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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 4690 of 2023

In the matter of an application under Articles 226 & 227 of the Constitution of India.

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Rishansh Kumar Vaidya & Ors. *Petitioners*

-versus-

Union of India & Ors. *Opposite Parties*

W.P.(C) No. 24192 of 2023

Subho Roy Bhandary & Ors. *Petitioners*

-versus-

Union of India & Ors. *Opposite Parties*

For Petitioners : Mr. U.C. Mohanty, Adv.

For Opp. Parties : Mr. P.K. Parhi, DSGI
along with
Mr. D.R. Bhokta, CGC
Mr. Debraj Mohanty, Adv.
Along with
Mr. P.R. Patnaik, Adv.
(Opp. Party Nos.5 & 6)
Mr. S.K. Parida, Adv.
(Opp. Party Nos.7 to 14)

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:18.11.2025 & Date of Judgment: 20.01.2026



Biraja Prasanna Satapathy, J.

Since both the Writ Petitions involve common issue with similar prayer, both the matters were heard analogously and disposed of by the present common order.

2. Both the Writ Petitions have been filed inter alia with the following prayer:-

“It is, therefore, humbly prayed that Your Lordships may graciously be pleased to admit the Writ Petition and after hearing the parties further be pleased to issue appropriate Writ(s)/ Order(s):-

(1) To quash and set-aside the condition mentioned in Eligibility/ Essential qualification provided under clause 2 of the Advertisement being Advertisement No. Ref. No. MCL/HQ/Recruitment/ Statutory/ 2022/600 dated 15.12.2022 issued by Mahanadi Coalfield Limited under Annexure-1 whereby and where under the candidates possessing restricted competency Certificates have been declared not eligible for appearing in the selection process for recruitment to the various posts of Jr. Overman T&S Gr-C (82 vacancies), Mining Sirdar T&S Gr-C (145 vacancies) and Surveyor T&S Gr-B (68 vacancies) which is wholly arbitrary, unreasonable, whimsical and without application of mind and in complete violation of the Coal Mines Regulation, 2017 and Cadre Scheme for Mining Supervisory Personnel (Cadre Scheme No. 4) published by Joint Bi-Partite Committee for the Coal Industry dated 28.03.1994.

AND

(II) Further be pleased to direct the Respondent No. 5 to accept the examination form from the candidates possessing restricted competency certificate and allow them to appear in the said examination, holding the said advertisement is illegal, arbitrary, unreasonable and unconstitutional.

AND



(III) Further be pleased to direct the Opp. Parties to provide and accept Hard Copy of the Form/Application to be filled under Advertisement No. Ref. No.: MCL/HQ/Recruitment/Statutory/ 2022/600 dated 15.12.2022 subject to the outcome of the instant case.

AND/OR

(IV) Pass such other order(s) as may deem fit and proper in the facts and circumstances of the case and in the interest of Justice.

And for this act of kindness, the petitioners as in duty bound shall ever pray.”

3. Learned counsel appearing for the Petitioners contended that advertisement was issued by the authorities of Mahanadi Coalfields Limited (in short MCL) on 15.12.2022 under Annexure-1, inviting applications to fill up the posts of Junior Overman (T & S), Mining Sirdar (T & S) Group-C and surveyor (T & S) Group-B. It is contended that since in the impugned advertisement so issued under Annexure-1, vide Clause-2, while prescribing the minimum qualification required for the aforesaid posts, a requirement was made that valid mining certificate of competency (Unrestricted) so issued by the Director General of Mines Safety is required to be produced, the present Writ Petitions were filed challenging such stipulation made in the impugned advertisement.

3.1. Learned counsel appearing for the Petitioners contended that this Court while issuing notice of the matter vide order dated 17.02.2023, passed an interim order holding that process of selection pursuant to



Annexure-1 shall continue, but no final decision shall be taken without leave of the Court. However such interim order passed on 17.02.2023 was modified after appearance of Opp. Party-MCL vide order dated 13.07.2023. As per the said order this Court clarified that out of the 100 posts advertised for the post of Mining Sirdar (T & S) Group-C, 44 posts in W.P.(C) No 4690 of 2023 and 10 numbers of posts in W.P.(C) No 24192 of 2023 shall not be filled up till the next date. It is further contended that such interim order passed on 13.07.2023 is still in force.

