[O. H. C.–97-A]

SAILABALA JENA

T.P.TRIPATHY,K.BADHEI,A.SAHU,K.NANDA,J.JENA,

# In the High Court of Orissa

## ORDER SHEET

M/S SAHEER KU DAS
P.K.BEHERA, N.JENA } OP-4

WA

BLAPL/W. P. (C)~~WA~~ No. 148/2024 of 20 24

IA-no-428/24

**MOHAN KANHAR** *Petitioner*

*Versus*

**STATE OF ODISHA** *Opposite-Party*

| Sl. No. of Order | Date of Order | ORDER WITH SIGNATURE | Office note as to action (if any), taken on Order |
|---|---|---|---|
| | | | **PRESENTED ON 08/02/2024**<br>**Register and Put up for Orders**<br>**Registrar (Judicial)** |

**IN THE HIGH COURT OF ORISSA AT CUTTACK**
**W.A. No.148 of 2024**

***Mohan Kanhar*** ... ***Appellant***

Ms. Sailabala Jena, Advocate

*-versus-*

***State of Odisha and Others*** ... ***Respondents***

Mr. M.K. Khuntia, Addl. Govt. Advocate

**CORAM:**
**THE CHIEF JUSTICE**
**MR. JUSTICE MURAHARI SRI RAMAN**

**ORDER**

**Order No.** **13.03.2024**

**W.A. No.148 of 2024 and I.A. No.428 of 2024**

01. This matter is taken up through Hybrid mode.

2. Issue notice. Mr. M.K. Khuntia, learned Additional Government Advocate accepts notice on behalf of the State-respondents No.1 to 3. Let requisite number of copies of the appeal memo as well as the I.A. be served upon him within a week.

3. Notice be issued to respondent No.4 by Speed Post with A.D. returnable within two weeks. Requisites for such notice be filed within a week.

4. List this matter on 10.04.2024.

***(Chakradhari Sharan Singh)***
***Chief Justice***

***(M.S. Raman)***
***Judge***

*S.K.Jena/Secy*

**IN THE HIGH COURT OF ORISSA AT CUTTACK**
**W.A. No. 148 of 2024**

***Mohan Kanhar*** .... ***Appellant***

Ms. Jacquiline Jena, Advocate

*-versus-*

***State of Odisha & Others*** .... ***Respondents***

Mr. S. Das, AGA
Mr. P.K. Behera, Advocate

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**
**HON'BLE MISS JUSTICE SAVITRI RATHO**

**ORDER**

**Order No.** **12.08.2024**

02. This matter is taken up through Hybrid mode.

2. As requested on behalf of Mr. Sameer Kumar Das, learned counsel for the respondent no.4, list this matter on 20.08.2024.

***(Chakradhari Sharan Singh)***
***Chief Justice***

***(Savitri Ratho)***
***Judge***

*puspa*

IN THE HIGH COURT OF ORISSA, AT CUTTACK

**W.A. No. 148 of 2024**

***Mohan Kanhar*** ..... ***Appellant***

*Ms. J. Jena, Advocate*

*vs.*

***State of Odisha & others*** ..... ***Respondents***

*Mr. S.B. Panda, Addl. Govt. Advocate*
*Mr. N. Jena, Advocate (Respondent No.4)*

**CORAM:**
**HON'BLE THE CHIEF JUSTICE**
**HON'BLE MISS JUSTICE SAVITRI RATHO**

**ORDER**
**03.12.2024**

**Order No. 03.** This matter is taken up through hybrid mode.

2. Today also an adjournment is being sought for on behalf of respondent No.4.

3. List this matter on 10.12.2024 within first five cases.

4. We make it clear that no further adjournment shall be granted at the instance of respondent No.4.

**(Chakradhari Sharan Singh)**
**Chief Justice**

**(Savitri Ratho)**
**Judge**

*Arun/Ashok*

D-MA-5442/24

# IN THE HIGH COURT OF ORISSA

MA Case No. 148/24

## OFFICE NOTES

| Sl. No. of Order for compliance | Date of Order for compliance | Notes and action taken on order with signature of Dealing Assistant and Superintendent |
|---|---|---|
| | | 8/2/2024<br>RAJENDRA PRASAD SINGH<br>ASST. REGISTRAR<br>For fresh Admission<br>1) I.A No-428/24 is at Flag-'A' for efey.<br>Along with WPC(OAC)-2105/17<br>& R/WPET-303/23<br>Biswabhusan Nahak<br>07.03.24<br>DB<br>Vide memo to<br>11.03.24<br>Memo: 5858<br>Date: 30.3.2024<br>Notice on Admission and IA matter issued to the R-4 by S.P. with A.D. fixing on 09.04.2024 for appearance and show cause.<br>30.03.24 |

