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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.14410 OF 2017

Dibakar Patra .... **Petitioner**

-Versus-

State of Odisha and another .... **Opposite Parties**

Advocates appeared in this case:

For Petitioner : Mr. P.K. Rath, Senior Advocate with
M/s. A. Behera, S.K. Behera, P. Nayak,
S. Das and S. Rath, Advocates

For Opp. Parties : Mr. S.B. Panda,
Additional Government Advocate
[O.P. No.1]

Mr. P.K. Mohanty, Senior Advocate with
M/s. D.N. Mohapatra, (Smt.) J. Mohanty,
Mr. P.K. Nayak, Mr. S.N. Dash, P.K. Pasayat and
Mr. P. Mohanty, Advocates
[O.P. No.2]

CORAM:

THE HON'BLE MR. JUSTICE DIXIT KRISHNA SHRIPAD
AND
THE HON'BLE MR. JUSTICE M.S. SAHOO

J U D G M E N T

Decided on: 17.06.2025

***PER* DIXIT KRISHNA SHRIPAD, J.**

Petitioner, a Court employee aspiring for employment in the Odisha Judicial Service, having been denied appointment and further

debarred from public employment, is knocking at the doors of Writ Court essentially with the following prayers:

> (i) To declare "Rule-18(2) and Rule 19(1) proviso or Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 as ultra virus to Article-14 and 16 of the Constitution of India *(sic),*
>
> (ii) To quash order No.7025 dated 30.06.2017 of the opposite party no.1 under Annexure-9 and clause-5(ii)(iii) and clause-6 (v) of the advertisement No.3 of 2016-17 under Annexure-1 *(sic), and*
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> (iii) To issue a writ of mandamus to the opposite party no.1 to grant appointment letter to the post of Civil Judge on the basis of selection vide Notification dated 02.03.2017 issued by Orissa Public Service Commission.

2. After service of notice the opposite parties having entered appearance through the learned AGA and the panel counsel have filed the counter resisting the petition. To the said counter petitioner has filed rejoinder. Learned advocates representing the opposite parties make submission in justification of impugned Rules and proceedings.

3. Foundational Facts:-

(a) Petitioner, a Court employee belonging to the Scheduled Caste, had staked his claim for appointment to the post of Civil Judge,

pursuant to Orissa Public Service Commission Notification, in question. To put it shortly, he was found to have applied for the post not through his employer, as required under the notification, nor had he taken "No Objection Certificate" before gaining entry to the recruitment fray. This having angered the answering respondents, the order dated 30.06.2017 at Annexure-9 came to be issued. The same reads as below:-

> *"No.7025/L Dated the Bhubaneswar, 30th June, 2017*
> 25-28/17
>
> *After careful consideration of the show cause reply submitted by Sri Dibakar Patra, S/o Taru Patra, At/P.O.-Kaunrikala, Via-Ukhanda, P.S.-Baria, Dist.-Keonjhar, in response to the show cause notice issued vide No.5600/L dated 25.05.2017, the Government have been pleased to debar him from employment under the Government.*
>
> *By order of the Governor*
> *Sd/- S.R. Bohidar*
> *2nd A.L.R.-cum-Addl. Secretary"*

(b) The above order permanently debarring the petitioner from Government employment is premised essentially on two factors: that he had applied for appointment to the judicial post directly, i.e., not through the Head of the Department in which he has already been employed, and secondly that he has falsely stated in his online application that he was not a departmental candidate. It is a specific case of the opposite parties that the petitioner had perpetrated certain

misconduct in the examination and therefore in terms of extant Rule the impugned action has been taken to deny appointment coupled with a permanent ban for Government employment.

(c) The impugned action taken against the petitioner by the Government, according to learned Addl. Government Advocate, has been perfectly in accordance with law and after giving reasonable opportunity of hearing and therefore there is no warrant for the interference of Writ Court, some arguable lacunae notwithstanding. He also tells us that a Writ Court is not a Court of appeal to undertake deeper examination of the dispute, its jurisdiction being limited in focusing the decision making process as distinguished from decision itself. However, all this is controverted by the learned Senior Advocate appearing for the petitioner.

4. Having heard the learned counsel for the parties and having perused the petition papers, we are inclined to grant a limited indulgence in the matter as under and for the following reasons:-

4.1. The Odisha Superior Judicial Service and Odisha Judicial Service Rules, 2007 have been promulgated in exercise of powers conferred by the proviso to Article 309 read with Articles 233, 234 and

235 of the Constitution of India. Essentially, petitioner inter alia has called in question the proviso to Rule 19(1), which reads as under:-

> *"Provided that in case of a person already in Government service, the application shall be submitted through the appointing authority."*

It is admitted case of the petitioner that he had not applied through his present employer. His counsel submits that there is no such requirement, since he is not in Government service. Alternatively, he argues that this proviso is unconstitutional being violative of Articles 14 and 16. It is not uncommon to find a proviso of the kind enacted in several recruitment rules. Such a proviso is a matter of policy arising from working experience of the Government. It was Justice Oliver Wendell Holmes who said "*The life law is not logic but experience*…." Legislative decisions of the kind need to be shown due deference by the judicial institution. Courts cannot run a race of opinions with other organs of the State, separation of powers being one of the *basic features* of our Constitution vide ***Indira Nehru Gandhi v. Shri Raj Narain,*** AIR 1975 SC 2299.

