



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.1825 OF 2024

In the matter of an appeal under Clause 10 of the Letters Patent of Patna High Court read with Article 4 of the Orissa High Court Order, 1948 and Chapter-III, Rule 6 of Orissa High Court Rules, 1948 from order dated 10.11.2023 passed by the learned Single Judge of this Court in W.P.(C) No. 19120 of 2018 & WP(C) No.12813 of 2016.

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1. **State of Odisha, represented through its Principal Secretary to Govt., School & Mass Education Deptt., Bhubaneswar, Khurda**
 2. **State Project Director, OPEPA, Bhubaneswar, Khurda**
 3. **Director Elementary Education, Odisha, Bhubaneswar, Khurda**
 4. **Collector, Kendrapara-cum-Chief Executive Officer, Zilla Parishad, Kendrapara**
 5. **District Project Coordinat, Sarba Sikshya Abhiyan, Kendrapara** *Appellants*

-versus-

Debendra Nath Malik, Kendrapara *Respondent*

Advocates who appeared in this case

For Appellants - Mr. S.B. Mohanty, AGA

For Respondent - M/s. D.N. Rath, A.K. Saa & S. Das, Advocates



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HON'BLE MR. JUSTICE KRISHNA SHRIPAD DIXIT
HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Hearing & Judgment : 25.02.2026

PER KRISHNA S. DIXIT, J.

This Intra-Court Appeal by the State & its functionaries seeks to call in question a learned Single Judge's order dated 10.11.2023, whereby Respondent's WP(C) No.19120 of 2018 & WP(C) No.12813 of 2016 having been favoured the disengagement order dated 27.10.2018 has been quashed coupled with a direction to the Appellants to reinstate the Respondent into the post with all consequential service & financial benefits.

2. Learned AGA in his usual vehemence seeks invalidation of the impugned order essentially on the grounds that: The very initial engagement of the Respondent was on the basis of the process that was initiated by the recruitment advertisement dated 25.03.2003, and that the same has been quashed by a learned Single Judge of this Court in WP(C) No.11748 of 2003 between *Hrushikesh Bindhani v. State of Odisha* disposed off on 29.04.2004; secondly, even after selection the candidature of Respondent had fallen beyond the cut off line. According to him, these aspects having not been properly considered, the impugned order has apparent infirmities warranting interference of this Court for setting the same at right. Ld. Counsel appearing for the



Respondent-employee resists the Appeal making submission in justification of the impugned order and the reasons on which the same has been structured. He submits that the Respondent was put to perennial agony, inasmuch as he was driven to this Court on multiple occasions, though in every case he emerged victorious and therefore, exemplary cost should be awarded to him.

3. Having heard learned Counsel for the parties and having perused the Appeal papers, we decline indulgence in the matter for the following reasons:

3.1. AS TO AGONY OF RESP WHO BELONGS TO SCHEDULED CASTE:

3.1.1. Rabindranath Tagore (1861-1941) in a letter addressed to C. F. Andrews in 1921 that the '*idea of India*' itself militates '*against the intense consciousness of the separateness of one's own people from others*'. Untouchability & casteism were two monsters that afflicted our society for centuries, if not millennia. South of the country heralded a new epoch of equality & egalitarianism. From time to time several great persons have campaigned for the eradication of these maladies that had put a large chunk of people to enormous social disadvantage and suffering. Then came the Great Ambedkar with a book in hand 'Annihilation of Caste'. Under his leadership, a progressive Constitution came to be enacted inter alia providing for abolition of untouchability, and reservation by affirmative action in favour of oppressed communities.

