

# ORISSA HIGH COURT : CUTTACK

**W.P.(C) Nos. 29573, 29575, 29578, 31382 and 32248 of 2011**

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

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Sri Ramakanta Parhi (In W.P.(C) No. 29573 of 2011)  
Sri Pradip Kumar Das (In W.P.(C) No. 29575 of 2011)  
Smt. Prativa Mishra (In W.P.(C) No. 29578 of 2011)  
Sri Anakar Sahu (In W.P.(C) No. 31382 of 2011) and  
Sri Ananta Charan Barik (In W.P.(C) No. 32248 of 2011)

... Petitioners

Versus

State of Orissa and others (In all writ petitions) ...

Opposite parties

***For petitioners***

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***M/s. Sameer Kumar Mishra and S.K.Mishra.  
( In all writ petitions)***

***For opposite parties***

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***Standing Counsel for School and  
Mass Education Department  
( In all writ petitions)***

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**P R E S E N T**

**THE HONOURABLE MR. JUSTICE S.K.MISHRA**

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***Date of hearing – 02.03.2012***

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***Date of judgment - 29.03.2012***  
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***S.K.Mishra, J.***

In this batch of writ petitions, the petitioners pray to quash the order passed by the Collector, Bhadrak on 16.09.2011 in Misc. Case No.8 of 2010 and to direct the opposite parties to engage the petitioners as Sikhya Sahayak under the physically handicapped category and to grant them consequential benefits including back wages, seniority etc. from the date the first batch of candidates appointed in Bhadrak district as per the advertisement dated 14.10.2006.

2. The petitioners having +2 Arts C.T. qualification applied for the post of Sikhya Sahayak under the physically handicapped category of Basudevpur Block under Bhadrak district in pursuance of the advertisement issued by the Director on 14.10.2006. The petitioners further claimed that they were duly selected for engagement as Sikhya Sahayak, hereinafter referred as 'SS' for brevity, by the authorities under the physically handicapped category, they were then called upon to sign on an agreement. The petitioners appeared before the authorities and also signed the agreement, but no engagement order has been given to them nor copies of the agreement were supplied to them on a plea that the select list is to be revised because the provisions of the Orissa Reservation of Vacancies Act has not been followed. The selection of the candidates under the physically handicapped category according to the petitioners has been deleted. It is further pleaded that the physically handicapped category itself is a reserved category, it admits no further reservation on the basis of candidates belonging to the scheduled caste and scheduled tribe categories. It is further pleaded that in violation of such rule of law, the authorities have prepared the select list by giving reservation to those reserved candidates under the physically handicapped category, in the process, persons those who have secured less percentage of marks than these petitioners have been engaged ignoring the rightful claim of the petitioners.

3. The further case of the petitioners is that relying on the ratio decided in ***Mahesh Gupta v. Yashwant Kumar Ahirwar***, (2007) 8 SCC 621, two equally placed persons as that of the petitioners from Bonth Block of Bhadrak district namely, Gayadhar Das and Jitendra Kumar Mishra have filed W.P.(C) No. 5606 of 2008 and W.P.(C) No.56-8 of 2008 challenging the illegal selection procedure of the opposite parties. Since the said two persons are equally placed as that of the petitioners and belong to the same district and have called in question to the said selection, the petitioners awaited for the judgment of the case, as because the ratio of the present decision will be applicable to the persons belonging to the physically handicapped category of Bhadrak district. This Court in aforesaid two cases directed the Collector to

reconsider the matter as aforesaid as it relates to selection of the petitioners as SS.