# IN THE HIGH COURT OF ORISSA

**Case No.** WA-148/2024

## OFFICE NOTES

| Sl. No. of Order for compliance | Date of Order for compliance | Notes and action taken on order with signature of Dealing Assistant and Superintendent |
|---|---|---|
| | | Receipt showing Service of certified copy (3 sets) on A.G on behalf of R-1 to R-3.<br>30.03.24 |
| 01. | 13.03.2024 | For Admission<br>① Further order in I.A. No. 428/24 is at flag 'A'.<br>② Neither A.D. nor the undelivered notice issued to R-4 is returned back. In this regard the postal tracking report showing "Item Delivered (Addressee)" is at flag 'X'.<br>Along with WPC(OAC)-2105/17<br>RVWPET-303/23<br>Adj. to 10.04.2024<br>Umaprasad Behera D.B.<br>08.04.2023<br>Return from Court without any order.<br>29.04.2024 |

# IN THE HIGH COURT OF ORISSA

Case No. WA-148/2024

## OFFICE NOTES

| Sl. No. of Order for compliance | Date of Order for compliance | Notes and action taken on order with signature of Dealing Assistant and Superintendent |
|---|---|---|
| | | A.D. returned back from R-4 after valid service.<br>04.07.2024<br><br>For Admission |
| 01 | 13.03.2024 | (1) I.A. No. 428/2024 is at flag 'A' for further order regarding Stay.<br><br>Along with WP(OAC)-2105/2017<br>RVWPET - 303/2023<br>(both are disp. of case)<br><br>Umaprasad Behera D.B.<br>04.07.2024 vide mentim memo.<br><br>H/F |
| 02 | 12.08.2024 | Office note dt. 04.07.2024 as above may kindly be repeated.<br><br>Along with WP(OAC)-2105/2017<br>RVWPET - 303/2023<br>(both are disp. of cases)<br><br>Umaprasad Behera D.B.<br><br>12.08.2024 Adj. to 20.08.2024 |

# IN THE HIGH COURT OF ORISSA

**Case No.** WA-148/2024

## OFFICE NOTES

| Sl. No. of Order for compliance | Date of Order for compliance | Notes and action taken on order with signature of Dealing Assistant and Superintendent |
|---|---|---|
| 02 | 12.08.2024 | For Admission<br>(i) I.A No- 428/2024 is at flag 'A' for further orders regarding stay.<br><br>Alongwith WPC(OAC)-2105/2017, RVWPET-303/23 disp. of cases.<br><br>Susmita Panda DB<br>2/12/24<br><br>~~Adga~~ vide cls<br><br>2/12 |
| 03 | 03.12.2024 | For Admission<br>(ii) I.A. No.-428/24 is at flag 'A' for further orders regarding stay.<br>(Order no. 3 may kindly be seen)<br><br>Along with WPC(OAC)-2105/2017<br>RVWPET-303/23 (disp of cases)<br>Adjn to 10/12/24 (within first five cases)<br>Sushree Lady mohanty DB<br>7/12/24 |



7/12/24

**ORISSA HIGH COURT**

FILING ACKNOWLEDGEMENT SLIP

| | |
|---|---|
| CNR | **ODHC010092532024** |
| Filing No | **D- WA/0005442/2024** |
| Date and Time | **05/02/2024-16:17:54** |
| Case No | **WA/148/2024** |
| Registration Date and Time | **08/02/2024** |
| Misc Case/IA | 428/2024 |
| Petitioner Name | MOHAN KANHAR |
| Petitioner Advocate Name | SAILABALA JENA |
| Respondents Name | STATE OF ODISHA |
| Respondents Advocate | |
| Amount | |
| Police Station | |
| FIR | - |

