
(2012) 06 OHC CK 0009

In the Orissa High Court

Case No : Writ Petition (C) No. 19383 of 2009

Sri Surendra Prasad Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 26-06-2012

Acts Referred:

Citation : (2012) 114 CLT 982

Hon'ble Judges : S. Panda, J;B.P. Das, J

Bench : Division Bench

Advocate : G.P. Mohanty, M. Basu, R.C. Mohapatra and S. Debdas, for the Appellant; P.K. Routray, A.S.C. (School and Mass Education Deptt.), for the Respondent

Judgement

B.P. Das, J.—The Petitioner has filed this writ application with a prayer to quash the Order Dated 3.9.2009 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A.No. 2714(C) of 2007 vide Annexure-10 & to direct Opp. Parties 1 to 4 to appoint him as a regular Primary School Teacher under the District Inspector of Schools, Balasore-II, Soro as per the policy decision of the Government in School & Mass Education Department dated 19.8.1996 vide Annexure-1. The Petitioner has challenged the impugned order on the ground that the same has been passed without application of mind. From the impugned Order Dated 3.9.2009 passed by the Orissa Administrative Tribunal; it reveals that the Petitioner-applicant was appointed as NFE Instructor Under Non-Formal Education Scheme on 21.6.1991 & he acquired CT qualification on 20.1.1994. While he was continuing as such, the State Government in School & Mass Education Department decided to absorb NFE Instructors/Supervisors as regular Primary School Teachers by Notification dated 19.8.1996 (Annexure-1). During 1997 a panel of such persons eligible for absorption was prepared where the Petitioner-applicant was placed at Sl.No. 49 & Opp. Parties 6 & 7, i.e. Respondents 5 & 6 before the Tribunal were placed at Sl. No. 3 & 9(W). Respondent No. 7 was not in the select list for absorption. According to the Petitioner-applicant, Respondent Nos. 5 & 6 were included wrongly in the list &

more particularly, Respondent No. 5, Gopal Charan Palai, who was reflected at Sl. No. 8 was not entitled to that seniority in the select list & Respondent No. 6, Manjulata Sahu was placed at Sl. No. 9 in a separate list meant for women instead of placing her in a combined list. The Petitioner-applicant also contended that there were some defects in preparation of the list of candidates selected to be absorbed as NFE Instructors under Non-Formal Education Scheme.

2. The Tribunal after hearing Learned Counsel for the parties & verifying the select list, found that the Petitioner-applicant, who was placed at Sl. No. 49 in the select list, occupies 7th SEBC point. When 29 posts were filled up, the Petitioner-applicant would have no chance of being included against the vacant roster point on application of the ORV Act & further the claim of the Petitioner-applicant that removal of Respondents from the result-sheet would not result in any benefit to the applicant. Thus, the Tribunal finding no merit in the Original Application dismissed the same. Without going into the merits of the case, we are of the considered opinion that the Petitioner-applicant, who was placed at Sl. No. 49 of the select list may not get the benefit of appointment, but when it was brought to the notice of the Tribunal that there were some irregularities in preparation of the select list, the Tribunal instead of probing the same should not have brushed aside the allegation of the Petitioner-applicant on the ground that removal of Respondents 5, 6 & 7 will in no way give the Petitioner-applicant the benefit of appointment. Accordingly, in our considered opinion, the order passed by the Tribunal in Annexure-10 is an outcome of non-application of mind. We, therefore, set aside the said order of the Tribunal & remit the matter back to the Tribunal for re-hearing & for passing necessary orders on the allegation of the Petitioner.

The Writ Petition is accordingly disposed of. No costs.

S. Panda, J.

Respectfully I agree.