3.2. While assailing the stipulation so contained in the advertisement with regard to production of the certificate of competency (Unrestricted) vide Clause-2, learned counsel appearing for the Petitioners contended that such a stipulation made in the advertisement is illegal and contrary to the provisions contained under Regulation 247 of the Coal Mines Regulations, 2017. Regulation 247 of the 2017 Regulation reads as follows:-

“247. Sirdars and overmen.– (1) No person shall be appointed as a competent person under regulations 33, 75, 99, sub-regulations (14) and (15) of regulation 137, clause (a) of sub-regulation (4) of regulation 138, sub-regulation (6) of regulation 139, sub-regulations (7) and (8) of regulation 142, sub-regulation (9) of regulation 150, sub-regulation (12) of regulation 159, sub-regulation (3) of regulation 161, subregulation (2) of regulation 165, regulations 167, 169 and



195, unless he is the holder of either an Overman's Certificate or a Manager's Certificate.

(2) No person shall be appointed as a competent person under regulations 129, 130, sub-regulation (6) of regulation 135, sub-regulation (7) of regulation 136, regulation 147, sub-regulation (1) of regulation 165 and regulation 166 unless he is the holder of either a Manager's Certificate or Overman's Certificate or a Sirdar's Certificate together with a gas testing certificate:

Provided that, so much of this regulation as requires a person holding a Manager's Certificate or Overman's Certificate or a Sirdar's Certificate to hold gas testing certificate also shall not apply to, persons employed aboveground, or in opencast working, or competent person under sub-regulation (6) of regulation 135.

(3) In case of mines having opencast workings only, nothing in sub-regulations (1) and (2) shall prohibit the appointment under regulations 33, 129, 130, sub-regulation (6) of regulation 135, clause (a) of subregulation (4) of regulation 138, sub-regulation (6) of regulation 139 and regulation 195 of a person holding, as the case may be, a Sirdar's Certificate, Overman's Certificate or Manager's Certificate restricted to mines having opencast workings only.

(4) Notwithstanding anything contained in sub-regulation (2), the Chief Inspector may, where special conditions exist, permit or require appointment of any person, not necessarily holding either a Manager's Certificate or Overman's Certificate or a Sirdar's Certificate as a competent person under regulation 130, if such person possess otherwise a suitable qualification and experience for effective supervision of the working places."



3.3. It is contended that since the Petitioners all possess the qualification of Diploma in Mining Engineering, in view of the provisions contained under Regulation 247 of the Regulation, the requirement to have an unrestricted certificate of competency is not sustainable in the eye of law and such a stipulation could not have been made by Opp. Party-MCL while issuing the impugned advertisement under Annexure-1.

3.4. It is also contended that such a provision in the advertisement for having an unrestricted certificate of competency is also not permissible, in view of the provisions contained under Regulation 47, 48 and 173 of the 2017 Regulation. Regulations 47, 48 and 173 of the Regulation reads as follows;

“47. Duties and responsibilities of overman.– (1) The overman shall subject to the orders of superior officials, have responsibility, charge and control of such part of the mine, and shall carry out such duties, as may be assigned to him by the manager.

(2) The overman shall, -

(a) while on duty, carry a tracing of the workings of such district and shall keep the tracing up-to-date;

(b) in his district, make the inspections and reports required by these regulations;



(c) ensure that the subordinate officials and competent persons in his district carry out their respective duties in a proper manner;

(d) ensure that mining operations in the part of the mine assigned to him under sub-regulation (1) are carried out as per the code of practices framed under these regulations.

(3) The overman shall, to the best of his power, enforce in his district the provisions of the Act, of these regulations and orders made thereunder, and shall, subject to the control of manager and the assistant manager, if any, give such directions as may be necessary to ensure compliance with those provisions, and to secure the safety of the district and the safety and proper discipline of the persons employed therein.

(4) The overman shall see that sufficient supplies of timber, support materials, brattice, tools and tackles, appliances, and other necessaries required for the safe working of his district are kept at convenient places therein.