Thursday 08th of February 2024 04.18.45 PM

**ORISSA HIGH COURT**

FILING ACKNOWLEDGEMENT SLIP

| | |
|---|---|
| CNR | **ODHC010092532024** |
| Filing No | **D- WA/0005442/2024** |
| Date and Time | **05/02/2024-16:40:16** |
| Case No | ------- |
| Registration Date and Time | ------- |
| Misc Case/IA | 428/2024 |
| Petitioner Name | MOHAN KANHAR |
| Petitioner Advocate Name | SAILABALA JENA |
| Respondents Name | STATE OF ODISHA |
| Respondents Advocate | |
| Amount | |
| Police Station | |
| FIR | - |

Monday 05th of February 2024 04.45.34 PM

Mob - 7008035441

D-WA/5442/2024

1 RFA / RSA / FAO / SAO / LPA / SPA / CPA / CRP / Review pet / O. Ref. / EXFA / EXSA / SM / APP / TP (o) WP (c) / WA / SCLP / Co Appl / Co. Pet / Co. Cass / Co. App / Beg P / Mst A / Mat / Ref / RP (FAMCT) Test Case / Intest Case / L.A. Ref. / RCFA / L.A.A. / RCCA/RE Rev / MAC / MAC APP / EL Pet / ELAPP / Arb. P/Arb A/ARB. A/Issurance Ref / Cont. Cas(c) / Courd. App (c) MFA (name of the Act) / MSA / SP. JC (name of the Act) Cri. A/Cri. Rev / CKI.M.C / BLAPL / Cal MAPPI / WP (ctl) CUSREF STREV.

Case Type W.A No. 148 /2024 Date of Regn 5/2/24

2 If State is Party, Name of the Dept. : (Pet/Res) [Put mark]

If Public Undertakings (Specify name) : (Pet/Res) [Put mark]

3. (a) Number of Category under which the matter falls :

| 2 | 0 | 1 | 1 | 0 | 0 |
|---|---|---|---|---|---|

If Others, Specify the subject

(b) Which is applicable ? [Put ✓ Mark]

Single Bench / Div. Bench / Three Judge Bench / Five Judge Bench)

4 Article of the Constitution / Act (Central / State) [Put mark]

5 Section / Sub-Section Involved

6. Rules Involved Rule - 6 of the High Court of Orissa.

7. Whether any other matter is pending in this Court on the same point of law :

If so, give the number of matter : NA.

8. Whether any other matter is pending against the impugned order / Judgement ?

If so, give the number of matter NA.

9. Whether the matter is covered by any judgement of the Supreme Court this Court or any other High Court. If so give the details of the judgement NA.

10. Point of law involved in the matter Natural Justice.

Date 5/2/2024

Signature of the Advocate

SAILABALA JENA
ADVOCATE
E. No.-O-555/1998
Mob.-7008035441

**IN THE HIGH COURT OF ORISSA, CUTTACK,**

**Writ Appeal No. 148 /2024**

**Code:** 201100

Mohan Kanhar .....Appellant

**Vrs**

State of Odisha & Ors. .....Respondents

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(P)

Cuttack

Date- 5/2/24

By the Appellant through

Adv

ADVOCATE

(SAILABALA JENA),
ADVOCATE,
Enrolment No.O-555-1998,
Ph. No. 7008035441,
G-168-170, Sector-6, CDA,
Cuttack.

A

**Appendix-I**

## SYNOPSIS

That, the present Writ Appeal has been filed challenging the order dated 10.4.2023 passed in WPC(OAC) No.2105/2017 and the order dated 5.1.2024 passed by the Hon'ble Single Judge in RVWPET No.303 /2023 of this Hon'ble Court wherein the Review Petition has been dismissed in spite of the fact that, the Appellant/ Petitioner has secured more marks then Respondent No.4/Opp. Party No.4. That, the Respondent No.4 has been allowed to continue in the job since he was continuing by virtue of the interim order of the Court in a writ petition which has been filed by Respondent No.4/Opp. Party No.4 by playing a fraud on the Court , since he did not arrayed either the Appellant or Abhilash Bhoi a party intentionally. Apart from the above Learned Single Judge has not take note of the fact that, The Respondent No.4 has managed to get appointment under Sports quota . Hence the present Writ Appeal.

