

**ORISSA HIGH COURT
CUTTACK**

OJC NO. 15655 OF 1997
A N D
O.J.Cs. 3137, 3195, 7846 & 8957 OF 1998

In the matter of applications under Articles 226 and 227 of the Constitution of India.

OJC No.15655 of 1997:-

State of Orissa	.....	Petitioner
Versus		
Manas Ranjan Nayak & others	.....	Opposite Parties
For Petitioner	-	Addl. Govt. Advocate
For Opp.Parties	-	M/s Anand Ch. Swain, M.K.Mohanty and P.R.Mishra

OJC No.3137 of 1998:-

Manas Ranajan Nayak	.....	Petitioner
Versus		
State of Orissa & others	.....	Opposite Parties
For Petitioner	-	M/s Anand Ch. Swain, M.K.Mohanty and P.R.Mishra
For Opp.Parties	-	Addl. Govt. Advocate

OJC No.3195 of 1998:-

Urmi Devi & others	.....	Petitioners
Versus		
State of Orissa & others	.....	Opposite Parties
For Petitioners	-	M/s B.Routray, B.Parida, B.Dash, S.S.Kanungo & P.K.Dash
For Opp.Parties	-	Addl. Govt. Advocate

OJC No.7846 of 1998:-

Bandana Mohanty & others Petitioners

Versus

State of Orissa & others Opposite Parties

For Petitioners - M/s B.Routray, B.Parida,
B.Dash, S.S.Kanungo &
P.K.Dash

For Opp.Parties - Addl. Govt. Advocate

OJC No.8957 of 1998:-

Swapana Rani Mishra
And another Petitioners

Versus

State of Orissa & others Opposite Parties

For Petitioners - M/s A.K.Mishra,
B.B.Acharya,
J.Sengupta,
B.K.Panda, C.Mohanty
P.R.J.Dash & G.Sinha

For Opp.Parties - Addl. Govt. Advocate

PRESENT:-

**THE HON'BLE MR. JUSTICE I.M.QUDDUSI
A N D
THE HON'BLE MR. JUSTICE PRADIP MOHANTY**

Heard and decided on : 20.07.2005

I.M.QUDDUSI,J. These five writ petitions have been filed against the same judgment dated 08.07.1997 passed by the Orissa Administrative Tribunal, Bhubaneswar Bench, in O.A. No.1202 of 1997.

2. OJC No. 15655 of 1997 has been filed by the State and the remaining writ petitions have been filed by the persons who were

applicants before the Tribunal in the above-mentioned O.A. as well as other O.As.

3. The brief facts of the case are that the State Government had created some posts of Junior Lecturer in the Government Educational (Higher Secondary) Institutions. The applicants before the Tribunal and some other persons were appointed as Junior Lecturers on stop gap arrangement for 89 days each time. The posts of Junior Lecturer are within the purview of Public Service Commission. Therefore, the State Government had not regularized their appointment. The Public Service Commission did not advertise the posts and as such the State Government published an advertisement on 20th June, 1991 for appointment on ad hoc basis as the process of selection by the Commission would take time. A selection was made by the Department in which the applicants as well as some other persons were declared selected and were given appointment on ad hoc basis on 12.12.1991. In the meantime, the Orissa Public Service Commission conducted the written test, in pursuance of the advertisement issued earlier, in the month of November 1991. Thereafter, result was published. But many candidates, who were already holding the posts of Junior Lecturer on ad hoc basis and had not applied to the Commission or some, who although applied but not selected, became adversely affected on coming of the candidates from Public Service Commission. They earlier filed O.As. before the Tribunal and the same were decided with the direction to the State Government that the names of those applicants appointed shall be sent to the Public Service Commission and their ad hoc appointment shall not be terminated. Against the judgment and order passed by the Tribunal, the State Government filed Special Leave Petitions before the Hon'ble Apex Court numbered as SLP (Civil) Nos.20231-20242 of 1994 which came up for hearing on 13.2.1995 along with Civil Appeal No. 5439 of 1994. The Hon'ble Apex Court dismissed the appeal and Special Leave Petitions by order dated 13.02.1995 holding that there was no fault in the direction given by the Tribunal. The operative part of the said order is as under:-

“In the result, therefore, we direct that the State Government shall refer the names of those of the ad-hoc appointees to the Orissa Public Service Commission who did not apply for the posts of Junior Lecturers in response to Advertisement issued by it for the purpose of consultation as to their suitability for appointment against the posts held by them on regular basis. The State Government shall not refer names of those of the ad-hoc appointees who had applied to the Commission for appointment to the posts pursuant to the advertisement issued by it and have been declared unsuitable for appointment. We further direct that till consultation is made with the Public Service Commission in respect of the ad-hoc appointees in respect of whom we have given direction as above, their appointment shall not be terminated.’

The Tribunal has issued an innocuous direction to the State Government to refer the names of the respondents, ad-hoc appointees, for consideration by the Public Service Commission in accordance with law. It is no doubt correct that the High Court has further directed that till the consultation is made with the Public Service Commission and the decision in that respect is taken, the services of the respondents shall not be terminated. But we find no fault with the direction of the Tribunal. The appeal and special leave petitions are dismissed.”

