

**AFR****IN THE HIGH COURT OF ORISSA AT CUTTACK****W.A. No. 1033 of 2026****CNR No. ODHC010573582026****Manasmita Maharana**

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Appellant**-Versus-****State of Odisha and others**

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Respondents**Advocates appeared in this case:**

For Appellant : Mr. Sidheswar Mallik, Advocate

For Respondents : Mr. S. K. Swain,
Addl. Government Advocate**CORAM:****HON' BLE THE CHIEF JUSTICE
AND
HON'BLE MR. JUSTICE CHITTARANJAN DASH****J U D G M E N T**

Date of Hearing & Judgment: 24th August, 2026

HARISH TANDON, CJ.

1. Though the orders dated 06.05.2026 and 02.07.2026 are challenged in the instant appeal, we, after hearing the counsel for the appellant, did not intend to delve into the maintainability of the single appeal against two independent orders as we find the issue



is restricted to the effect of the concession made by the counsel at the time of hearing the main writ petition to be binding on the parties.

2. The writ petition was filed challenging the order dated 02.02.2026 passed by the Government rejecting the claim of the appellant made through a representation in relation to the benefit of salary during the training period to be given instead of stipend.

3. It would be profitable to recapitulate the facts being the foundation of the claim laid by the appellant in the said writ petition before we proceed to decide the core issue pertaining to a concession made at the time of hearing of the writ petition. The appellant was appointed as an Assistant Conservator of Forest under the Odisha Forest Service Group-A (Junior Branch) at a relevant point of time when Odisha Forest Service Group-A (Junior Branch) (Recruitment & Conditions of Service) Rules, 2013 was in vogue. It postulates two years training and during the training period such appointees shall be extended with the benefit of the stipend instead of salary. The said Rule of 2013 was subsequently amended with a notification dated 13.03.2024 in relation to payment of salary during the training period together



with other allowances as admissible to such post. Admittedly the appellant underwent training in terms of the said Rules and later on appointed to the post of Assistant Conservator of Forest and subsequently made a representation for payment of salary in lieu of the stipend on the basis of the amendment having carried out through the notification issued by the Government. Several writ petitions were filed by similarly circumstanced persons which were disposed of by extending the benefit of payment of salary instead of stipend and some of the orders disposing of the writ petition as well as the writ appeal travelled to the Apex Court and the Special Leave Petitions were dismissed.

4. At the time of hearing of the writ petition filed by the appellant, the question of entitlement to salary was one of the primary issues, but an ancillary relief in the nature of seniority to be adhered to was also raised. The counsel for the writ petition allegedly made concession before the Single Bench that the appellant abandons the claim of the seniority and restricts his claim for salary in view of the amendments having brought into the said Rules. Taking into account such concession having made before the Court and the entitlement of the appellant to the salary



instead of the stipend as well as the judgment of this Court and the Apex Court, the writ petition was disposed of extending the benefit of salary instead of stipend under the said Rules.

5. Subsequently the appellant filed an application seeking modification of the said order disposing of the writ petition on the premises that there was no concession made by the Senior Counsel appearing for the appellant on the date of disposal of the writ petition and, therefore, the portion of the final order which contains the concession should be deleted and the said order should be modified by extending the consequential benefit of the seniority in the cadre.

6. By an order dated 02.07.2026, the Single Bench rejected the said application reiterating that the Senior Counsel made a concession which was duly recorded in the said order and the stand of the appellant that it is a wrong recording of the event is untenable.

7. The sole point involved in the instant writ appeal pertains to the effect of a concession made by the counsel representing the litigant before the Court.



8. Mr. Mallik, learned advocate appearing for the appellant vociferously submits that there was no concession made by the counsel representing the appellant before the single bench and therefore, the recording of a concession by the learned Single Judge is a mistake of the Court for which the litigant should not suffer. It is further submitted that the wrong concession made by the counsel is not binding on his client and placed reliance upon the judgments of the Supreme Court in the case of *Union of India v. Subit Kumar Das*, reported in 2025 SCC OnLine SC 2243, *Union of India v. Manraj Enterprises* reported in (2022) 2 SCC 331, *Uptron India Ltd v. Sammi Bhan*, reported in (1998) 6 SCC 538 and *Bharat Heavy Electricals Ltd. v. Mahendra Prasad Jakhmola and others*, reported in (2019) 13 SCC 82. According to learned counsel, the lawyer representing his client is not authorised to concede any relief claimed in the writ petition in absence of any instruction given in this regard and, therefore, the Court ought to have modified the order expunging the portion which recorded the concession so made. He fervently submits that no litigant should suffer for a wrong concession made by his lawyer nor the Court



recording such submission mistakenly should cause prejudice to the said litigant.

