

Orissa Public Service Commn.& Anr vs Rupashree Chowdhary & Anr on 2 August, 2011

Equivalent citations: AIR 2011 SUPREME COURT 3276, 2011 AIR SCW 4588, 2011 LAB. I. C. 3754, AIR 2011 SC (CIVIL) 2042, 2011 (8) SCC 108, (2011) 2 ORISSA LR 585, (2011) 1 SCT 49, (2011) 7 MAD LJ 605, (2011) 4 PAT LJR 55, (2011) 8 SCALE 151, (2012) 1 SERVLR 478, (2011) 2 CLR 575 (SC)

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Bench: Anil R. Dave, Mukundakam Sharma

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6201 OF 2011

[Arising out of SLP(C) No. 6751 of 2010]

Orissa Public Service Commission & Anr.

....Appellant(s)

VERSUS

Rupashree Chowdhary & Anr.

....Respondent(s)

JUDGMENT

Dr. MUKUNDAKAM SHARMA, J.

1. Leave granted.

2. The present appeal is filed against the judgment and order dated 08.12.2009 passed by the Orissa High Court at Cuttack whereby the High Court allowed the appeal filed by the Respondent No. 1 herein and ordered for rounding off of the aggregate marks of the respondent from 44.93% to 45% along with two other candidates but not parties before the Court and held her eligible to appear in the interview as per Rule 24 of the Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 [for short "the Rules"].

3. The facts leading to the filing of the present case are that the Orissa Public Service Commission [in short "the OPSC"] published an advertisement inviting applications from suitable candidates for the Orissa Judicial Service Examination, 2009 for direct recruitment to fill up 77 posts of Civil Judges (J.D), pursuant to which, the respondent No. 1 applied for the said post. She appeared in the Preliminary Written Examination held on 15.05.2009. Being successful in the Preliminary Written Examination, she appeared in the Main Written Examination which was held from 15-18.07.2009.

The list of successful candidates, who were eligible for interview, was published on 25.8.2009 in which respondent's name was not there.

Immediately after publication of the result of the Main Written Examination, the respondent applied for her marks in the Main Written Examination and the mark sheet of the respondent was issued to her on her request on 27.10.2009, which she received on 03.11.2009.

4. After receiving the same, she came to know that she had secured 337 out of 750, i.e., 44.93% of marks in aggregate & more than 33% of marks on each subject. As per Rule 24 of the Rules the candidates who have secured not less than 45% of the marks in aggregate & not less than minimum of 33% of marks in each paper in the written examination should be called for viva-voce test. Since the respondent secured 44.93% marks in aggregate she was not called for interview/viva-voce. Aggrieved thereby she approached the High Court of Orissa by filing a Writ Petition W.P. (C) No. 16782 of 2009 with a prayer that she should have been called for the interview as the fraction of marks, i.e., 44.93%, secured by her should have been rounded off to 45% & in that way she would have fulfilled the criteria as per the Rules. The High Court vide its order dated 08.12.2009 allowed the writ petition filed by the respondent herein against which this appeal has been filed, upon which, we heard the learned counsel appearing for the parties.

5. Learned counsel appearing on behalf of the appellant submitted that as per Rule 24 of the Rules a candidate who has secured not less than 45% of marks in aggregate could only be called for the interview and since the respondent secured only 337 out of 750 marks [i.e., 44.93%] in the Main Written Examination she was not called for the interview. Counsel submitted that the High Court erred in permitting the rounding off of the marks of the respondent as there is no provision of rounding off or relaxation of marks under the Rules which permit the Commission to give such a kind of grace to the respondent. He further submitted that High Court also erred in permitting 2

more candidates to sit in the interview by rounding off their marks to 45% even when they were not party to the Writ Petition before it.

6. Learned counsel appearing on behalf of the respondent however refuted the contentions made by the counsel appearing for the appellant and submitted that the High Court rightly and correctly permitted the respondent to be called for the interview by rounding off the marks obtained by her to 45%. He further submitted that the High Court rightly held that in the absence of any Rule dealing with the fraction of = marks or even less secured by the candidates, while determining the percentage of marks the same could be rounded off to the next whole number.

7. Learned counsel appearing for the respondents during the course of his arguments relied upon the decisions of this Court in *State of Orissa and Another v. Damodar Nayak* reported in (1997) 4 SCC 560, *State of U.P. and Another v. Pawan Kumar Tiwari and Others* reported in (2005) 2 SCC 10, *Union of India v. S. Vinodh Kumar* reported in (2007) 8 SCC 100 and *Bhudev Sharma v.*

District Judge, Bulandshahr and Another reported in (2008) 1 SCC

233. On scrutiny, we find that the findings recorded in the above referred cases are not applicable to the facts of the present case.

Facts and findings recorded by this Court in the above referred cases are distinguishable to facts of the case in hand. Almost all the aforesaid cases dealt with post or vacancies where it was allowed to be rounded off to make one whole post. Understandably there cannot be a fraction of a post.

8. In the light of the detailed records placed before us we have considered the aforesaid submissions of the counsel appearing for the parties. The appointment to the post of Civil Judge (J.D.) under the Orissa Judicial Services is guided by Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 and Rule 24 thereof specifically deal with the criteria for determining of candidates for interview. Rule 24 reads thus: -

"24. Determination of number of candidates for interview - The Commission shall call the candidates for interview who have secured not less than forty-five per centum of marks in aggregate and a minimum of thirty three per centum of marks in each paper in the Main written examination."

9. A bare reading of the aforesaid rules would make it crystal clear that in order to qualify in the written examination a candidate has to obtain a minimum of 33% marks in each of the papers and not less than 45% of marks in the aggregate in all the written papers in the Main examination. When emphasis is given in the Rules itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the concerned candidate there cannot be a question of relaxation or rounding off.

10. There is no power provided in the statute/Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no

such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for giving the benefit of rounding off or relaxation.

11. We may also draw support in this connection from a decision of this Court in District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another.

v. M. Tripura Sundari Devi reported in (1990) 3 SCC 655. In the said judgment this Court has laid down that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same then it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement.

12.The entire record of the main written examination was also produced before us which indicates that there are also candidates who have got more than the respondent in the aggregate but has not been able to get 33% marks in each paper and have missed it only by a whisker. In case, the contention of the counsel appearing for the respondent is accepted then those candidates who could not get 33% marks in each paper in the Main written examination could and should have also been called for viva-voce examination, which would amount to a very strange and complicated situation and also would lead to the violation of the sanctity of statutory provision.

13.When the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences, for the Act speaks for itself. There is no ambiguity in the language of Rule 24 leading to two conclusions and allowing an interpretation in favour of the respondent which would be different to what was intended by the Statute. Therefore, no rounding off of the aggregate marks is permitted in view of the clear and unambiguous language of Rule 24 of the Rules under consideration.

14.The High Court, in our considered opinion, has also committed an error apparent on the face of the records by allowing two more persons, who secured marks between 44.5% and 45%, to be called for interview who were not even parties before it and who had not even shown interest subsequently to be appointed subsequent to the declaration of the results of the examination but despite the said fact the High Court directed them also to be called for the interview only on the ground that they have secured more than 44.5% of marks but less than 45% marks in the main written examination in aggregate.

15.In that view of the matter, the appeal is allowed and the judgment and order of the High Court is set aside leaving the parties to bear their own costs.

.....J (Dr. MUKUNDAKAM SHARMA)J
(ANIL R. DAVE) NEW DELHI, AUGUST 2, 2011.