(5) The overman shall –

(a) ensure that every air-crossing, stopping, door, brattice and other ventilation device is maintained in good order;

(b) ensure that the ventilation is effective in his district, and when brattices or air pipes or ducts are required to be used for the ventilation of the working places, he shall see that they are kept sufficiently advanced so that an adequate amount of air reaches every such working place;

(c) have power to send out of the mine any person under his charge who infringes or attempts to infringe any provision of the Act or of the regulations or orders made thereunder, or fails to carry out any direction given with regard to safety, and shall report such matter in writing to the manager;



(d) ensure that all tracks and tramlines are properly laid, graded, ballasted or otherwise packed; (e) see that the manholes on the haulage roadways are kept safe, clear of any obstruction, and properly white-washed;

(f) ensure that the stop-blocks, runway switches and other safety devices are fixed and used as required under the regulations, drag or back-stays are provided and regularly used behind tubs ascending inclines and that a sufficient supply of suitable sprags is provided where tubs are loaded on a gradient or lowered down a gradient by hand;

(g) stop the use forthwith if he finds any of the ropes, chains, signals, brakes, jig wheels and post or other apparatus in use in his district to be in an unsafe condition;

(h) ensure that, except for the purposes of inspection, examination and repair every person other than an official or a haulage attendant travels by the travelling roadway;

(i) give prompt attention to the removal of any danger observed or reported to him, and shall see that dangerous places are adequately fenced off;

(j) see that approved safety lamps are used belowground.

(6) In case of opencast workings, the overman shall ensure that-

(a) sides of benches are kept properly dressed;

(b) stability of benches is not endangered;

(c) haul roads are kept maintained;

(d) stability of overburden dumps is not endangered;

(e) there is no over-crowding of men and machinery at the working faces;

*(f) adequate lighting is provided at the area under his control;
and*

(g) adequate precautions as laid down in these regulations are taken before blasting operations is conducted;



(h) all machinery and plant are operated in safe and secured manner.

(7) The overman shall –

(a) devote the whole of his time to his duties and visit each working place in his district as often as may be necessary or possible;

(b) not, except for justifiable cause, leave the district in his charge until he has finished the inspections required under these regulations and any other duties that he is required to perform, or until relieved by a duly appointed substitute;

(c) if the mine is working in a continuous succession of shifts, confer with the official succeeding him and give him such information as may be necessary for the safety of his district and of persons employed therein;

(d) at the end of his shift, record in a bound paged book kept for the purpose a general report in the specified format on the performance of all his duties during the shift, including anything concerning the proper working of the mine and the safety and discipline of persons employed in his district.

48. Duties and responsibilities of sirdar.– *(1) The sirdar or other competent person appointed under regulation 129 shall, subject to orders of superior officials, have responsibility, charge and control of the district of the mine assigned to him by the manager or assistant manager.*

(2) The sirdar shall –

(a) take reasonable means to ensure proper observance of the requirements of the Act and of the regulations, and orders made thereunder by persons under his charge and shall, as soon as practicable, report any contravention thereof to his superior official;



(b) make such inspection and reports as are required by these regulations, and in making such examination, he shall pay particular attention to edges of the goaf, if any, for checking supports and for presence of gas;

(c) except in the case of a mine working in a continuous succession of shifts, on completion of the first inspection of the district, proceed to the station specified under regulation 129 and instruct all persons as to their places of work and as to any special precautions necessary to be observed by them;

(d) if he finds any person in a place other than the one assigned to him, he may order such person out of the mine, and shall forthwith report the matter to his superior official;

(e) ensure that no inexperienced person is employed on any work except under the supervision of an experienced person.

(f) see that the roof and sides of all traveling roadways and working places in his district are made and kept secure;

(g) where the height of any working place in the district in his charge measured from floor to roof exceeds three meters, see that a suitable wooden buntion or pole by which all parts of the roof may be effectively tested by a person standing on the floor and a ladder of suitable length are kept at convenient places in the district;

(h) report to his superior official any deficiency in timber, support materials, appliances and other necessaries required for the safe working of the district;

(i) Where either of the two ways affording means of egress from the district to the surface is not ordinarily used for travelling, travel, once at least in every seven days, the whole of such roadway in order to make himself thoroughly acquainted with the same; and

(j) see that no support is withdrawn except by means of a safety prop-withdrawer.



(3) If sirdar observes any dangerous place during the course of his inspections or if any danger at a place where work persons are employed is reported to him, he shall, if the danger is not possible to be removed forthwith, withdraw all persons from such place and shall not leave the place until the danger has been removed in his presence or all approaches to the place have been fenced off so as to prevent persons from inadvertently entering such place.