9. The counsel representing the State opposed the said appeal by contending that there is no mistake committed by the Court in recording the concession as the counsel representing the litigant is competent to make a concession or abandon any of the claims made in the writ petition. He further submits that once the Court has recorded the event happened in the Court, it is not open to the litigant to contradict the same by filing an application or an affidavit in this regard. He arduously submits that a litigant cannot be permitted to take U-turn and dispute the recording of the events happened in course of the hearing before the Court and the appeal challenging the order is incompetent and should be dismissed.

10. On the premises of the aforesaid stand taken before us and the point so raised in the instant writ appeal, the Court must remember the line of the distinction between a concession made by the counsel representing his client on fact and on law. There is a significant difference between a concession in relation to a fact and a concession in relation to a law. Such distinction is real and apparent and it has been a consistent view taken by the Courts that



the concession of a lawyer on a proposition of law is not binding on the litigant nor be recorded as a binding concession. It is no longer *res integra* that a wrong concession on the proposition of law enacted through a well recognised procedure is no concession in the eye of law as the applicability and the efficacy of the law cannot be decided or readily inferred on the concession. The aforesaid notion is fortified in the judgment rendered by the Apex Court in ***Subit Kumar Das*** (supra) where an issue relating to absorption in service to the post of Technician at the Eastern Zone of All India Radio under Scheduled Caste category was involved. In the said report, the requisition was made by the All India Radio, Eastern Zone to the Employment Exchange for appointment to the post of Technician wherein three posts were reserved for Scheduled Caste category candidates. The Selection Committee after interview selected three candidates in the order of merit and the respondent therein was placed at Sl. No. 4. Being aggrieved by the same, the respondent therein approached the Tribunal challenging the decision of the authorities that only in the event the three selected candidates did not join, no right for appointment would accrue to the candidate appearing below in seriatim. An



argument was advanced that in the event any vacancy arises in SC quota, the applicant would be absorbed and on the basis of such concession the Tribunal disposed of the case, which travelled to the High Court and ultimately to the Apex Court. However such concession was sought to be projected before the Apex Court to run counter to the statutory rules of recruitment and it was sought to be contended that the concession which is opposed to the statutory provision cannot be regarded as a binding concession. In the back drop of the same, the apex Court held thus:

“17. It appears that the High Court was much impressed by the fact that the statement made on 15.01.1999 on behalf of the appellants was not being honoured. It is true that a statement made before the Court has its solemnity and the party making such statement is bound to comply with the same. At the same time, it has to be seen as to whether such statement in the form of a concession, if given effect to would result in violation of any statutory rules or regulations. If such consequence is likely to flow, it would be open for the affected party on whose behalf such concession in law was made to place before the Court the correct position of law and urge that it may not be compelled to give effect to an erroneous concession made on law. In the present case, giving effect to such statement made on 15.01.1999 would result in a waitlisted candidate being given an appointment notwithstanding the fact that all selected candidates in the said recruitment process had duly joined their posts and there was no occasion to operate the wait list. It would amount to filling in one post in the subsequent recruitment on the basis of an exercise carried out in the previous recruitment. This would definitely cause prejudice to the candidates



seeking recruitment in the subsequent process as the vacancies would stand reduced. Moreover, it would also extend the life of the wait list though all vacancies stand filled in, which would be impermissible.

In these facts therefore, we find that the appellants are justified in contending that the statement dated 15.01.1999 cannot be acted upon as it would result in conferring benefit on a waitlisted candidate to which he otherwise in law is not entitled to. The same is also not shown to be permissible under the Recruitment Rules. It appears that the High Court glossed over these vital aspects while directing the appellants to absorb the services of the respondent. The available vacancies having been filled up in 1997 resulted in exhaustion of the wait list and the said process of recruitment had come to an end. The High Court has, therefore, erred in directing the absorption of the respondent.”

