

**ARUNA SURESH, J.**

W.P.(C) NO.8334/2011 & 11403/2011 (Dt.31.01.2012)

**SMITARANI SAHOO & ANR.**

... ....Petitioners.

.Vrs.

**STATE OF ORISSA & ORS.**

.....Opp.Parties.

For Petitioners - Mr. S.Das.

For Opp.Party - Mr. P.Mohanty,  
Sr. Standing Counsel for School & Mass  
Education Department.

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**ARUNA SURESH, J.** Since both the petitions involve common question of law, they were heard together.

2. Petitioners have challenged the selection procedure followed by the respondents in preparing merit list of eligible candidates who were found suitable for appointment as Sikshya Sahayaks.

3. In brief, case of the petitioners is that respondents published guidelines vide Resolution no.587 dated 10.1.2011 for issuance of an advertisement for appointment of Sikshya Sahayaks, their minimum qualifications, criteria and the procedure for selection to be followed while selecting eligible candidates. Another letter was issued by the Department on 17.1.2011 thereby revising the calendar of selection process. This revised calendar required advertisement to be issued by 24.1.2011. Accordingly, advertisement was issued. Petitioners submitted their applications for consideration as they possessed requisite eligibility. Name of the petitioners appeared in the provisional list published by the Department. Name of the petitioners also appeared in the merit list but they were not engaged. However, petitioners noticed that their names were not included in the SEBC +2 Arts (C.T) final select list. Petitioners came to know that total marks secured by them in the vocational course had not been taken into consideration at the time of final selection, rather the marks secured in the basic foundation course had been deducted from the grand total and only marks of some of the subjects had been considered for calculation of percentage of marks for selection of Sikshya Sahayaks. Therefore, the total percentage of marks of the petitioners with +2 vocational certificates was reduced drastically and their name did not find place in the final select list.

4. Grievance of the petitioners is that they have been discriminated vis-à-vis the candidates having vocational course in other districts where their vocational course have been considered for selection. However, a deviation was made by the respondents while selecting eligible candidates for appointment in Cuttack and Bhadrak district respectively while preparing the select list in utter violation of Resolution dated

10.1.2011. Challenging the selection list so prepared by the respondents and seeking consideration of their marks secured in vocational course as eligible criteria for selection, petitioners have filed these petitions.

5. Respondents have contested the claim of the petitioners. It is alleged in the counter affidavit filed by Bijoy Kumar Rath, District Project Coordinator that guidelines, eligibility criteria and procedure as laid down in the Resolution dated 10.1.2011 was followed at the time of preparation of the final select list. The Government had been issuing instructions from time to time which were also followed. It is further averred that letter dated 15.1.2011 was issued by School & Mass Education Department to all the Collectors-cum-CEO, Zilla Parishad enclosed with letter no.5 dated 14.2.2011 of the Secretary, Council of Higher Secondary Education, Orissa clarifying that as per the proceedings of the Academic Committee of the Council held on 11.1.2010 and duly approved by the General Body of the Council in its meeting held on 13.1.2010; High School Vocational Examination having History, Pol. Science and Economics as basic Foundation Course is to be considered as equivalent to Higher Secondary Examination in Arts stream.

6. It is alleged that case of the petitioner was considered in accordance with the said letter dated 14.2.2011 and entire marks of +2 vocational course as reflected in the marksheet submitted by the petitioners while applying as SEBC candidates, were taken into consideration and accordingly, provisional list was prepared, but subsequently, as per the guidelines and instructions issued from the Government, their basic foundation course in +2 vocational course was taken into consideration while preparing the final merit list and in the final list, the petitioners have secured much lesser marks and were placed in the merit list amongst SEBC category candidates. Candidates up to serial no.25 in the merit list, who had secured higher marks, have been engaged and since all the posts in the said category have been exhausted, there is no vacant post against which petitioners can be considered for appointment. It is urged that the petitions therefore deserve to be dismissed.

7. Mr. S. Das, advocate appearing for the petitioners has submitted that neither in the guidelines dated 10.1.2011, nor in the advertisement, there was any stipulation that the marks secured in the vocational course would not be taken into consideration at the final selection and also that the marks secured in the basis foundation course would be deducted from the grand total and only the marks obtained in some subjects would be taken into consideration for calculation of percentage of marks for selection of Sikshya Sahayks. Therefore, Department in not considering the marks obtained by the petitioners in the vocational course acted against the resolution of the Government and in violation of principles of equity and natural justice. He has referred to Tarun Kanti Sethi Vs. State of Orissa Vol. 110 (2010) CLT 544 to support his case.

