



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No. 25369 of 2024

(An Application under Articles 226 & 227 of the Constitution of India)

Ananta Narayan Behera

..... Petitioner

-Versus-

State of Odisha & Others

.... Opposite Parties

For Petitioner : Mr. K.K.Jena, Advocate,

For Opp. Party : Mr. S.N.Pattnaik,
Additional Government Advocate for
the State.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
29th April, 2025

SASHIKANTA MISHRA, J.

The petitioner has filed this writ application with
the following prayer;

“It is, therefore, prayed that this Hon'ble Court would graciously be pleased to admit the writ petition after hearing the parties allow the same thereby directing the opp.party no.2 to consider the legitimate grievance as per instruction vide letter no.964 dated 30.10.2003 issued by Commissioner



cum Secretary, S&ME Department, Govt. of Odisha under Annexure-2 and consequential resolution of Government of Odisha, Department of School and Mass Education dated 31.05.2006 under Annexure-3 engaging the petitioner as Sikshya Sahayak in Phiringia Block under District of Kandhamal in the interest of justice and equity.

And issue any other writ(s)/Order(s)/Direction(s) be passed as this Hon'ble Court deem just fit and proper.

And for this act of kindness this petitioner as in duty bound shall ever pray."

2. The facts of the case, briefly stated, are that the petitioner was selected as Sikhya Sahayak pursuant to advertisement dated 14.10.2006. He being an SC untrained physically handicapped candidate, applied for such position in Phiringia block under Kandhamal district. It is stated that 39 vacancies were notified for the district. The petitioner was placed at SL. No. 39 of the merit list. It is his grievance that though 54 candidates were appointed, the petitioner, despite being placed at Sl. No. 39, was not granted appointment. As such, he preferred writ application before this Court



being W.P.(C). No. 7218 of 2009, which was disposed of on 13.05.2009 granting him liberty to submit a representation before the Collector, Kandhamal highlighting his grievances. Pursuant to such order, the petitioner submitted a representation but the same came to be rejected by order dated 23.09.2009 on the ground that the cut-off mark under SC male category is 68 and the petitioner having secured 67.21 marks is not eligible to be selected. The petitioner challenged the order of the Collector before this Court again in W.P.(C). No. 10141 of 2019. In the said writ application a specific stand was taken that as per instructions of the Government vide letter dated 30.10.2003, untrained SC candidates can be appointed against vacant posts meant for SC and ST candidates. This Court, by order dated 17.06.2019 permitted the petitioner to withdraw the writ application with liberty to approach the appropriate forum ventilating his grievance. As such, the petitioner again approached the Collector, Kandhamal as well as the State Project Director, OSEPA by submitting representations on 09.12.2019. No action being taken



on the representations, the petitioner again submitted a representation on 08.02.2021. A revised merit list was prepared on 27.10.2021 but the name of the petitioner did not find place. It is stated that all other districts except Kandhamal have acted as per the instruction/clarification issued by the Government on 13.10.2003. Under such circumstances, the petitioner again submitted representation to the Commissioner-cum-Secretary, School and Mass Education Department on 27.03.2023. Since no action was taken, he has approached this Court with the prayer as quoted above.

3. Heard Mr. K.K.Jena, learned counsel for the petitioner and Mr. S.Behera, learned AGA for the State.

4. Mr. Jena would argue that as per letter dated 30.10.2003 of the Government, it was clarified that in case SC and ST trained candidates are not available, untrained candidates can be appointed. Following this clarification, almost all districts of the State, except Kandhamal, have given engagement to untrained Sikhya Sahayaks belonging to the SC and ST category. The subsequent clarification issued by the Director,



Elementary Education on 19.12.2006, relied upon by the authorities in case of the petitioner, does not hold good in view of the fact that the same was issued by the Director.

5. Mr. Behera, learned State counsel refers to the letter dated 19.12.2006 of the Director, Elementary Education, copy enclosed as Annexure-7 wherein it was clearly stated that engagement of SC and ST candidates against UR category is in violation to the existing norms. The petitioner's case was not considered because he did not have training qualification.

6. After hearing learned counsel for the parties and on going through the letter dated 30.10.2003 of the Commissioner-cum-Secretary to Government in School and Mass Education Department, it is clear that the Government clarified that in case SC and ST trained candidates are not available, untrained candidates can be appointed. In so far as the letter dated 19.12.2006 (Annexure-7) is concerned, the same was issued by the Director, Elementary Education and State Project Director, OPEPA and therefore, cannot override or



supersede the letter dated 13.10.2003 of the Government. Nevertheless, in the said letter also, it has been clarified as under 'therefore, ST/SC untrained candidates can only be engaged against the posts earmarked for ST/SC category provided that required no. of trained ST/SC applicants are not available in the block unit area'. As such, even the letter dated 19.12.2006 does not appear to be contrary to the clarification issued by the Government on 30.10.2003, at least in principle. That apart, materials have been placed before this Court to show that in other districts, such as Malkangiri, appointments have been made in line with the clarification of the Government issued on 30.10.2003. There is no reason as to why the same shall not be followed in the district of Kandhamal as otherwise, it would amount to discrimination. It is needless to mention that a uniform principle has to be adopted by the Government in all districts.

7. The position that emerges from the above discussion is that even untrained ST/SC candidates can be



engaged against SC/ST posts meant for trained qualified candidates provided such candidates are not available.

8. In such view of the matter, the writ application is disposed of directing the Collector, Kandhamal to consider the case of the petitioner for his engagement as Sikhaya Sahayak (or in any other equivalent post) in Phiringa Block against available vacancy in SC category provided no trained candidates are available and subject to such other conditions that may be imposed in accordance with law. Necessary orders in this regard shall be passed within two months from the date of production of the certified copy of this order by the petitioner. It is needless to mention that if no trained candidates are available, the petitioner, if found to be otherwise suitable, shall be given engagement.

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Sashikanta Mishra,
Judge

Deepak

Signature Not Verified

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