

[Merit List Not A Reservoir For Future Appointments: Orissa High Court Dismisses Plea Filed With 15 Yrs Delay](#)

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IN THE HIGH COURT OF ORISSA AT CUTTACK

S.K. SAHOO; J.

W.P.(C) No. 22181 of 2022; 05.12.2022

Kalandi Charan Barik versus State of Odisha

Petitioner Mr. S.K. Pradhan, Advocate; Opp. Parties Addl. Government Advocate

ORDER

This matter is taken up through Hybrid Arrangement (Video Conferencing/Physical Mode).

Heard Mr. S.K. Pradhan, learned counsel for the petitioner and Mr. Saswat Das, learned Additional Government Advocate for the State of Odisha.

The petitioner Kalandi Charan Barik has filed this writ petition with a direction to the opposite parties more particularly to the opposite party no.3, the Collector -cum- C.E.O., Zilla Parishad, Angul to give him appointment as Multiple Purpose Assistant (GRS) in Jharbada Gram Panchayat under Pallahara Block.

It is the case of the petitioner that on 07.08.2007, the opposite party no.3 published an advertisement for engagement as Multiple Purpose Assistant under all the 209 Gram Panchayats of Angul district on contractual basis with a consolidated remuneration of Rs.2,000/- (rupees two thousand) per month. As per the advertisement, the petitioner submitted his application along with the documents relating to his requisite qualifications for the said post and on 24.09.2007, the opposite party no.2, the Project Director, District Rural Development Agency, Angul published a merit list of candidates in which the name of the petitioner finds place in Sl. No.3 for Jharbada Gram Panchayat. The Sl. No.1 candidate, namely, Puspa Ranjan Pradhan who was selected as GRS for the said Gram Panchayat stated to have manipulated some documents and obtained the residential certificate and after the said fact came to the notice of the present petitioner, he submitted a complaint before the opposite party no.5, the Tahasildar, Pallahara for verification of the residential address of the select list no.1 candidate Puspa Ranjan Pradhan. After enquiry, the Tahasildar found that the said candidate does not belong to village Raipal for which the residential certificate as well as other certificates were cancelled. Puspa Ranjan Pradhan preferred an appeal before the opposite party no.4, the Sub-Collector, Pallahara challenging the order of the Tahasildar which was dismissed in Appeal No.02 of 2007 and the order passed by the Tahasildar was upheld. The writ petition filed by the said candidate before this Court vide W.P.(C) No.135 of 2008 was also dismissed on 24.11.2007.

It is the case of the writ petitioner that the second candidate as per the merit list was one Akshaya Kumar Pradhan, who died on 06.05.2009 and since the person who got the first position in the merit list became ineligible and the second person died, the petitioner being Sl. No.3 in the merit list submitted his representation before the opposite parties nos.2 and 3 with a prayer to give him appointment against Multiple Purpose Assistant (GRS) post under Jharbada Gram Panchayat.

It is the contention of the learned counsel for the petitioner that since the petitioner remained as the sole candidate in the merit list which was prepared in the year 2007, he should be given appointment for the said post. It is further submitted that a representation was filed on 18.11.2021 before the opposite party no.3, the Collector -cum- C.E.O., Zilla

Parishad, Angul and a copy of the same was also served on the opposite party no.2, the Project Director, District Rural Development Agency, Angul but the same has not been acted upon and therefore, direction is sought for to the opposite parties to give him appointment as Multiple Purpose Assistant (GRS).

Mr. Saswat Das, learned Additional Government Advocate, on the other hand, submitted that the petitioner is virtually praying before this Court to act upon the merit list (select list) which was prepared in the year 2007 and appointment has been given basing on that list and there is inordinate delay in approaching this Court and in the meantime, almost fifteen years have passed and the merit list prepared in the year 2007 cannot be treated as a perpetual reservoir for the purpose of appointment and no indefeasible right accrued in favour of the petitioner merely because his name finds place in the select list. Learned counsel for the State further highlighted that even in the year 2018, a comprehensive guideline has been prepared to the effect that the final merit list shall remain valid for a period of one year from the date of final publication. Learned counsel for the State placed reliance in the case of **State of Orissa and another -Vrs.- Rajkishore Nanda and others reported in (2010) 6 Supreme Court Cases 777.**

Adverting to the contentions raised by the learned counsel for the respective parties, the questions that crops up for consideration are (i) whether the merit list (select list) that was prepared in the year 2007 can be acted upon after fifteen years; (ii) whether relief as sought for by the petitioner can be granted in view of inordinate delay in approaching this Court?

In the case of **Rajkishore Nanda** (supra), the Hon'ble Supreme Court held as follows: -

“14. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.

15. A Constitution Bench of this Court in **Shankarsan Dash -Vrs.- Union of India** held that appearance of the name of a candidate in the select list does not give him a right of appointment. Mere inclusion of the candidate's name in the select list does not confer any right to be selected, even if some of the vacancies remain unfilled. The candidate concerned cannot claim that he has been given a hostile discrimination. (see also **Asha Kaul -Vrs.- State of J & K, Union of India -Vrs.- S.S. Uppal, Bihar Public Service Commission -Vrs.- State of Bihar, Simanchal Panda -Vrs.- State of Orissa, Punjab SEB -Vrs.- Malkiat Singh, Union of India -Vrs.- Kali Dass Batish, Divisional Forest Officers -Vrs.- M. Ramalinga Reddy, Subha B. Nair -Vrs.- State of Kerala, Mukul Saikia -Vrs.- State of Assam and S.S. Balu -Vrs.- State of Kerala**).

16. A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required. It is the settled legal proposition that no relief can be granted to the candidate if he approaches the Court after expiry of the select list. If the selection process is over, select list has expired and appointments had been made, no relief can be granted by the Court at a belated stage. (Vide **J. Ashok Kumar -Vrs.- State of A.P., State of Bihar -Vrs.- Mohd. Kalimuddin, State of U.P. -Vrs.- Harish Chandra, Sushma Suri -Vrs.- Govt. of NCT of Delhi, State of U.P. -Vrs.- Ram Swarup Saroj, K. Thulaseedharan -Vrs.- Kerala State Public Service Commission, Deepa Keyes -Vrs.- Kerala SEB and Subha B. Nair**).

Law is well settled that persons seeking relief against the State under Article 226 of the Constitution, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary

relief. The unexplained delay on the part of the petitioner in approaching the High Court for redressal of his grievance under Article 226 of the Constitution would be sufficient to justify rejection of the petition.

After going through the averments taken in the writ petition, it appears that the Tahasildar, Pallahara cancelled the residential certificate of the sl. no.1 candidate Puspa Ranjan Pradhan on 16.10.2007 and thereafter, his appeal was also dismissed by the Sub Collector, Pallahara on 19.12.2007 and the candidate who stood second as per the select list expired on 06.05.2009. In such a scenario, there was no justification for the petitioner not to approach this Court earlier. In my humble view that since the selection process was over, the appointment was made and the petitioner has approached this Court after fifteen years of the publication of the merit list and no reasonable explanation has been offered for the delay, no relief can be granted to the petitioner at this stage.

Accordingly, the writ petition is being devoid of merit, stands dismissed.

Issue urgent certified copy as per Rules.

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