8. Mr. P. Mohanty, Senior Standing Counsel for the Government has refuted the submissions made by counsel for the petitioners. He has argued that letter dated 14.2.2011 has laid down the criteria to be considered for deciding equivalence to

different streams of HS vocational examination and as per this letter, HS vocational examination having History, Pol. Science and Economic as basic foundation course can only be considered as equivalent to Higher Secondary Examination in Arts stream. Petitioners were not having subjects of History, Pol. Science and Economics for consideration of their marks as equivalent to Higher Secondary Examination in the Arts stream and, therefore, their marks were not taken into consideration while calculating the percentage of marks for preparation of select list of the candidates. He has urged that since all the vacancies meant for SEBC candidates have been filled in and no vacancy of the concerned year is left, the claim of the petitioner is without merits and must be rejected.

9. Para 4 of the Resolution dated 10.1.2011 lays down the procedure and minimum qualification to be considered by the Department for engagement of a Sikshya Sahayak. As per para 4.2, vacant post as well as newly created posts in the elementary schools on account of opening of new Primary/Upper Primary Classes or due to Up-gradation of existing Primary Schools to Upper Primary Schools or opening of Class-VIII by way of up-gradation of existing Upper Primary Schools are to be filled up by the candidates having the qualification of +2 Science, Arts/Commerce (or its equivalent examination declared by appropriate authority and C.T Training or +2 Science, Arts/Commerce (or its equivalent examination declared by appropriate authority) and 2 year Diploma in Education (Special Education) a course recognized by Rehabilitation Council of India (RCI) and B.A., B.Sc. (or its equivalent Examination declared by appropriate authority) and B.Ed. or B.A., B.Sc. (or its equivalent examination declared by appropriate authority) and one year B.Ed. (Special Education) course recognized by Rehabilitation Council of India (RCI) as per the requirement under each category.

10. As per sub-para 4.3, selection has to be made only on merit on the basis of percentage of mark secured in +2 (or its equivalent examination declared by the appropriate authority) and C.T. for C.T. candidates and B.A., B.Sc. (or its equivalent examination declared by the appropriate authority) with B.Ed. for B.Ed. candidates.

11. Para 6 of the Resolution lays down the eligibility criteria to be fulfilled by a candidate while applying for the post of Sikshya Sahayak. As per this paragraph, the candidate must have passed +2 Science, Arts/Commerce (or its equivalent examination declared by appropriate authority) and C.T. Training from a recognized Board/University or +2 Science, Arts/Commerce (or its equivalent examination declared by appropriate authority) and 2 year Diploma in Education (Special Education) a course recognized by Rehabilitation Council of India (RCI) or B.A., B.Sc. (or its equivalent examination declared by appropriate authority) and B.Ed. from a recognized University or B.A., B.Sc. and one year B.Ed. (Special Education) course

recognized by Rehabilitation Council of India (RCI). The +2 candidates must have Odia as a subject up to class-VII and B.Ed. candidates must have Odia as a subject up to class-X.

12. This Resolution, therefore, is silent if qualification of vocational course of a candidate is to be considered or not while calculating the percentage of marks secured by a candidate at the time of making of the merit list. Similarly, the advertisement issued in pursuance of the Resolution dated 10.1.2011 does not contain any stipulation that the vocational course of a candidate shall not be taken into consideration for selection. The petitioners in view of the past guidelines and procedure which was being followed by the Department filed their candidatures for consideration with the presumption that their marks obtained by them in the vocational course would also be considered by the Department while preparing the selection list. Letter dated 15.2.2011 enclosed with copy of letter dated 14.2.2011 of the Secretary, Council of Higher Secondary Education was circulated by the Additional Secretary to Government after the Resolution was published and advertisement was issued. True that, in the revised calendar circulated vide letter dated 17.1.2011 by the Commissioner-cum-Secretary to Government to all the Collectors-cum-CEO, Zilla Parishads, it was stated that marks secured in Extra Optional, Foundation Course and Ancillary course would be excluded from computation of aggregate of marks. However, this stipulation was not contained in the advertisement issued on 21.1.2011. Besides, it is silent as to how the marks obtained in Vocational Course are to be considered or excluded for computation of aggregate of marks.

13. Under the circumstances, there was no reason for the petitioners to believe that their vocational course qualification would not be considered at the time of selection.