4.2. The proviso to Article 309 read with the Articles 233, 234 & 235 of the Constitution bestow on the High Court a quasi legislative power in exercise of which 2007 Rules have been promulgated. Statutes

and delegated legislations like the 2007 Rules enjoy a measure of presumptive constitutionality vide ***Ram Krishna Dalmia v. Justice S.R. Tendolkar***, AIR 1958 SC 538. Neither lack of competence nor arbitrariness is demonstrated despite vociferous submissions made by learned counsel for the petitioner. We are aware that the degree of presumption of constitutionality of a delegated/subordinate legislation like 2007 Rules is comparatively not as high as in the case of a statute. Even to rebut this, no convincing argument is made. A piece of subordinate legislation made by the delegate from the experience gained through the years cannot be struck down by a stroke of pen. An argument to the contrary runs counter to the constitutional jurisprudence of at least half a century. The subject clauses of OPSC recruitment notification are nothing but the replica of what the Rules prescribed and therefore they too cannot be faltered.

4.3. Learned Addl. Government Advocate submitted that not sending the online application through the Head of the Department with whom a candidate is already employed, virtually amounts to fraud and therefore impugned action is sustainable. To us, this appears to be too farfetched a contention, guilty mind having not been pleaded, much less prima facie proved. There is also scope for the argument that the

service of petitioner is not with the 'Government' as such, inasmuch as he happens to be in the Court Service (non-judicial). As a layman, what he has done is wrong simpliciter and therefore, he cannot be crushed by sledge hammer, when a mild pinch would do the rightful. There is also force in the submission of learned for the petitioner that the impugned order debarring his client from Government service permanently is too harsh to be sustained. A harsh and disproportionate treatment meted out an erring citizen runs amuck of doctrine of proportionality.

4.4. The impugned order, which not only de-candidatured the petitioner for the recruitment but also debarred him permanently from Government employment, is not a speaking order, as rightly argued by petitioner's counsel. A perusal of its text does not show for what reason such harsh penal action is levied on the petitioner. The contention of learned Addl. Government Advocate that though the order itself does not have the reasons inbuilt, the relevant file contains the reasons, runs counter to ***Mohinder Singh Gill v. The Chief Election Commissioner,*** AIR 1978 SC 851, wherein Justice Krishna Iyer speaking for the 5-Judge Bench observed as under:-

> *"When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."*

4.5. Reasons should emanate from the very order itself so that for an onlooker it provides the opportunity to know why such an order is made. It is a most legitimate expectation of the person who suffered such orders, more particularly when the right to stake claim for public employment is a facet of Article 16 of the Constitution of India vide ***Secretary, State of Karnataka v. Umadevi***, AIR 2006 SC 1806. The authority who makes an order in exercise of statutory power cannot say that the reasons are available in the file that is not indicated in the order itself. In a constitutionally ordained Welfare State a citizen cannot be told that the reasons for a decision are stacked in the Godown of the Government. After all, ours is not the East India Company of bygone era. The Government has to conduct itself as a model employer vide ***Bhupendra Nath Hazarika v. State of Assam,*** AIR 2013 SC 234.

4.6. The vehement contention of learned Addl. Government Advocate that under Rule-21 power does avail to the Government *inter alia* to debar a candidate from future public employment cannot be much disputed. Rule-21 of 2007 Rules has the following text:-

> ***"21. Penalty for misconduct in the examination*** *- A candidate who is or has been declared guilty of impersonation or of submitting fabricated document or documents specified in Sub-rule (3) of Rule 19 which has been tampered with or of making statements which are incorrect or false or of suppressing material information or of using or attempting support for his candidature may in addition to the liability for criminal prosecution, be debarred either permanently or for a specified period -*
>
> *(a) by the Commission from appearing at any Preliminary Written Examination or Main written examination or any interview held by it for selection of candidates, and*
>
> *(b) by the Government, from employment under them as may be directed by the Commission or the Government, as the case may be."*

4.7. It hardly needs to be stated that existence of power is one thing and its exercise is another; existence per se is not a justification for its exercise. Heading of the Rule is crystal clear "Penalty for misconduct in the examination". The text obviously gives power, as already mentioned. What is the false statement or incorrect statement allegedly made by the candidate, remains to be a mystery wrapped in enigma. When right to public employment subject to conditions is one of the facets of Article 16, the Government or the Public Service Commission has to be circumspect in invoking such a penal provision, more particularly when the candidate is denied appointment to the post in question. No special reasons are assigned to justify a permanent

embargo as if a heinous sin is committed by the candidate. After all, errors do occur in any human transaction. What needs to be looked into is, whether it is a misconduct with guilty mind or a mistake simpliciter. Our examination reveals that the arguably culpable act of the petitioner does not fit into the former and therefore his case is miles away from the precincts of penal provision. More is not necessary to specify.

4.8. All the above being said, learned Addl. Government Advocate is right in telling us that no appointment order can be issued to the petitioner, since his entry to the recruitment fray was marred by illegalities, such as, not sending the application through Head of the Department nor with the no objection from the employer, as prescribed by law. Granting a direction to appoint such an erring candidate that too to the post of Civil Judge, in the circumstances is not warranted. A contra view if countenanced would lay dangerous precedent in the realm of service law. Had there been minor irregularities as were sought to be made out on behalf of the petitioner, we would have arrived at a different conclusion. A Writ Court cannot embark upon such a misadventure.

In the above circumstances, this petition is allowed in part. The challenge to subject proviso of Rules 2007 and so also to the

impugned paragraphs of subject OPSC Recruitment Notification is repelled. However, a writ of certiorari issues quashing the impugned order dated 30.06.2017 only to the extent it permanently debars the petitioner from staking claim for Government appointment and therefore he is entitled to participate in the future recruitment process, if he is otherwise eligible.

Costs made easy.

(Dixit Krishna Shripad)
Judge

(M.S. Sahoo)
Judge

Orissa High Court, Cuttack
The 17th day of June, 2025/Dutta/Radha