(4) The sirdar shall –

(a) take care that any dangerous operation is carried out with due precautions, and in such cases shall be present throughout whenever any work of clearing falls of ground and setting of supports therein is being carried out;

(b) cause the entrance to every place which is not in actual use or in course of working or extension, to be fenced across the whole width, so as to prevent persons from inadvertently entering such place;

(c) if he finds any accumulation of inflammable or noxious gases, take such precautions as specified in regulation 166 and shall not remove such accumulation until he has received instructions in that behalf from his superior official;

(d) on receipt of information of an accident to any person in his district, proceed at once to the place of accident, inspect the place and, if required, supervise the rescue operations, and shall report or send notice of the accident to the manager or assistant manager;

(e) devote the whole of his time to his duties, and shall not leave the mine until the end of the shift or until relieved by a duly appointed substitute;

(f) if the mine is worked by a continuous succession of shifts, before leaving his district, confer with the sirdar or other competent person succeeding him, and shall acquaint him with



all matters requiring his personal attention and give him such other information as may be necessary for the safety of his district and of the persons employed therein;

(g) see that mining operations in the district of the mine assigned to him under sub-regulation (1) are carried out as per the code of practices framed under these regulations.

(5) In case of opencast workings, the sirdar shall ensure that-

(a) sides of benches are kept properly dressed;

(b) stability of benches is not endangered;

(c) haul roads are kept maintained;

(d) stability of overburden dumps is not endangered; and

(e) dust control measures are implemented.

173. Underground relighting stations.— *(1) In every mine, lamp stations for relighting safety lamps may be fixed by the manager at suitable places belowground and every such station shall be legibly marked RELIGHTING STATION, which shall be situated in a main intake airway, and shall be placed in charge of a competent person.*

(2) No person shall be appointed as a competent person under this regulation unless he holds a Gas Testing Certificate.”

3.5. It is also contended that even though Petitioners are Diploma holders in Mines and Mining Engineering together with batch testing certificate and the competency certificate, because of the illegal stipulation contained in the advertisement to produce the certificate of competency (Unrestricted), petitioners were deprived to make the application for the posts in question. However, because of the interim



order passed by this Court 54 numbers of posts as against the post of Mining Sirdar, T & S Group-C have not been filled up out of the total 145 posts so advertised under Annexure-1.

3.6. It is contended that since Petitioners were otherwise eligible to make the application for the posts in question and because of the illegal stipulation contained in the advertisement regarding production of the certificate of competency (Unrestricted), they were debarred from making the application to face the selection process, taking into account the nature of interim order passed by this Court on 13.07.2023, the recruitment process since has already been completed, Opp. Party-MCL be directed to hold a special examination for the Petitioners without insisting on the unrestricted certificate of competency to be produced along with the application.

3.7. It is further contended that in view of the provisions contained under regulation 247 of the Regulation which has got statutory force, authorities of MCL while issuing the impugned advertisement on 15.12.2022 under Annexure-1 could not have insisted for production of the certificate of competency (Unrestricted).

3.8. It is also further contended that since most of the coal mines operated by MCL are overcast mines and Petitioners are having



certificates to work in overcast mining, because of the illegal restriction imposed in the advertisement, Petitioners were deprived to get the benefit of selection and appointment.

It is accordingly contended that Opposite-Party MCL be directed to conduct the recruitment test by allowing the Petitioners to participate in the selection process pursuant to Annexure-1 in respect of the 54 posts so reserved vide order dated 13.07.2023.

3.9. In support of his aforesaid submissions learned counsel appearing for the Petitioners relied on the following decisions:-

(i) Budhan Choudhury & Ors. Vs. State of Bihar, AIR 1955 SC 191

(ii) Tej Prakash Pathak & Ors. Vs. Rajasthan High Court & Ors., 2025 (2) SCC 1/MANU/SC/1179/2024

(iii) Ramesh Kumar Vs. High Court of Delhi & Ors., AIR 2010 SC 3714

(iv) Ashish Kumar Vs. State of U.P & Ors., (2018) 3 SCC 55

(v) Jyoti K.K & Ors. Vs. Kerala Public Service Commission & Ors., (2010) 15 SCC 596

(vi) Sidheswari Mohanty Vs. State of Orissa & Ors., 2023 LabIC 2648/MANU/OR/0841/2023

3.10. Hon'ble Apex Court in Para 5 of the decision in the case of ***Budhan Choudhury*** has held as follows:-



“5. It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.”