4. Thereafter, the State Government, following the above decision, sent the names of ad-hoc appointees to the Public Service Commission. The Public Service Commission recommended the names of only 18 out of 87 candidates and the remaining 69 persons were not recommended. Again some of those persons, whose names were not recommended by the Public Service Commission, approached the Tribunal in the O.A. in question, i.e., O.A. No. 1202 of 1997. The Tribunal vide its judgment and order dated 8.7.1997 decided the O.A. with the following directions mentioned in paragraph 22 of the judgment:-

- “22. In conclusion- (i) Applicant shall be given appointment on ad-hoc basis in a vacant post in which no regularly selected candidate is available till such a candidate would be available for appointment,

within seven days from the date of receipt of a copy of this order.

- (ii) If the vacancy is in respect of a reserved category candidate, ad-hoc appointment shall be made in compliance with the provisions of O.R.V. Act.
- (iii) All candidates whose services have been terminated and whose applications are either pending before the Tribunal or have not applied waiting for result of this application will get the same benefit as the applicant is getting.
- (iv) Steps shall be taken to fill up the posts on regular basis by intimating the Public Service Commission the number of vacant posts and applicant and others will be given opportunity to apply by relaxation of the overage to the extent of their ad-hoc appointment from 1991 till the date of termination.”

Feeling aggrieved by some of the directions of the Tribunal, the State Government as well as some applicants before the Tribunal have filed these writ petitions.

5. In paragraphs 20 and 21 of its judgment, the Tribunal has observed that earlier the Hon’ble Supreme Court and the Tribunal only prohibited the State Government from referring the names of those who were not recommended in spite of applications along with those who did not apply at all to the Commission. Decision of the apex Court did not debar them from being regularly selected in future. The State Government may consider to relax the age limit to give chance to them to get themselves recommended by the Commission under the Orissa Education Service (Higher Secondary Branch) Method of Recruitment and Condition of Service Rules, 1991 (for short “the 1991 Rules”), since there is no recruitment as yet after 1992 by the Commission under the 1991 Rules. If they are regularly appointed, the question of their seniority will be considered under the Rules, for which the Tribunal has expressed no opinion. The petitioners before this Court or the applicants before the Tribunal who have not been selected by the Public Service Commission can have opportunity to apply again to the Public Service Commission for being duly selected to continue in the posts. There was no issue before the apex Court whether they can

apply in future. The order of the Tribunal not to refer their cases to the Commission should not be interpreted to prohibit them from applying afresh when advertisement is issued.

6. Learned counsel for the parties have apprised this Court that almost majority of persons have been engaged and as such they have now no grievance for regularization in the posts in question, i.e., Junior Lecturers. They have also not protested further after rejection of their candidature by the Public Service Commission. Therefore, we feel that the persons who did not approach the Tribunal should be deemed to have lost their claims and their cases should not be considered any further. Therefore, the judgment and order passed by the Tribunal requires modification to the extent that Clauses (iii) and (iv) of the above quoted direction of the Tribunal are liable to be quashed and the remaining directions are to be followed with the modification that since the applicants before the Tribunal or the petitioners before this Court have become over-aged by the passage of time, the Government may give them opportunity to apply for relaxation of age under Rule 17 of the 1991 Rules. However, this will further be confined only to those applicants before the Tribunal or the petitioners before this Court who intend to apply. Mr. Routray, learned counsel for the petitioners submits that such persons are only about 35 in all and there are more than 500 vacancies of Junior Lecturers existing in different Government institutions and no selection has been made by the Public Service Commission against those posts after 1998 so far.

7. In view of the above mentioned facts and circumstances, the writ petitions are disposed of with the direction that Clauses (iii) and (iv) of paragraph-22 of the judgment and order passed by the Tribunal are quashed and Clauses (i) and (ii) thereof are upheld with the modification that the age relaxation will be considered of those who were applicants before the Tribunal in the above mentioned O.A. or petitioners before this Court in these writ petitions provided they intend to participate in the selection for regularization by the Public Service Commission. Those of the applicants/petitioners, who desire to move for relaxation of their age

and to participate in the selection for recommendation by the Public Service Commission for regularization in the posts of Junior Lecturer, shall make such application(s) within two months from today and thereafter the State Government shall take a decision in respect of relaxation of their age and send the cases of those applicants to the Public Service Commission within a period of one month. We make it clear that relaxation of their age will be considered sympathetically under Rule 17 of the 1991 Rules, since admittedly the applicants were engaged by the State Government in the year 1991 and they have served as Junior Lecturers since then. Thereafter, the matter regarding their selection/regularization will be decided by a specific order to be passed.

8. The above directions shall be complied with by the State Government, keeping in view the fact that there are more than 500 vacancies of Junior Lecturers existing for which naturally there would be loss of studies of the students, as expeditiously as possible, preferably within a period of one month from the date of receipt of this order.

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I.M.Quddusi, J.

Pradip Mohanty,J. I agree.

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Pradip Mohanty, J.

Orissa High Court, Cuttack.
 July 20, 2005/ *Samal & Bisoi*