B

**Appendix-II**

## LIST OF DATES AND EVENTS

| | |
|---|---|
| 09.12.2016 | The learned Orissa Administrative Tribunal, Cuttack Bench, Cuttack directed the Respondent No. 1 to 3 to review the entire process of ASO examination transparently and consider it to be beyond reproach, along with other directions. |
| 25.07.2017 | In pursuance to the order dated 09.12.2016 the Respondent No.3 reviewed the examination process and published a new merit list and the candidature of Respondent No.4 was cancelled.<br><br>Thereafter, the Respondent No.4 challenged the order dated 25.07.2017 before the learned Orissa Administrative Tribunal, Cuttack Bench, Cuttack as it then was in OA 2105(C) of 2017, praying |

| | |
|---|---|
| | therein that he should be allowed to continue as Assistant Section Officer as an Interim Measure |
| 19.05.2018 | The Respondent No.1 complied the decision of the OPSC regarding the cancellation of the candidature of the Respondents No.4 by including one Abhilash Bhoi in the list and removing the Respondent No.4. |
| 24.01.2020 | The appellant also filed a writ petition before this Hon'ble Court in WP(C) No.2916/2020 praying therein for a direction to consider his case regarding his appointment as Assistant section Officer arraying the name of the Respondent No.4 as Opp. Party No.4. |
| 06.02.2020 | This Hon'ble Court disposed of the WP(C) No.2916/2020 with a direction to O.P.3 to take up the request of the Appellant within one month from the date of communication of this order. |

**D**

| | |
|---|---|
| 10.4.2023 | This Hon'ble Court, in WPC (OAC) No.2105/2017, directed the Respondents 1 to 3 to allow Respondents No.4 to continue as Assistant Section Officer without considering the grievance of the present Appellant. |
| | That thereafter the Appellant filed a review petition being aggrieved against the order Dated 10.4.2023 bearing RVWPET No.303 of 2023 on praying therein to review the order dated 10.4.2023 passed in WPC(OAC)2105/2017 and further prayed to give a direction to the Respondent No.1 to 3 to select and give appointment to the present appellant in place of Respondent No.4 |
| 05.01.2024 | The learned single judge, without considering the grievance of the appellant and legality of the order dated 10.4.2023 dismissed the RVWPET No.303/2023. |

**E**

Hence, the Present Writ Appeal against the order Dated 10.4.2023 passed in WPC(OAC) No.2105/2017 and order dated 5.1.2024 passed in RVWPET No.303/2023.

CUTTACK

Dated 5/2/24

By the petitioner through

Advocate

(SAILABALA JENA),
ADVOCATE,
Enrolment No.O-555-1998,
Ph. No. 7008035441,
G-168-170, Sector-6,
CDA, Cuttack.

IN THE HIGH COURT OF ORISSA CUTTACK,

WA No. 148 /2024

Code: 201100

IN THE MATTER OF:

An appeal under Chapter –III Rule -6 of the Rules of the High Court of Orissa, 1948 read with Clause -10 of the Letters Patents constituting the High Court of Judicature of Patna..

Presented on 8/2/2024

Registrar (Judicial)

AND

IN THE MAITTER OF:

An Appeal challenging the order dated 10.4.2023 passed in WPC (OAC) No.2105/2017 and the order dated 5.1.2024 passed by the Hon'ble Single Judge in RVWPET No.303 /2023 of this Hon'ble Court vide Annexure-1 & 5 respectively.

Adv

SAILABALA JENA
ADVOCATE
E. No.-O-555/1998
Mob.-7008035441

AND

IN THE MAITTER OF:

An appeal to set aside the order dated 10.4.2023 passed in WPC (OAC)2105/2017 and the order dated 05.01.2024 passed in RVWPET 303/2023

## LIMITATION

| | | |
|---|---|---|
| Date of Judgement/Awards | 05-1-2024 | |
| Date of Valid Presentation | 05-2-2024 | |
| Total Period Occupied | 31 | day |
| Limitation | — 30 | day |
| Certified Copy Period | — 3 | day |
| Delay in filing | — 2 | days |

(No delay)

