

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9879 of 2016

Abhijit Mahal and others ***Petitioner***
Mr.Sambit Samal, Advocate

-versus-

State of Odisha and others ***Opp. Parties***
Mr. P.C.Das, A.S.C.

CORAM:
JUSTICE A.K. MOHAPATRA

ORDER
13.02.2024

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard the Petitioner No.2 in person and Mr.Das, learned Additional Standing Counsel. Perused the Writ Petition as well as the Counter Affidavit filed on behalf of the Opposite Parties and documents annexed to such pleadings.
3. The present Writ Petition has been filed with the following prayer :

“ That the Petitioners therefore pray that the Hon’ble Court may kindly be pleased to admit the Writ Petition and to issue a RULE NISI to the Opp.Parties to show cause s to

- i) Why the Petitioners should not be given an opportunity to be intimated through a call to

participate in the fresh recruitment process which has been notified recently to which they are being denied access and get reappointed and carry on their duty who were performing their duty perfectly and have now on dated 26.11.2015 have applied afresh and why their re-appointment should not be considered as per law and with sympathy by the Ops. As there is no legal bar for it.

And if the Opp.Parties do not show cause then the rule be made absolute by issuing writ(s)/direction(s) and any other order s deemed fit be passed.”

4. On a careful scrutiny of the Writ Petition, it appears that the Petitioners, who are three in numbers are Ex-Home Guard of Balasore district. It further appears that they were initially selected and appointed as Home Guard. Thereafter, they were disengaged from service. Pursuant to an advertisement to fill up 75 numbers of Home Guard, the present Petitioners approached the authority to permit them to participate in the recruitment process. Since they were not allowed to participate in the recruitment as the Ex-Home Guard candidates, they approached this Court by filing the present Writ Petition.

5. On perusal of the records, it appears that the present Writ Petition was filed on 03.06.2016. Vide order dated 13.06.2016 while issuing notice in the Writ Petition, a coordinate Bench of this Court permitted the Petitioner to participate in the recruitment process on production of certified copy of the order and their result shall be kept in a sealed cover which shall be subject to the result of the Writ Petition. Pursuant to such interim order dated 13.06.2016 the Petitioners participated in the recruitment process. It further appears that pursuant to order

dated 10.04.2023 passed by another coordinate Bench, learned Additional Standing Counsel was directed to produce the result of the Petitioners and others which have been kept in a sealed cover.

6. Learned Additional Standing Counsel on the other hand referred to the Counter Affidavit filed by Opposite party No.3 submitted before this Court that the present Writ Petition is not maintainable. He further contended that earlier disengagement order in W.P.(C) No.19068 of 2015 was disposed of on 19.11.2015 granting liberty to the petitioner to participate in the process of reengagement in accordance with law. Thereafter, 75 number of vacant posts of Home Guards under the Commandant, Home Guards, Balasore was to be filled up on 04.06.2016. Learned Additional Standing Counsel further contended that the recruitment to the post of 75 numbers of Home Guards was deferred initially and thereafter it has been stated in the Counter Affidavit that the Petitioners will be given due intimation at the time when such posts are to be filled up and the Petitioners will be called to attend Appointment Board. Learned Additional Standing Counsel further contended that the recruitment process completed during the pendency of the Writ Petition and the Petitioners pursuant to the interim order were allowed to participate in the recruitment process. He further contended that pursuant to the interim order passed by this Court, an affidavit has been filed by the D.S.P., Home Guards, Balasore wherein it has been stated that out of the three Petitioners, the Petitioner No.2 namely, Khageswar Khatua is

eligible for reengagement and accordingly, he has been selected. He further contended that since there was a direction of this Court to keep the result in sealed cover, in obedience to such order, the result of the Petitioners has been kept in sealed cover and selected candidates have not been given appointment. In such view of the matter, learned Additional Standing Counsel submitted that the present Writ Petition is premature and the same is liable to be dismissed.

7. Considering the submissions made by the Petitioner No.2, who is present in Court and conducting the case in person as well as learned Additional Standing Counsel, on careful examination of the background facts of the present case and materials on record, further taking into consideration the affidavit filed by the Opposite Party No.3 on 25.04.2023 this Court is of the considered view that there was no impediment in permitting the Petitioners to participate in the selection process to fill up 75 numbers of vacant post of Home Guards in Balasore district. Therefore, interim order passed by this Court permitting the Petitioners to participate in such selection process is hereby confirmed. On a careful analysis of the factual background of the case, this Court is of the view that the Writ Petition is bound to be allowed and accordingly the Writ Petition stands allowed and the Opposite Parties are directed to open the sealed cover and issue appointment order in favour of Opposite Party No.2, who is validly selected as has been reflected in the Affidavit within a period of four weeks from the date of communication of the

certified copy of this order.

8. With the aforesaid observation the Writ Petition stands disposed of.

Issue urgent certified copy of this order as per Rules.

(A.K. Mohapatra)
Judge

RKS



Signature Not Verified

Digitally Signed
Signed by: RAMESH KUMAR SINGH
Designation: Junior Stenographer
Reason: Authentication
Location: High Court of Orissa
Date: 16-Feb-2024 18:51:47