4. The petitioners further pleaded that in view of the order passed by this Court, the entire selection for the post of SS from the physically handicapped category ought to have been considered afresh and the list was to be prepared afresh in consonance of the judgment of the Supreme Court. The Collector, Bhadrak, however, rejected the claim of those two persons on the ground that the selection list has lost its life in the passage of time i.e. one year. Thereafter, said two persons filed two separate writ petitions bearing W.P.(C) Nos. 347 of 2009 and 348 of 2009, where this Court took the view that the action of the Collector is contemptuous and issued notice to show cause. It is further pleaded that by antedating the orders in file, the Collector in a hurry just before his relief on transfer, issued appointment order in favour of those two persons as SS without recasting the entire list and without verifying the relative merit of other candidates, those who have not come to the Court. Thereafter, the petitioners approached this Court by filing writ application bearing W.P.(C) No. 15565 of 2008, which has been disposed of giving liberty to the petitioners to file fresh representation to the Collector, Bhadrak, who shall consider the same in accordance with law within a period of six weeks. Thereafter, the petitioner filed a representation, but it is submitted that by passing a cryptic order, the Collector, Bhadrak rejected their claim and has illegally held that the ratio decided in the case of ***Mahesh Gupta v. Yashwant Kumar Ahirwar*** (*supra*) is not applicable to the case in hand. Therefore, on the basis of such pleading, the petitioners urge that the order passed by the Collector should be quashed and they should be engaged as Sikhya Sahayaks.

5. The opposite party namely, District Project Coordinator, SSA, Bhadrak has filed counter affidavit. The opposite party pleads that the Government of Orissa in General Administration Department has passed Resolution on 20.09.2005 regarding reservation of vacancies of physically handicapped category persons, sportsmen and ex-servicemen in initial recruitment in State Civil Services and posts as per Clause 5 of that resolution, persons with disabilities (physically handicap), sportsmen and ex-servicemen

categories shall claim vacancies reserved for the categories to which they may belong to. This means that persons with disabilities (physically handicap), sportsmen and ex-servicemen, if belonging to scheduled caste will claim the vacancy reserved for scheduled castes so on and so forth. Therefore, the opposite party prays that the writ application be dismissed.

6. It transpires in course of hearing of the case that while reserving post of SS for the physically handicapped category persons, the authorities have reserved post within that category for scheduled caste and scheduled tribe and socially and economically backward classes categories, which is in complete violation of the rule of law propounded by the Supreme Court of India in ***Mahesh Gupta v. Yashwant Kumar Ahirwar*** (*supra*). The Supreme Court in clear terms laid down that the authorities cannot create categories within categories and reserve seats in the physically handicapped category for scheduled caste and scheduled tribe and other backward classes. The action of the opposite parties is definitely not in consonance with the ratio decided by the Supreme Court of India.

7. However, this Court is not inclined to grant the relief to the petitioners on two grounds; firstly, it is very categorically contended/pleaded that the authorities have prepared the select list by giving reservation to the persons belonging to the physically handicapped category ignoring the rightful claim of the petitioners. In other words, some other persons have been selected in place of the petitioners; they are proper and necessary parties to this writ application. As the reservations cannot exceed the prescribed percentage, those persons have to be impleaded as parties and in case it is found that those persons were in fact engaged, though less meritorious than the petitioners, then their appointments have to be cancelled and the petitioners should be appointed in their place. However, such an order cannot be passed without giving them reasonable opportunity of filing show cause and hearing. In absence of those candidates, the writ application is not maintainable. If any order is passed regarding appointment of the petitioners from the existing vacancies, then it will have the effect on other candidates. Moreover, if the petitioners are engaged in addition to those persons, who have been

mentioned in paragraph 4 of the writ application, then the total reservation in the physically handicapped category will be more than the prescribed limit. Therefore, this Court holds that the writ applications are not maintainable in absence of the persons who have been engaged in place of the present petitioners.

8. Secondly, it is the admitted case of the petitioners that they have waited till the writ application filed by Gayadhar Das and Jitendra Kumar Mishra, which was disposed of at the first instance. Thereafter, their second round of litigations were pending and the Court issued notice to the opposite parties to show cause, why the Collector should not be punished for contempt of Court. In other words, the petitioners want to take advantage of the orders passed by the Court in favour of some persons who have filed the writ applications before the Court. In that sense, the petitioners are fence-sitters and they awaited the result of the earlier writ applications filed by the aforesaid two persons and want to take advantage of the result of the cases filed by them. Such a procedure is not permissible.

Accordingly, this Court comes to the conclusion that the petitioners are not entitled to the relief claimed and, therefore, the writ applications are dismissed.

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**S.K.Mishra, J.**

Orissa High Court, Cuttack,  
Dated, March 29, 2012/JNS.