3.1.2. Several policies of affirmative action came to be formulated for the upliftment downtrodden and for the protection



of marginalized sections of the society. In matters of education, employment, entry to public spaces, election etc., these sections secured relief to an extent, cannot be denied. Rev. Martin Luther King Jr. (1929-1968) writes in his article ‘My trip to Land of Gandhi’¹

“...We were surprised and delighted to see that India has made greater progress in the fight against caste ‘untouchability’ than we have made here in our own country against race segregation. Both nations have federal laws against discrimination...But after this has been said, we must recognize that there are great differences between what India has done and what we have done on a problem that is very similar. The leaders of India have placed their moral power behind their law. From the Prime Minister down to the village councilmen, everybody declares publicly that untouchability is wrong. But in the United States some of our highest officials decline to render a moral judgment on segregation and some from the South publicly boast of their determination to maintain segregation. This would be unthinkable in India... Gandhi also renamed the untouchables, calling them ‘Harijans’ which means ‘children of God.’ ...”

All the above being said, still individual cases of discrimination of downtrodden in the matter education and employment galore, needs no research for demonstration. Case of the Respondent is one that of class. He was made to run to pillar to the post, on umpteen times.

3.2. FOUNDATIONAL FACTS:

3.2.1. Case of the Respondent who happens to be a member of Scheduled Caste is not one of backdoor entry. There was a recruitment notification dated 25.03.2003 issued by the Director of Elementary Education. He was selected on the basis of his merits in the qualifying examination for the post of Swechhasevi Sikshya

¹. Ebony, July 1959, Pg. 84-92.



Sahayak (SSS). This was in the Scheduled Caste Category, for which 16.25% of vacancies was earmarked; thus, out of 146 posts, 23 were reserved. Final Select List was published on 02.07.2003 wherein he figured at Sl. No.18. He was issued appointment order on 29.11.2003. After executing the requisite agreement, he was permitted to join the duty on 11.12.2003. All this is not in dispute.

3.2.2. Whilst working in UGUP School, Gualigaon, the Collector vide order dated 19.07.2006 had disengaged the Respondent in the light of judgment in WP(C) No.11748 of 2003 between ***Hrushikesh Bindhani v. State of Odisha*** disposed off on 29.04.2004. In Respondent's WP(C) No.12278 of 2006, this order came to be quashed vide order dated 15.01.2007 and matter was remitted for fresh consideration, keeping open all contentions. The remand was not decided for long and therefore, Respondent filed CONTC No.55 of 2008, that generated heat. The Collector having examined all aspects of the matter, issued fresh engagement order dated 12.02.2009 for a period of one year. It is relevant to mention that the Collector had entered a specific finding that Respondent's case was not covered by the judgement in ***Hrushikesh Bindhani supra***.

3.2.3. When others similarly circumstanced were given continuity of service *ab inceptio*, Respondent was denied. He filed WP(C) No.15038 of 2011 wherein a learned Single Judge vide order 20.05.2011 directed the Appellants to consider his representation, made in that connection, within two months. No decision was taken despite long lapse of time and therefore, he had filed CONTC No.2146 of 2012. After service of notice, the



answering Appellants having entered appearance, gave undertaking that the decision would be taken on the representation by the end of October, 2012. Recording the same, Contempt Proceedings were dropped by order dated 06.09.2012. The Collector took the decision vide order dated 06.10.2012 rejecting Respondent's representation wherein he had sought for the regularisation of break in service between 19.07.2006 & 11.02.2009.

3.2.4. Adding insult to the injury, the Collector had issued a notice dated 25.03.2013 calling upon the Respondent to show cause why he should not be disengaged in the light of order in some other case, i.e, WP(C) 31049 of 2011 between **Ganeswar Sethi v. State of Orissa**. Respondent filed WP(C) No.12813 of 2016 against the said notice and with a prayer for regularisation of his service as well w.e.f. 29.11.2003. During the pendency, the Collector by another order dated 27.10.2018 had removed him from service, strangely in the light of decision in **Hrushikesh Bindhani supra**. This has been set aside by the learned Single Judge by the impugned order specifically holding that the Respondent does not fall even in the *penumbra* of said decision. He rightly castigated the Appellants for disengaging the Respondent after a long & spotless service of 9 years & 8 months observing as under:

“I...This shows not only the non-application of mind of the said authority, but also shows that the authorities are playing with the judicial proceedings of this Court, which they should not have been. Such conduct of the Collector is contumacious in nature. When making a statement before this Court that they have complied the order by issuing engagement order, the contempt petition was dropped, again after 9 years 8 months



they have reopened the issue arbitrarily and whimsically without taking leave of this Court Such action of the authorities is hit by principle of estoppels.”