14. It is pertinent that the Department did consider the marks obtained by the petitioners in the vocational course at the time of preparation of provisional list. Since petitioners found their name in the provisional list, there was no reason for them to apprehend that their vocational course marks would not be considered by the Department while preparing the final select list. Before preparation of the final list, Department did not inform the petitioners that in view of the letter dated 14.2.2011, their marks obtained in the vocational course would not be taken into consideration while preparing the select list. Undisputedly, this letter was issued after the applications were submitted by the candidates including the petitioners as the last date of receipt of the application was 10.2.2011. Preliminary scrutiny and compilation of the applications were to be completed by 15.2.2011. Obviously at the time when provisional list was prepared, the Collector was not aware of the letter dated 14.2.2011. Surprisingly, though the Academic Committee of the Council had taken a decision on 11.1.2010 which was duly approved by the General Body of the Council in its meeting held on 13.1.2010 laying down the criteria to be followed for deciding equivalence to different streams of Higher Secondary Examinations, it was not communicated to the Special Secretary to Government, Department of Higher Education, Orissa, Bhubaneswar and further Collector-cum-CEO, Zilla Parishad for compliance till after the preliminary scrutiny and compilation of applications Education District Unit wise were completed.

15. Petitioners were called upon to bring their original certificates for verification on 1.3.2011. Their documents were accordingly verified. It is noted that at the time of

verification of the documents, petitioners were not intimated of issuance of the letter dated 14.2.2011 by the Secretary, Council of Higher Secondary Education and also that in view of the said letter, their marks obtained in the basic foundation course in Higher Secondary Vocational examination would not be considered while calculating the percentage of marks obtained by them. Experience of the petitioners that they would be finally selected, considering their merit in the provisional list and also on verification of the documents as Sikshya Sahayak was therefore natural.

16. Similar question arose in **Tarun Kanti Sethi Vs. State of Orissa and others 110 (2010) CLT 545**. In the said case petitioner was disengaged from the post of Swechhasevi Sikshya Sahayak by Collector, Bhadrak on the plea that her average percentage of marks had come down below the minimum requirement after verification as the Extra optional marks obtained by her were not to be calculated to prepare the merit list panel in pursuance of G.O letter dated 4.11.2000 and, therefore, she had to be disengaged. While allowing the petition, this Court directed the Department to re-engage the petitioner in the said petition with the observations that advertisement did not reflect that while calculating the total marks, the marks obtained in Extra Optional should be excluded.

17. As discussed above, there was no stipulation in the Resolution dated 10.1.2011 and the advertisement issued in pursuance of the resolution that marks obtained in the vocational course would not be considered for calculation of average percentage of marks for preparing the select list. Letter dated 15.2.2011 makes it very clear that +2 vocational course has to be treated as equivalent to Higher Secondary Examination under Arts and Science stream as minimum qualification for the purpose of engagement of

Sikshaya Sahyaks. Therefore, the concerned officials of the Department should have considered +2 vocational course of the petitioners under Arts stream for the purpose of engagement as Sikshya Sahayaks while preparing the select list.

18. Vide letter dated 14.8.2006, Council of Higher Secondary Education had informed all concerned that +2 vocational examination conducted by Council of Higher Secondary Education, Orissa, Bhubaneswar is equivalent to the Higher Secondary Examination conducted by the Council of Higher Secondary Education for Arts, Science and Commerce Stream. Similar letter dated 17.1.2008 was circulated to all the concerned Departments. In accordance with these letters, various Departments of the Government have been considering +2 Vocational Examination conducted by the Higher Secondary Education as equivalent to +2 Arts stream examination conducted by the Council of Higher Secondary Education.

19. In **W.P (C ) No.4265 of 2011(Goutam Behera & others Vs. State & others)**, a similar question arose for consideration. In this petition, learned Single Judge of this Court observed as below.

In this view of the matter all the pending Misc. Cases as well as the writ petition is disposed of directing that the cases of the petitioners/candidates, who have completed +2 Vocational course with CT training shall be considered by the Collectors-cum-CEOs, Zilla Parishad as per the instruction given by the Department of School and Mass Education Department and the provisional list of selected candidates already published shall be revised accordingly after considering the cases of the petitioners and other candidates situated similarly. Fresh provisional merit lists of selected candidates shall be published. Since there are many similar matters pending and all the Collectors-cum-CEOs have been directed to revise such provisional list of selected candidates, this order shall apply to the entire process of selection in the State. The interim order passed earlier stands vacated.

20. Facts & circumstances of this case are clearly covered by the aforesaid order of this Court. The concerned officials of the Department ought to have considered +2 vocational course of the petitioners under Arts stream as equivalent to +2 Arts for the purpose of their engagement as Sikshya Sahayak while preparing the final select list.

21. Hence, the petitions are disposed of with the direction to the concerned Collectors-cum-CEOs, Zilla Parishad to consider the claim of the

petitioners afresh as per the directives issued by the Council of Higher Education Department from time to time in the light of observations as above and after reconsideration of the claim of the respective petitioners, if need be, revise the final select list already published, preferably within a period of two months from the date of the order. The concerned Collector shall afford fair opportunity of being heard to the petitioner and other affected candidates, if any, and shall grant liberty to the petitioners to produce relevant documents in support of their relevant cases, if so desired.

Writ petitions disposed of.