J.

13. I agree.