

**ORISSA HIGH COURT: CUTTACK.**

**W.P.(C). No. 6599 OF 2013**

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

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Brajesh Nayak

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Petitioner

***-Versus-***

Collector, Bargarh & others

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Opp. parties

For Petitioner : Mr. Gouranga Ch. Mohapatra

For opp. parties: M/s. Himansu Sekhar Mishra,  
A.K. Mishra & R. Dash

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**Date of Order: 25.04.2013**  
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**PRESENT :**

**THE HONOURABLE SHRI JUSTICE M.M. DAS  
AND  
THE HONOURABLE SHRI JUSTICE B.K.MISRA.**

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**O R D E R.**

Bereft of unnecessary details, it may be stated that the petitioner, in this writ application was appointed as Gram Rojgar Sevak ("GRS" in short) at Guderpali Gram Panchayat on being selected pursuant to the process of selection.

2. The opposite party No.5 filed W.P.(C) No.1248 of 2008 before this Court challenging the engagement of the petitioner alleging that he was more suitable and eligible than the petitioner with a further allegation that the application for appointment was not submitted by the petitioner, but by somebody else in his name.

This Court, by order dated 31.01.2008 disposed of the said writ application directing that since disputed question of facts are involved, which cannot be effectually adjudicated in a writ application, the Collector, Bargarh will enquire into the matter by calling for the records of selection issuing notice to the present petitioner, who was opposite party No.3 in the said writ application and the appointment of the present petitioner shall be subject to the order, which is to be passed by the Collector after enquiry. The entire exercise was directed to be completed within three months and opportunity was given to the present opposite party No.5, who was the petitioner in the said writ application to file a fresh representation before the Collector.

3. After disposal of the aforesaid writ application, the Collector conducted an enquiry by calling for the records of selection. The opposite party No.2, i.e., the Project Director, District Rural Development Agency, Bargarh, issued notice to the petitioner as well as to the opposite party No.5 to remain present on 22.04.2008 at 3.00 P.M. before the Collector, Bargarh. Accordingly, the petitioner states that he appeared on that date and time. The Collector, on that date, obtained three specimen signatures of the petitioner and he examined the documents.

The opposite party No.2, however, issued several notices to the petitioner and also obtained specimen writing and signatures of one Golap Naik, who was not connected with the case. A

letter was issued to the petitioner by the opposite party No.2 on 28.03.2009 intimating him that as per the letter dated 22.04.2008, his application form was sent to the hand writing expert, Rasulgah for examination and the said hand writing expert opined that the signature appearing in the application form of the petitioner does not belong to him and directed the petitioner to file a show cause as to why he will not be disengaged and disciplinary/criminal action shall not be taken against him. It is further alleged by the petitioner that 36 specimen signatures were also obtained from him by the opposite party No.2. The petitioner, challenging the legality of the letter issued by the opposite party No.2, filed W.P.(C) No.5919 of 2009.

4. This Court, by order dated 24.08.2011, on analyzing all the materials, came to the conclusion that as per the provision of the Scheme, the Collector-cum-CEO, Zilla Parishad is the only authority, who is competent to take disciplinary action including removal for unsatisfactory performance, indiscipline or otherwise after getting feedback from the concerned Grama Panchayat through the Programme Officer and the P.D., D.R.D.A., Bargarh lacks jurisdiction to issue the said letter to the petitioner calling upon him to file show cause. Accordingly, the said letter was quashed. This Court further directed that the Collector shall provide a copy of the report of the expert's opinion to the petitioner and grant him opportunity to cross-examine the hand writing expert with regard to his opinion and only thereafter the Collector shall appreciate the expert's opinion along

with his deposition to pass any order in the proceeding. The Collector thereafter provided a copy of the hand writing expert's opinion report to the petitioner and granted him opportunity to cross-examine the said expert.

5. Considering the report and the deposition of the hand writing expert and the submission made by the petitioner, the Collector ultimately has come to the conclusion that the signature in the application form is not that of the petitioner and further concluded that the petitioner may be disengaged from the post of GRS and the candidate next below in the panel for the said post may be engaged in the said post. Challenging the said order passed by the Collector on 12.03.2013, the petitioner has approached this Court in the present writ application.

6. On considering the submission made by Mr. G.C. Mohapatra, learned counsel for the petitioner, we find that the only contention raised before this Court is that the Collector should not have passed the impugned order solely basing on the hand writing expert's opining, which has been held by the Hon'ble Supreme Court in various decisions that the science of identification of handwriting is an imperfect and frail one as compared to the science of identification of finger-prints; courts have, therefore, been wary in placing reliance on such opinion evidence and have looked for corroboration. Mr. Mohapatra in support of the above contention relies upon the decision in the case of ***State of Maharashtra v. Sukhdeo Singh***

**and another**, AIR 1992 SC 2100 and various other decisions of the Hon'ble apex Court. In the case of State of Maharashtra v. Sukhdeo Singh and another (supra), the Hon'ble Supreme Court was considering a death reference case and held as follows:-

“What emerges from the case law referred to above is that a handwriting expert is a competent witness, whose opinion evidence is recognized as relevant under the provisions of the Evidence Act and has not been equated to the class of evidence of an accomplice. It would, therefore, not be fair to approach the opinion evidence with suspicion but the correct approach would be to weigh the reasons on which it is based. The quality of his opinion would depend on the soundness of the reasons on which it is founded. But the court cannot afford to overlook the fact that the science of identification of handwriting is an imperfect and frail one as compared to the science of identification of finger-prints; courts have, therefore, been wary in placing implicit reliance on such opinion evidence and have looked for corroboration but that is not to say that it is a rule of prudence of general application regardless of the circumstances of the case and the quality of expert evidence. No hard and fast rule can be laid down in this behalf but the court has to decide in each case on its own merits what weight it should attach to the opinion of the expert”.

**(emphasis supplied)**

Most of the decisions, on which Mr. Mohapatra has relied upon, relate to criminal law and/or election law.

7. Considering the facts of the present case, we are of the view that an application in response to any advertisement for appointment, which provides a space for signature of the applicant, is required to be signed by the applicant personally. A third party cannot be permitted to make an application for seeking the service/job for another person.

8. Perusal of the impugned order clearly goes to show that the learned Collector has taken much pain in analyzing and

appreciating the evidence of the expert from the Forensic Laboratory of the Government and on appreciating evidence of the expert, has come to the factual finding that the signature appearing in the application form of the petitioner was not signed by him.

We are also of the view that the conclusion of the learned Collector after enquiry is a finding of fact and unless it is shown to be erroneous on the face of it, the same cannot be interfered with in a certiorari proceeding. We, therefore, find no reason to interfere with the impugned order.

9. In the result, therefore, the writ application stands dismissed being devoid of merit.

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***M.M. Das, J.***

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***B.K.Misra, J.***

***Orissa High Court, Cuttack.***  
***April 25th ,2013/Subha***