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3.11. Hon’ble Apex Court in Para 65(4) & (5) of the decision in the case of ***Tej Prakash Pathak*** has held as follows:-

“65.4. Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/non-arbitrary and has a rational nexus to the object sought to be achieved;

65.5. Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the rules are non-existent, or silent, administrative instructions may fill in the gaps;”

3.12. Hon’ble Apex Court in Para 15 of the decision in the case of ***Ramesh Kumar*** has held as follows:-

“15. in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and further specify the minimum benchmarks for written test as well as for viva voce.”



3.13. Hon'ble Apex Court in Para 27 of the decision in the case of

Ashish Kumar has held as follows:-

“27. Any part of the advertisement which is contrary to the statutory rules has to give way to the statutory prescription. Thus, looking to the qualification prescribed in the statutory rules, the appellant fulfils the qualification and after being selected for the post denying appointment to him is arbitrary and illegal. It is well settled that when there is variance in the advertisement and in the statutory rules, it is the statutory rules which take precedence.”

3.14. Hon'ble Apex Court in Para 7 of the decision in the case of **Jyoti**

K.K has held as follows:-

“7. It is no doubt true, as stated by the High Court that when a qualification has been set out under the relevant Rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted.”

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3.15. Hon'ble Apex Court in Para 26 & 27 of the decision in the case of

Sidheswari Mohanty has held as follows:-

“26. Thereby, applying the above principles to the present case, if a rule framed under proviso to Article 309 is clear in its language, on plain reading of the same if Interpretation is given, then any action taken de hors the rules has to be struck down. As a consequence thereof, since the selection committee had been constituted contrary to the rules, any selection made by it cannot be sustained in the eye of law. Any subsequent executive instructions issued cannot supplement or supplant the provisions of the rules, which are purely statutory in nature, unless the same is incorporated by way of amendment to the rules itself. Therefore, the constitution of the selection committee relying on the executive instructions and any selection made by such committee cannot be sustained being de hors the rules framed by the authority, which is statutory in nature. As a consequence thereof, the selection of the petitioners being de hors the rules



governing the field, the same cannot be sustained. As a result of which, the conclusion arrived at by the Tribunal in the order impugned is well justified, which does not require any interference by this Court at this stage.

27. In view of facts and law, as discussed above, since the selection to the post of Live Stock Inspector, pursuant to advertisement dated 16.01.2004, was made de hors the rules governing the field, the same is liable to be quashed and the Tribunal has rightly done so. Therefore, while upholding the impugned orders of the Tribunal, this Court directs the opposite party-authorities to prepare a fresh selection list on the basis of applications submitted, pursuant to the advertisement dated 16.01.2004, in accordance with statutory rules giving preference to the candidates as per Rule-6(d) of the Rules, 1983, after constituting a Selection Board, as per Rule-8(1) of the Rules, 1983. As such, the entire action shall be taken within a period of four months from the date of receipt of this judgment. While carrying out the aforementioned directions, the opposite party-authorities shall ensure that the candidates, who had been selected and whose names would appear in the revised select list, the impugned orders of termination shall not be implemented against them till then and shall be given effect to only in respect of candidates whose names do not find place in the list, and all the selected candidates will continue till then and their appointment shall be treated to be on ad hoc basis. However, the candidates whose names were appearing in the original selection list will get service continuity as well as other financial benefits and the newly recruited candidates as per the revised selection list will only get notional benefit from the date of initial appointment like other selected candidates.”

4. Per contra, learned counsels appearing for MCL in both the cases made their submissions basing on the stand taken in the counter affidavit so filed. It is contended that advertisement dated 15.12.2022 under Annexure-1 was issued in consonance in the provisions contained under Regulation 14(5) of the 2017 Regulation read with Gazette Notification dated 14.09.2018 so issued by the Director General of Mines Safety. Such a stipulation for having unrestricted competency



certificate was made in the impugned advertisement in terms of the provisions contained under Regulation 12(1) and 12(4) of the 2017 regulation. Regulation 12(1), 12 (4) and 14(5) of the Regulation reads as follows:-

“12. Examinations and examiners.- (1) Certificate shall be granted to candidates after such examinations and in such form as the Board may specify: Provided that the Board may, subject to the conditions specified in bye-laws, exempt any person from appearing at the examination or part thereof for the grant of a certificate referred to in regulation 11.