(Emphasis supplied)

11. In *Mahendra Prasad Jakhmola* (supra), the award made by the Labour Court on the basis of a notification issued under Contract Labour (Regulation and Abolition) Act, 1970, which relates to workmen not deployed to do the work mentioned in the said notification was questioned on the premises whether such workmen who were otherwise employed by a contractor were in fact directly employed by the company on the basis of a concession made by the employer’s representative that the supervision, superintendence and administrative control of all the workmen were with them. The Apex Court finds that the statutory provision applicable in this regard speaks otherwise than what was



conceded before the Labour Court as well as the High Court and, therefore, such concession does not stand on the parameters of law nor should be applied in prejudicial to the interest of the employer.

12. Even in the case of *Manraj Enterprises* (supra), the concession was made by the counsel representing the litigant on an interpretation of law which causes greater prejudice to the said litigant and in such perspective it was held that such concession based on law is not binding on the parties. In the same line the *Uptron India Ltd* (supra) held that a wrong concession on a question of law by the counsel is not binding.

13. There is no iota of doubt in our mind that a concession on proposition of law by the counsel cannot bind the parties as such concession is always regarded as no concession in the eye of law. Even a concession made by the counsel which runs counter to the statutory provision is regarded as a non binding concession on the parties as the applicability of law cannot depend upon such concession. The moment the law is enacted either to extend a benefit or to take away such benefit, the concession by a counsel at the time of hearing which undermine the object and purpose of the legislation is not permissible. Thus a distinction has to be drawn



between a concession on fact and a concession on law by the counsel. In the latter case it has been the consistent view of the Courts that it does not bind the parties, but in the former case, the question is still begging an answer as to whether the concession by a counsel was on the strength of the instruction given by his client. Unless the client instructs his counsel to concede a fact, no concession can be made unilaterally to bind the litigant who has been pursuing the remedy before the Court. The authority of the counsel to act prejudicial to the interest of the client by making a concession on fact is to be judged on such parameters and in the event the Court finds that such concession is not supported by any instruction from the litigant, there is no fetter to expunge such concession as the litigant should not suffer for the act of the counsel.

14. The position in the instant case is based upon a different notion as an application to expunge the concession and modify the order is based on a specific stand that the counsel representing the appellant did not make any concession; meaning thereby there is a wrong recording of an event happened in the Court or the Court recorded such event mistakenly. It is a cardinal principle that the



recording of an event happened in the Court by the Judge is sacrosanct and cannot be contradicted by filing an affidavit. The only possible recourse which can be resorted to is to approach the same judge promptly before such event fades from his memory and in the event the Court finds that there was no such concession made, may expunge such concession or modify the order depending upon the situation. The moment the Court finds that such concession was in fact made and correctly recorded and dismisses the application made in this regard, the Appellate Court should be slow and circumvent in interfering with such order.

15. It is common in the judicial system that the reliefs be it main or ancillary or consequential are claimed in the litigation and the litigant may abandon any of such claims. Such right to abandon the claim can be traced from Order XXIII Rule 1 of the Code of Civil Procedure. The moment one of the reliefs is abandoned by the litigant through his counsel and restricted to a main claim, we do not find any fetter on the part of the Court in adopting such recourse. The primary issue involved in the writ petition relates to payment of salary and not the stipend in view of the subsequent notification amending the said Rules which has



been granted to the appellant. Even the earlier judgments are suggestive of the notion that right to get salary instead of stipend gets crystallized by virtue of an amended notification and the said relief has been granted by the Court adhering the comity of Judicial Discipline. The certainty and uniformity in a decision is a hall mark of the justice delivery system. The Court has extended the benefit to the appellant and, therefore, we do not find any incongruity in this regard. Even the Single Bench has refused to accept the stand of the appellant that there was no concession made abandoning the claim of seniority, which does not warrant any interference.

16. Accordingly, the writ appeal sans merit and the same is hereby dismissed. No order as to costs.

(Harish Tandon)
Chief Justice

(Chittaranjan Dash)
Judge