4. AS TO FINDINGS OF LEARNED SINGLE JUDGE:

4.1. Learned Single Judge is right in granting relief to the Respondent, who has rendered a spotless service of 12 years & 4 months, reckoned from the unceremonious removal. The answering Appellants arbitrarily and capriciously had caused disengagement mindlessly applying the decision in *Hrushikesh Bindhani supra*, having earlier held it to be inapplicable, in so many words. This decision was not the subject matter of show cause notice stating that the same was wrongly held to be inapplicable. It hardly needs to be stated that the findings recorded in the earlier orders pursuant to the remand by the learned Single Judge would operate akin to *res judicata*.

4.1.2. The next contention advanced by Id. AGA that the candidature of the Respondent could not have been considered even in the first appointment dated 29.11.2003, is bereft of elements of justice. All this was looked into by the Appellant-Collector himself on remand of the matter in WPC No.12278 of 2006 disposed off on 15.01.2007. There is no merit in the plea that the candidature of the Respondent fell outside the quota earmarked for Scheduled Caste Category. It is not the case of the Appellants that the Respondent does not have the professed social status. Admittedly, he had applied for the post in the open market and faced the competition. He succeeded in the examination and was selected. In the Select List, he ranked at Sl. No.12, few others above him having not



joined the employment. The advertised vacancies for SC candidates were 15. Obviously, Respondent falls within that. Learned Single Judge in this regard has rightly observed as under:

“F. Such argument of the State counsel is absurd, imaginary and has no basis in view of the fact narrated above that the petitioner's position is coming at Serial No. 12 of the select list, which is well within the 15 advertised vacancy meant for SC category candidates. Therefore, the Petitioner at no stretch can be treated to have been appointed beyond the advertised vacancy and is well within 100% advertised vacancy. Therefore, such statement is incorrect on the face of it.”

5. AS TO WHY STATE TO BE LEVIED WITH EXEMPLARY COSTS

5.1. This is a fit case for levy of exemplary cost of Rs.50,000/- for making a meritorious person belonging to Scheduled Caste to mount multiple legal battles successfully. They are WP(C) No.12278/2006; WP(C) No.15038/2011; WP(C) No.12813/2016; WP(C) No.19120/2018; CONTC No.2146 of 2012 & CONTC No.55 of 2008. The fruits of victorious battles to some extent eluded him. Mindlessness and callousness galore on the part of authorities ‘that be’. A scrupulous member of downtrodden community was made to spend the prime of his youth in the Court corridors, that are not a happy place to hover. That cannot go unscathed. Someone has to raise the red flag and we are doing it. What all happened in this case reminds us of Alice in Wonderland by Lewis Carroll (1832-1898). It raises a question; whether State is the first enemy of scrupulous citizens ? We do not venture to answer it. It was Jeremy Bentham (1748-1832) who had said ‘What is State without justice, but a band of robbers...’. Much is not necessary to deliberate.



In the above circumstances, this Appeal being devoid of merits is liable to be dismissed and accordingly it is, with an exemplary cost of Rs.50,000/- (rupees fifty thousand) only. However, this cost becomes payable by the Appellant-State, if impugned order of the learned Single Judge is not implemented within an outer limit of eight (8) weeks. Even otherwise, time for compliance is eight (8) weeks only, failing which the Appellants run the risk of contempt proceedings.

Web copy of judgment to be acted upon by all concerned.

(Krishna Shripad Dixit)
Judge

(Chittaranjan Dash)
Judge