(4) The Board may make bye-laws as to the procedure for, and the conduct of the examinations and as to the granting of certificate of competency and of fitness as required under these regulations, and shall so far as may be practicable, provide that the standard of knowledge required for the grant of certificates of any particular class and the standard of medical fitness shall be uniform throughout the territories to which these regulations extend:

Provided that the Board may take decision on any matter, not specified under the bye-laws, which may be brought to it for disposal.

14. Age limit and general qualifications of candidates (5) (a) *No person shall be admitted as a candidate at any examination for a Manager's or an Overman's Certificate, which is not restricted to mines having opencast working only, unless he has obtained at least a Sirdar's Certificate, which is not restricted to mines having opencast working only and a Gas Testing Certificate; and*



(b) no person shall be admitted as a candidate at an examination for Manager's Certificate or Overman's Certificate restricted to mines having opencast working only, unless he has obtained at least a Sirdar's Certificate:

Provided that the Board may, subject to the conditions specified in bye-laws, exempt any person from the stipulations of the above sub-regulation."

4.1. It is contended that since MCL is operating both underground and open cast mining, while issuing the advertisement under Annexure-1. Candidates were requested to produce the competency certificate (Unrestricted). A candidate having an unrestricted competent certificate is permitted to work in both underground and open cast mines. It is accordingly contended that the stipulation made in the advertisement directing the candidates to have certificate of competency (Unrestricted) since has been made in terms of the provisions contained under Regulation 12 (1) and 12(4) of the Regulation, no illegality or irregularity can be found with the same.

4.2. It is further contended that the Petitioners in both the Writ Petitions as found from Annexure-2-series are having Overman certificate of competency and such certificate restrict their working in underground mines. Taking into account the nature of certificates issued in favour of



the Petitioners under Annexure-2 series, they are only permitted to work in open cast mines. But the vide advertisement issued under Annexure-1 a candidate is to work in both underground and open cast mines.

4.3. It is accordingly contended that since Petitioners in terms of the advertisement don't have the essential eligibility that is certificate of competency (unrestricted), the Writ Petition at the threshold is not maintainable.

4.4. It is however contended that because of the nature of interim order passed by this Court on 13.07.2023 in both the Writ Petitions, 44 (forty four) of Mining Sirdar (T & S) Group-C and 6 (six) posts of Junior Overman (T & S) have not been filled up while completing the selection process pursuant to Annexure-1. It is also contended that Regulation 247 on which much reliance has been placed, is no way applicable to the claim of the Petitioners, as the said regulation is made applicable subject to the provisions contained under various other regulations.

4.5. It is contended that since MCL is operating both underground and open cast mines and the requirement for having an unrestricted certificate of competency has been made in terms of the provisions



contained under Regulation 12(1) and 12(4) of the Regulation, no illegality and irregularity can be found with the same. It is also contended that MCL being the employer, it is the employer, who is competent to decide the requirements the candidate must possess according to the needs of the employer and the nature of work.

4.6. It is also contended that prescription of qualification for a post is a matter of recruitment policy and it is the employer who is entitled to prescribe the qualification and no judicial review can be made to expand the ambit of the qualification so prescribed. It is also contended that it is the employer who is eligible and entitled to determine and decide the relevancy and suitability of qualifications for any post and it is not for the Courts to consider and assess the same.

4.7. In support of the aforesaid submissions both the learned counsels appearing for MCL, reliance was placed on the following decisions:-

(i) Maharashtra Public Service Commission Vs. Sandeep Sharma Warade & Ors., (2019) 6 SCC 362

(ii) Zahoor Ahmad Rather & Ors. V. Sheikh Imtiyaz Ahmad & Ors., (2019) 2 SCC 404

(iii) Chief Manager, Punjab National Bank & Anr. Vs. Anit Kumar Das, (2021) 12 SCC 80



4.8. Hon'ble Apex Court in Para 9 of the decision in the case of ***Maharashtra Public Service Commission*** has held as follows:-

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“9. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement.”

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4.9. Hon'ble Apex Court in Para 26 of the decision in the case of ***Zahoor Ahmad Rather*** has held as follows:-

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“26. The prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. ”

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4.10. Hon'ble Apex Court in Para 7.3 of the decision in the case of ***Chief Manager, Punjab National Bank*** has held as follows:-

“7.3 it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribed qualifications for any post. There is a relation behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications.”



