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O.A. No. 236/2005

ORDER DATED 24th OCTOBER, 2008

Coram:

Hon'ble Mr. Justice K. Thankappan, Member (J)

Hon'ble Mr. C.R. Mohapatra, Member (A)

This O.A. was dismissed for default once. However, one Misc. Application No.194/08 is filed for restoration of this case. After hearing the Ld. Counsel for the Applicant, this Tribunal sees that the M.A can be allowed and O.A. restored. Accordingly the Original Application is restored.

2. Today on restoring the Original Application, we have heard the Ld. Counsel for the applicant as well as the official Respondents and the proxy Counsel appearing on behalf of the sixth Respondent.

3. The question now raised in this Original Application is whether the rejection of the application of the applicant is right or wrong. The applicant prays in the O.A as follows:-

- (i) Admit and allow this Original Application.
- (ii) Quash the provisional selection of the Respondent No.6 in Annexure-3 pursuant to the advertisement in Annexure-1.
- (iii) Direct the Respondent No.1 to give appointment to the applicant to the Post of EDMM in pursuant to the advertisement in Annexure-1.



4. On hearing the Ld. Counsel for the applicant and the Ld. Counsel for the Respondent, we see that the matter has to be considered by this Tribunal at length. In the above circumstances we heard Mr. S. Udgata, Ld. Counsel for the applicant and Mr. A. Kanungo, Ld. ASC for Respondent Nos.1 to 5 and Mr. S. Das, Ld. Counsel for R-6.

5. Mr. Udgata, Ld. Counsel for the applicant submits that though the applicant got more marks than that of the Respondent No.6 in the Matriculation Examination and got an employment registration in the State Employment Exchange for SC and ST at Bhubaneswar, the only such exchange for SC & ST having local jurisdiction over the State of Orissa. Further the counsel challenges the selection already made during 2000 and submits that the application of the applicant has been rejected without considering the circular which is followed by the Department and without giving an opportunity of hearing. The main ground urged by the counsel for the applicant is that only because of the reason that the applicant had a registration in the Special Employment Exchange for SC & ST, Bhubaneswar and is not having a registration number in the Local Employment Exchange as per the advertisement (Annexure-A/1) his application could not have been rejected. The other question is that the Respondent No.6 who also belongs to ST community, has secured less marks than the applicant.

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6. The Ld. Counsel for the Respondents relaying on the counter affidavit for and on behalf of the Respondents had taken the contention that since the application of the applicant is not in accordance with the advertisement (Annexure-A/1) the rejection is justified. Secondly, the Counsel submits that as per the advertisement it is a must the candidate should have registered his name in the Local Employment Exchange having jurisdiction over the area for which the application is invited. Further the Counsel for the Respondents also contended that since the application of the applicant has rejected against the 2nd Respondents cannot be questioned as he has not appeared in the test of the selection. In the above circumstances the O.A is dismissed accordingly.

7. The question to be considered is that whether the applicant is justified in approaching this Tribunal by filing this O.A. and reliefs sought for as stated above. It is to be noted that as per Advertisement (Annexure-A/1) it is specifically mentioned that applications in the prescribed forms are invited from the intending candidates of Cuttack District for recruitment to the Cadre of 03 posts of Extra Departmental Main Man under Head Record Officer R.M.S. "N" Division, Cuttack out of which 01 is reserved for O.C, 01 is reserved for S.C and 01 is reserved for S.T. The applicant though belongs to ST community he is not furnished the evidence for showing his registration in the Local Employment Exchange i.e. at Cuttack.



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In this context, Mr. Udgata, Ld. Counsel for the applicant invited the attention of this Tribunal to the definition of 'Local Employment Exchange' defined in the Law Lexicon 2005 edition Vol.2, published by Ashok Law House, New Delhi page 1558 of that book it is stated as follows:

"Local Employment Exchange" means an (Employment Exchange other than the Central Employment Exchange) notified in the Official Gazette, by the State Government or the Administration of the Union Territory as having jurisdiction over the area in which the establishment concerned is situated or over specified class or categories of establishment of the vacancies. Vide Employment Exchange (Compulsory Notification of Vacancies) Rules, 1960, Section 2 (5)."

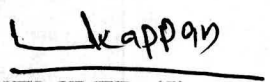
Admittedly the application is invited vide Annexure-A/1 for the post of Extra Departmental Mail Man under Head Record Officer R.M.S. "N" Division, Cuttack. Therefore, the candidates should have registered their names in the Local Employment Exchange. The applicant has got his name registered in the Special Employment Exchange for SC & ST at Bhubaneswar which is specially meant for SC & ST and that itself does not mean that the applicant has got his name registered with the Local Employment Exchange and that Special Employment Exchange, Bhubaneswar, is for special purpose and not for any other purpose. At the same time, the Respondent No.6 is a candidate belonging to ST community

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and is having Local Employment Exchange Registration. So the application of the applicant is not in accordance with Annexure-A/1 and if so, the other question raised is that the provisional selection was made during 2000. When the O.A. was admitted, this Tribunal found that the admission was subject to the question of delay to be considered by the Tribunal at the time of hearing. Not only that, the selection process cannot be challenged here. That apart, the applicant has not challenged Annexure-A/1 advertisement where the conditions were fixed.

9. In the above circumstances the above Original Application is devoid of any merit and is accordingly dismissed.


Member (A)


MEMBER (J)