



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.20577 of 2018

(Application under Articles 226 and 227 of the Constitution of India)

**Bijaya Kumar Samanta
and others**

...

Petitioners

-versus-

State of Odisha & others ...

Opposite Parties

Advocates appeared in the case through hybrid mode:

For Petitioner

: Mr.Budhadeb Routray,
Sr.Advocate.

Mr. R.P.Dalai, Advocate

-versus-

**For Opposite Party
Nos.1 to 5**

: Mr. S.N.Patanaik,
A.G.A.

**CORAM:
JUSTICE SASHIKANTA MISHRA**



JUDGMENT
09.10.2024.

Sashikanta Mishra, J. The Petitioners, five in number, have filed this Writ Petition seeking to challenge the order dated 5.9.2018 passed by the Principal Secretary to Government in the department of Higher Education in rejecting their prayer for being engaged as Sikshya Sahayak in Bhadrak District.

2. The case of the Petitioners, briefly stated, is that they were all applicants for Sikshya Sahayak pursuant to advertisement issued on 14.10.2006 by the Government. Their names were included in the provisional merit list published after scrutiny of the documents. While the matter stood thus, a guideline was issued by the Government directing selection of candidates taking the entire revenue District as one unit. However, in case of Bhadrak, separate select list (Block wise) was prepared. The matter was challenged before this Court by some affected persons in a writ application being **Chandramani Jena and others vs.**



State of Odisha¹. In the said case, a division Bench of this Court held that there can be no disqualification on the ground of residence and that any person, who satisfies the criteria of educational qualification and other eligibility condition shall be entitled to apply even if he does not stay within the Block where the appointments are to be made. Basing on the ratio decided as above, the Petitioners submitted representations to the Principal Secretary to Government, but their claims were rejected basically holding that after coming into force of the Right to Education Act, all appointments of teachers shall have to be made in strict compliance of the statute.

In another Writ Petition being W.P.(C) No.24011/2015, this Court again remitted the matter to the Principal Secretary to look into the matter afresh. Pursuant to such order, the Petitioners appeared before the Principal Secretary and put forth their grievance. But by order dated 05.9.2018, the claim of the Petitioners was rejected on the ground that

¹ 2007 (II) OLR 577



they have secured less than the cut off marks prescribed for their respective categories. Challenging such order of rejection, the Petitioners have filed this Writ Petition with the following prayer;

"It is therefore, most humbly prayed that this Hon'ble Court be graciously pleased to;

i) Admit the writ application.

ii) Call for the record.

iii) Issue rule NISI calling upon the opposite parties as to why the order No.19548 dated 05.09.2018 Issued by the Opposite Party No.1 under Annexure-6 shall not be quashed. If the Opposite Parties do not show cause or shows insufficient cause, issue a writ in the nature of Certiorari by quashing the order No.19548, dated 05.09.2018 passed by Opposite Party No.1 under Annexure-6.

Iv) Issue a writ in the nature of mandamus by directing the opposite parties more particularly opposite party Nos. 4 & 5 to recast the merit list cum select list by taking block as a unit and accordingly prepare block wise merit list and further necessary engagement orders be issued in favour of the petitioners in their respective categories

v) And/or pass such other order/orders, direction/directions as this Hon'ble Court may deems fit and proper for the ends of justice."

3. Counter affidavit has been filed by the State- Opposite Parties resisting the claim of the Petitioners specifically on the ground that as per report available,



1802 numbers of posts were advertised for Bhadrak District during 2006-07, out of which 1261 posts were earmarked for C.T. category and 541 for B.Ed. category. The Petitioners had applied for C.T. category posts and having secured less marks than the cut off marks than the respective categories, they were not selected. Further, they could not establish that any person securing less marks than them had been engaged in any Block under the Revenue district.

4. The Petitioners filed rejoinder affidavit specifically taking the stand that some persons securing less marks were found to have been engaged than them as per the information obtained under the R.T.I. Act. The information so obtained has also been enclosed to the rejoinder.