4.11. Placing reliance on the aforesaid decisions and the stand taken in the counter affidavits, learned counsels appearing for the MCL contended that even though both the writ petitions were filed challenging the stipulation contained in the advertisement more particularly vide para-2, with regard to the certificate of competency (Unrestricted), but while filing the Writ Petitions no such interim prayer was made before this Court to permit the Petitioners to take the recruitment pursuant to Annexure-1.

4.12. It is also contended that Petitioners have never made any applications pursuant to Annexure-1 and taking into account the nature of interim order passed initially by this Court on 17.02.2023 and the modified order passed on 13.07.2023, the selection process has already been completed with appointment of the selected candidates save and except the non-filling of 44 posts of Mining Sirdar and 6 posts of Junior Overman.

4.13. It is contended that since no such interim prayer was ever made before this Court to allow the Petitioners to make the application and to participate in the selection process, and since the selection process has already been completed in the meantime, Petitioners cannot be allowed



to take part in the recruitment process and their prayer to have a special examination for them is not permissible.

4.14. Making all these submissions learned counsels appearing for the MCL contended that both the Writ Petitions are liable for dismissal with vacation of the interim order.

5. To the submission made by the learned counsels appearing for the MCL, learned counsel appearing for the Petitioners made further submission contending inter alia that Petitioners pursuant to Annexure-1 could not made their applications, as they were not having the required certificate in terms of para-2 of the advertisement. But taking into account the nature of interim order passed by this Court initially on 17.02.2023 and subsequently on 13.07.2023, Petitioners be allowed to take the special examination to be conducted by MCL. It is further contended that since the stipulation for having an unrestricted competency certificate is not permissible, the process of selection is vitiated.

6. Having heard learned counsel for the Parties considering the submission made, this Court finds that the advertisement in question was issued by MCL on 15.12.2022 under Annexure-1, inviting applications to fill up posts of junior Overman, (T & S) Group-C,



Mining Sirdar, (T & S) Group-C and Surveyor (T & S) Group-B. As against all the aforesaid 3 posts as provided under para-2, a candidate with having the minimum qualification is required to possess the certificate of competency (Unrestricted).

6.1. It is not disputed that the Petitioners are having the certificate of competency which is restricted to mines having open cast working only under Annexure-2-series. Taking into account the certificate of competency so produced by the Petitioners, it is not disputed that Petitioners are not having the required unrestricted certificate of competency. It is therefore the prima facie view of this Court that Petitioners do not have the required eligibility in terms of Clause-2 of the advertisement.

6.2. Considering the submission and the provisions contained under Regulation 247 of the Regulation, this Court is also of the view that the stipulation for having an unrestricted certificate of competency having been prescribed in the advertisement in terms of the provisions contained under Regulation 12(1) and 12 (4) of the Regulation, this Court is not inclined to accept the contention of the learned counsel appearing for the Petitioner that in view of provisions contained under Regulation 247 of the Regulation, Petitioners are not required to have



the unrestricted certificate of competency. Regulation 247 of the Regulation also depends on the provisions contained under various other Regulations.

6.3. Petitioners since admittedly do not have the required unrestricted certificate of competency, placing reliance on the decisions so cited by the learned counsels appearing for the MCL, it is the view of this Court that while exercising the power of judicial review, such a stipulation cannot be declared as illegal or arbitrary.

6.4. It is also the view of this Court that since Petitioners have not made their applications pursuant to Annexure-1 and never participated in the selection process and no such interim prayer was also ever made to allow them to participate and since the selection process has already been completed pursuant to order dated 13.07.2023 with only 54 numbers of posts not filled up, this Court is of the view the no relief can be extended to the Petitioners at present.

6.5. It is also the view of this Court that the decisions relied by the learned counsel appearing for the Petitioners is not applicable to the facts of the present case. In view of the aforesaid analysis, this Court is not inclined to interfere with the selection process initiated by MCL Pursuant to advertisement dated 15.12.2022 under Annexure-1. While



not inclined to interfere with the advertisement and the selection process so initiated under Annexure-1, this Court dismiss both the writ petitions. Interim order passed on 13.07.2023 stands vacated.

7. Both the Writ Petitions stand dismissed accordingly.

(BIRAJA PRASANNA SATAPATHY)
Judge

Orissa High Court, Cuttack
Dated the 20th January, 2026/Jyoti