1. In Time..... yes Expired o
2. Period of delay No delay
3. Court Fee ₹ 1121- paid-
4. Authentication fee due on the
   (a) Copy of Trial Court Judgement Rs..... ...A...Decree Rs..... X..
   (b) Appellate Court Judgement Rs. 31- paid-
   Decree Rs..... .....
5. (a) Copy of Trial Court Judgement/Order X
   (b) Appellate Court/Revisional Order Judgement C.C. copy of Order dt 5-1-2024 passed in RVW PET NO-303/2023 vide Annexure-5 filed.
   (c) Second Copy of Petition filed
   (d) Receipt showing copy on A.G. filed
   (e) Vakalatnama properly stamped Executed and Accepted yes
6. (a) Cause Title In order
   (b) Provision of Law furnished
7. Code Indicated
8. Single Judge/Division Bench Case/ D.B
9. Other Defect...X

8/2/2024

STAMP REPORTER

RAJENDRA PRASAD Sinha
ASST. REGISTRAR

by the learned Single Judge of this Hon'ble Court vide Annexure-1 & 5 respectively.

AND

IN THE MAITTER OF:

An application for a direction to the Respondents to give appointment to the present appellant as Assistant Section Officer (ASO) in place of Respondent No.4.

AND

IN THE MAITTER OF:

Mohan Kanhar, aged about 33 years, S/o- Sadasiba Kanhar, At/P.O- Muniguda, Dist- Rayagada.

...Appellant

(Petitioner in the review petition.)

-Vrs-

1. State of Odisha, represented through its Commissioner –cum- secretary, Home Department, Secretariat Buildings Bhubaneswar, Dist- Khurda.

2. Secretary to Government of Odisha, General Administration Department, Secretariat Building, Bhubaneswar, District-Khurda.

Adv
SAILABALA JENA
ADVOCATE
E. No.-O-555/1998
Mob.-7008035441

NOTARY CUT
GHOSH
NOTARY
CUTTACK TOWN

3. Odisha Public Service Commission, represented through its Secretary, P.K.Parija Road, Cuttack, AT/PO/Dist.- Cuttack.

4. Dinbandhu Munda, Asst. Section Officer, PR & DW Department, Orissa Secretariat, Bhubaneswar, Dist- Khurda.

....Respondents

(Respondent No.1 to 3 were Respondents/Opp. Parties before the Court below, Respondent No.4 was the Applicant/Petitioner in the writ petition bearing no. WPC(OAC) 2105/2017 and Opp. Party No. No.4 in the RVWPET 303/2023).

Adv
SAILABALA JENA
ADVOCATE
E. No.-O-555/1998
Mob.-7008035441

Certified that, the matter out of which this Writ Appeal arises was never before this Hon'ble Court in any form what so ever except WP(C) No.2916/2020 which was disposed of on 06.02.2020, WPC(OAC) 2105/2017 which was disposed on 10.4.2023 and RVWPET No.303/2023 , disposed of on 05.01.2023.

To,

The Hon'ble Acting Chief Justice of Orissa High Court and his lordship's companion justices.

The humble petition of the Appellant above named

NOTARY CUTTACK

**MOST RESPECTFULLY SHEWETH**:-

1. That, the appellant files this Writ Appeal challenging the order dated 10.4.2023 passed in WPC(OAC) No.2105/2017 and the order dated 5.1.2024 passed by the Hon'ble Single Judge in RVWPET No. 303 /2023, vide Annexure-1 & 5 respectively.

2. That, the brief fact of the case is that, in pursuance to an advertisement to fill up the posts of Assistant Section Officer (ASO), the Respondents No.3 i.e. OPSC conducted the competitive examination.

3. That, it is most humbly submitted that, the selection in pursuance to such competitive examination was challenged by many candidates in OA 925(C) /16 and Batch before the Orissa Administrative Tribunal, Cuttack Bench, Cuttack as the then was.

Adv
SAILABALA JENA
ADVOCATE
E. No.-O-555/1998
Mob.-7008035441

4. That, the learned Orissa Administrative Tribunal, Cuttack Bench, Cuttack vide its order dated 9.12.2016 directed the Respondent No. 1 to 3 to review the entire process of examination transparently and consider it to be beyond reproach, along with other directions.

NOTARY CUTTACK
S. GHOSE
NOTARY
CUTTACK TOWN
GOVT OF ORISSA

5. That, in pursuance to the order dated 09.12.2016 the Respondents No.3 reviewed the examination

process and published a new merit list vide order dated 25.7.2017.

