

(2005) 12 OHC CK 0003

In the Orissa High Court

Case No : Original Jurisdiction Case No. 7385 of 1999

Sachikanta Mishra and Others

APPELLANT

Vs

Collector and Another

RESPONDENT

Date of Decision : 07-12-2005

Acts Referred:

Citation : (2006) 101 CLT 278

Hon'ble Judges : N. Prusty, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : R.K. Rath and N.R. Rout, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi. J.

1. This writ application has been filed against the judgment and order dated 20th May, 1999 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in dismissing O.A. No. 3171 (C) of 1997 of the instant petitioners.

2. The brief facts of the case are that the petitioners had appeared at the written examination held on 3.3.93 and also at the typewriting test for the post of Junior Clerk in the District Office in pursuance of an advertisement issued by the Collector, Nayagarh for the Nayagarh District. In the advertisement dated 3.8.1995 only 16 vacancies were advertised out of which 8 vacancies were earmarked for general candidates and the remaining 8 vacancies were earmarked for the candidates belonging to reserved category. The details of advertisement are that, 8 vacancies for general candidates (Male-5, Female-3), 8 vacancies for reserved candidates : SC-3 (Male-2, Female-1), ST-3 (Male-2, Female-1), SEBC-2 (Male-1 and Female-1). Against the above vacancies, a select list was published on 18.10.1996 containing names of 17 male and 5 female candidates of general category, 14 male and 2 female candidates of SEBC category and 4 male and 2 female of Scheduled Caste category no candidate

belonging to Scheduled Tribe (either male or female) was selected. All the petitioners occupied lower position in the select list in their respective categories. They were not given appointment out of select list for which they filed the O.A. before the Tribunal for a direction to appoint them also alleging that even though the vacancies were subsisting at the relevant time, they were not given appointment.

3. The Tribunal considering all the aspects of the case held that the petitioners had no right for appointment and they cannot compel the Government to give them appointment and dismissed the O.A. Feeling aggrieved, the petitioners have filed the instant writ application.

4. It is not disputed that only 16 vacancies were advertised for which a select list of 44 persons was published and only 23 persons were given appointments". The position of the petitioners in merit list was much below the candidates, who had been given appointment. Therefore, it cannot be said that there was any discrimination in making the appointment.

5. Learned Counsel for the petitioners has urged that the life-span of the select list comes to an end after the expiry of one year from the date of publication of select list meaning thereby that the select list remained valid till 17.10.1997 and not beyond that. According to the petitioners, since the select list was taken into consideration only for the month of December 1996, the same should have been treated as valid till the end of the year 1997. In our opinion even if it is taken as valid till the end of the year 1997, i.e., till 31.12.1997, it will be of no assistance to the case of the petitioners as the Tribunal could not have directed the department to make appointment from the select list beyond the number of vacancies advertised.

6. It is well settled law by a catena of decision of the Hon"ble Apex Court that the selected candidates do not acquire any right to the post and the State cannot be under any obligation or legal duty to fill up all or any of the vacancies. Only it is to be seen whether the action of the State is discriminatory, mala fide or arbitrary. As such, the instant petitioners do not have any right to be appointed to the post in question, more so, when only sixteen vacancies were advertised. In this regard the decisions of the Supreme Court in the cases of Kamlesh Sharma v. Yogesh Kumar Gupta and Ors., reported in AIR 1988 SC 1021 Som Raj and others etc. Vs. State of Haryana and others, are relied upon.

In the case of State of Bihar and another Vs. Madan Mohan Singh and others, , it was held by the Apex Court that if the select list has to be kept subsisting for the purpose of filling up other vacancies also that would naturally amount to deprivation of rights of other candidates, who would have become eligible subsequent to the said advertisement and selection process.

In the case of State of Bihar and others Vs. Md. Kalimuddin and others, , the Apex Court held that even if it is assumed that the panel or select list had not expired on the date of filing of the writ petition, the refusal on the part of the

Govt. to make appointment from the panel or select list could not be condemned as arbitrary, irrational and/or malafide.

7. In view of the above mentioned facts and circumstances, we find no illegality, impropriety or manifest error of law in the impugned order and judgment dated 20.5.1999 passed by the Orissa Administrative Tribunal, Cuttack in O.A. No. 3171(C) of 1997.

As such the Writ Petition is misconceived and the same is accordingly dismissed. However, there shall be no order as to costs.

N. Prusty, J.

8. I agree.