

(2023) 02 OHC CK 0081
In the Orissa High Court
Case No : Writ Petition (C) No. 16273 Of 2018

Sabita Sahoo

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 06-02-2023

Acts Referred:

Citation : (2023) 02 OHC CK 0081

Hon'ble Judges : Arindam Sinha, J;S. K. Mishra, J

Bench : Division Bench

Advocate : G. R. Sethi, J. K. Digal, B. Pattnaik, Manoj Kumar Khuntia, R. N. Acharya, Surya Narayan Patnaik, P. Mohapatra, S. Mohapatra, A. A. Mohanty, T. Panigrahi

Final Decision : Dismissed

Judgement

Arindam Sinha, J.

1. This writ petition has been specially assigned to this Bench. Mr. Sethi, learned advocate appears on behalf of petitioner while Mr. Acharya, learned advocate, is Standing Counsel for the department and Mr. Panigrahi, learned advocate appears for private opposite party no.4.

2. The facts, as we have been able to understand, are that there was advertisement dated 11th April, 1997 inviting applications from candidates for appointment to the posts mentioned. The posts were in the police establishment. The advertisement specified reservation for, inter alia, SEBC category. A further division in said category was between men and women to be appointed to the posts in the category.

3. In SEBC category, petitioner secured 131 marks. Her marks were below the last appointed candidate in the SEBC category for women. Women had 32 posts while men, 65. Opposite party no.4 was the appointed candidate in the category for men, having secured 130 marks (i.e., 1 mark less than petitioner). Petitioner had filed original application (OA) before the Tribunal praying for her

appointment as she had secured 1 mark more than private opposite party no.4 in the SEBC category. It appears from order dated 11th February, 2013, disposing of petitioner's OA, neither petitioner nor private opposite party were present. The order was made by the Tribunal saying, inter alia, as reproduced below.

"In view of the above, the respondent nos.1, 2 and 3 are directed to enquire into the matter and if it will be found that the respondent no.4/Prabir Chandra Jena securing one mark less than the applicant, even though both belonging to SEBC category, has been favoured with an appointment order as Asst. teacher (Science), issue appointment order in favour of the applicant, if there is no other impediment."

Petitioner on not getting the appointment, filed contempt petition. The petition was disposed of by impugned order dated 18th July, 2018.

4. Mr. Sethi submits, the category is the same. In the circumstances, his client having got more marks than private opposite party no.4, she should have got the appointment. He relies on judgment of the Supreme Court in *Saurav Yadav v. State of Uttar Pradesh*, reported in AIR 2021 SC 233, paragraphs 55, 58 and 59. The paragraphs are reproduced below.

"55. The open category is not a 'quota', but rather available to all women and men alike. Similarly, as held in *Rajesh Kumar Daria*, there is no quota for men. If we are to accept the second view [as held by the Allahabad High Court in *Ajay Kumar v. State of UP* and the Madhya Pradesh High Court in *State of Madhya Pradesh & Anr. v. Uday Sisode & Ors*, referred to in paragraph 20 of Justice Lalit's judgment], the result would be confining the number of women candidates, irrespective of their performance, in their social reservation categories and therefore, destructive of logic and merit. The second view, therefore – perhaps unconsciously supports- but definitely results in confining the number of women in the select list to the overall numerical quota assured by the rule.

58. In view of these clear decisions, it is too late in the day for the respondent state to contend that women candidates who are entitled to benefit of social category reservations, cannot fill open category vacancies. The said view is starkly exposed as misconceived, because it would result in such women candidates with less merit (in the open category) being selected, and those with more merit than such selected candidates, (in the social/vertical reservation category) being left out of selection.

59. I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. These are not to be seen as rigid "slots", where a candidate's merit, which otherwise entitles her to be shown in the open general category, is foreclosed, as the consequence would be, if the state's argument is accepted. Doing so, would result in a communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. The open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether

reservation benefit of either type is available to her or him.”

(emphasis supplied)

5. Without prejudice he submits, in event impugned order is not interfered with, there be direction upon the department since, there are existing vacant posts, in respect of which his client has eligibility to be appointed.

6. Mr. Acharya submits, there was compliance with order dated 11th February, 2013 disposing of the OA case. On enquiry and scrutiny of the several categories advertised for selection to the posts, it was found that though petitioner got one mark more than private opposite party no.4, latter belongs to the mens’ quota in the SEBC category and, therefore, his appointment was in relation to marks secured by other men candidates in the category. Petitioner, being a woman candidate could not be considered for appointment in the posts reserved for men belonging to the SEBC category. This was advertised and executed as per the terms notified.

7. Mr. Panigrahi adopts submission made by Mr. Acharya. He submits further, there be no interference at this stage, when his client has already put in more than 20 years of service and has been promoted in the meantime.

8. Facts in Saurav Yadav (supra) were as would appear from paragraphs 1 and 2 in the judgment, reproduced below.

“1. This Miscellaneous Application has been preferred by Ms. Sonam and Ms. Reeta Rani who had participated in the Selection Process initiated for filling up posts of Constables in U.P. Police and secured 276.5949 and 233.1908 marks respectively. They had applied in the categories of OBC-Female and SC-Female respectively.

2. It is submitted by them that their claim has been rejected by the State Government despite directions issued by this Court in its Order dated 24.07.2019 in I.A. No.10394 of 2018 (Ashish Kumar Yadav and Others vs. State of Uttar Pradesh and Others) and that candidates with lower marks have been selected in General Female category disregarding their claim.”

(emphasis supplied)

Facts in this case are not similar. Petitioner’s case is not that she secured more than the last candidate appointed in the Un-Reserved (UR) category. Scrutiny of advertisement dated 11th April, 1997 reveals the UR category did not have separate quota for men and women. It is only the Scheduled Tribes, Scheduled Castes, SEBC and sports categories that had further provision of demarcating posts for women and men. We also notice from the advertisement that clause (i) under appended note says as is reproduced below.

“Note(i) Male candidates of the same category can be allowed to fill up the vacancies caused due to non-availability of eligible and suitable women candidates.”

There is no corresponding note on the converse.

9. Challenge in the writ petition is against order passed in petitioner's contempt petition before the Tribunal. The question before us to be answered is whether there is perversity in impugned order, regarding compliance of direction made on said order dated

11 th February, 2013, by the Tribunal. The direction was for enquiry and if it will be found that opposite party no.4 securing 1 mark less than petitioner, even though both belonging to SEBC category, had been favoured with appointment, there should be issuance of appointment order in favour of petitioner. The peculiar situation is that both petitioner and opposite party having omitted to present their respective contentions in the OA case, went and ventilated their grievances in the contempt application. The Tribunal, in dealing with the contempt application, was shown the reservations, categories and divisions made by the advertisement and ultimately passed impugned order based on its appreciation of it. Petitioner did not challenge the advertisement itself but participated in the selection process to have been unsuccessful. She has moved Court as aforesaid.

10. The writ petition was presented on 30th August, 2018 but appointment was made long prior, in year, 1998. However, petitioner cannot be faulted for delay in presenting the writ petition since the OA case was disposed of as late on 11th February, 2013 and impugned order made on 11th July, 2018. However, we find from order sheet that defect in the writ petition was noticed on 27th January, 2020 and ultimately, the petition was moved on 3rd November, 2021.

11. We have pointed out the facts as distinguishable from those in Saurav Yadav (supra). The judgment is of no aid to petitioner. The sequence of events leading to the filing of the writ petition and it being moved before this Bench on special assignment, also we have pointed out. In the circumstances, we can do nothing more than express our anguish as we are unable to interfere in aid of petitioner.

12. The writ petition stands dismissed.

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