5. Heard Mr. B. Routray, learned Senior counsel along with Mr. R.P.Dalai, learned counsel for the Petitioners and Mr. S.N. Patnaik, learned Addl. Government Advocate for the State.

6. Mr. Routray would submit that the claim of the Petitioners was rejected specifically on the ground that



all of them had secured less than the cut off marks for their respective categories and that they could not establish that any person securing less marks than them had been engaged. In this context, Mr. Routray would argue that the above stand is factually incorrect if the information obtained by the Petitioners under the R.T.I. Act is perused. Elaborating his arguments, Mr. Routray submits that the cut off marks in U.R. category was 46.14% whereas the Petitioner No.1 (Bijaya Kumar Samanta) admittedly secured 48.24% and Petitioner No.4 (Amitav Mishra) secured 46.45%. Similarly, the cut off marks in SEBC category was 43.93% whereas Petitioner No.5 (Gajendra Prasad Behera) secured 46.12%. Therefore, it is clear that at least these three Petitioners ought to have been engaged, but one Sailendranarayan Panda securing 47.45% marks, which is less than the cut off marks for UR category was selected and one Bhaskar Ch. Das securing 44.88% marks, which is less than the cut off marks for SEBC category was selected. This clearly amounts to discrimination and otherwise illegal.



7. Mr. S.N.Patnaik, learned Addl. Government Advocate, fairly submits the cut off marks for UR category was 46.14% and 43.93% for SEBC category. If the same is to be accepted then the Petitioner No.2 (Amulya Kumar Parhi @ Padhi) being a UR category candidate and having secured only 42.07% marks cannot be engaged. Similarly, the Petitioner No.3 (Bijaya Kumar Nayak) being a SEBC candidate and having secured 43.27% marks cannot be engaged.

8. After considering the rival submissions as above and on going through the impugned order, this Court finds that the only ground on which the claim of the Petitioners was rejected is that they secured less than the cut off marks for their respective categories, but then, as per information obtained by the Petitioners under the R.T.I. Act, copies of which are annexed as Annexures-7 series and 8 series to the rejoinder, it is apparent that at least the Petitioner No.1 (Bijaya Kumar Samanta), Petitioner No.4 (Amitav Mishra) and Petitioner No.5 (Gajendra Prasad Behera) had secured more than the cut off marks for their



respective categories. It is also clear that Petitioner No.2 (Amulya Kumar Parhi @ Padhi) and Petitioner No.3 (Bijaya Kumar Nayak) have secured less than the cut off marks for their respective categories. Thus, there is considerable force in the submission of learned Senior counsel appearing for the Petitioners that the ground of rejection of the claim of the Petitioners by the Principal Secretary cannot be treated as entirely correct at least in so far as the Petitioner No.1 (Bijaya Kumar Samanta), Petitioner No.4 (Amitav Mishra) and Petitioner No.5 (Gajendra Prasad Behera) is concerned. The impugned order therefore, deserves to be entertained with accordingly.

9. For the foregoing reasons therefore, the Writ Petition is allowed in part. The impugned order in so far as it relates to Petitioner No.1 (Bijaya Kumar Samanta), Petitioner No.4 (Amitav Mishra) and Petitioner No.5 (Gajendra Prasad Behera) is hereby set aside. The Opposite Party-authorities are directed to issue necessary orders of engagement in their favour as soon as possible and in any case, not later than two



months from the date of production of certified copy of this order by the Petitioners. It is however, made clear that the above named Petitioners shall be entitled to be notionally engaged from the date their immediate juniors in the merit list on the basis of marks secured were selected but they shall not be granted any financial benefits.

10. The Writ Petition in respect of Petitioner No.2 (Amulya Kumar Parhi @ Padhi) and Petitioner No.3 (Bijaya Kumar Nayak) is hereby dismissed.

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Sashikanta Mishra,
Judge

Ashok Kumar Behera