6. That, as per the order dated 25.7.2017 the candidature of the Respondents No.4 was cancelled.

7. That, thereafter the Respondents No.4 challenged the order dated 25.7.2017, before the learned Orissa Administrative Tribunal, Cuttack Bench, Cuttack as it then was in OA 2105(C )/2017, praying therein that he should be allowed to continue as Assistant Section Officer as an Interim Measure.

8. That, thereafter the Respondent No.1 complied the decision of the OPSC regarding the cancellation of the candidature of the Respondents No.4 vide letter dated 19.5.2018.

Adv
SAILABALA JENA
ADVOCATE
E. No.-O-555/1998
Mob.-7008035441

9. That, the appellant most humbly submits that, in the letter dated 19.5.2018 the Respondents No.4 was clearly intimated about the cancellation of his candidature, stating therein that one Abhilas Bhoi has been included in the list and the name of the Respondents No.4 has been removed.

10. That, the appellant most humbly submits that, the Respondent No.4 by playing a fraud with the Court by not making such Abhilas Bhoi a party, filed the OA 2105 (C) / 2017before the Orissa

NOTARY CUTTACK GHOSH NOTARY

Administrative Tribunal, Cuttack Bench, Cuttack as the then was.

**11.** That, the appellant most humbly submits that, in the meantime the appellant also filed a writ petition before this Hon'ble Court in WP(C) No.2916/2020 praying therein for a direction to consider his case regarding his appointment as Assistant section Officer arraying the name of the Respondent No.4 as Opp. Party No.4.

**12.** That, the appellant most humbly submits that, this Hon'ble Court, vide its order dated 6.2.2020, disposed of the WP(C) No.2916/2020, which is quoted below:

Adv
SAILABALA JENA
ADVOCATE
E. No.-O-555/1998
Mob.-7008035441

*6.2.2020* *Heard learned counsel for the Appellant.*

*It appears, the Appellant on the selfsame ground has already approached the Tribunal in O.A. No.1962(C)/2018 as appearing from Annexure-5. The Tribunal on disposal of the Original Application directed respondent no.2, the present O.P.3 to treat the Original Application as representation, consider the grievance and pass appropriate orders within one month from the date of receipt of a copy of the said order.*

*Learned counsel for the Appellant submits that there is no disposal of the grievance of the Appellant in terms of the direction of the Tribunal, vide Annexure-5 as of now.*

NOTARY CUTTACK
N S GHOSE
NOTARY
CUTTACK TOWN
GOVT OF

*Keeping this in view and as a decision is ultimately required to be taken by the present O.P.3 in such matter, this writ petition stands disposed of with direction to O.P.3 to take up the request of the Appellant within one month from the date of communication of this order. In the event, the Appellant is aggrieved by such order, it is open to the Appellant to approach this Court again.*

*Issue urgent certified copy.*

*Sd./-*
*B.Rath (J)*

**13.** That, the appellant most humbly submits that, the respondents after receiving the order of this Hon'ble Court dated 6.2.2020, communicated to the Appellant that, since Abhilas bhoi was found at the top of the list, he has been given appointment and Dinabandhu Munda (Respondent No.4) has been removed from the selection list.

Adv
SAILABALA JENA
ADVOCATE
E. No.-O-555/1998
Mob.-7008035441

**14.** That, it is further submitted that, Abhilas Bhoi, who was selected in place of Respondents No.4 has secured more marks than the present Appellant and was given the offer of appointment even if three of them qualified in the skill test (practical) which is qualifying in nature.

NOTARY CUTTACK * N.S. GHOSE NOTARY CUTTACK TOWN * GOVT. OF ORISSA

**15.** That, as per the terms and conditions of the advertisement, the merit list has to be prepared on

the basis of mark secured in other subjects except the skill test in computer i.e. which is purely qualifying in nature.

16. That, since the Appellant secured less marks than Abhilas Bhoi, the Appellant remained silent and was satisfied on the letter dated 10.6.2020.

17. That, thereafter 28th of May 2023, the Appellant could know that this Hon'ble Court has been pleased to direct the Respondents 1 to 3 to allow Respondents No.4 to continue as Assistant Section Officer without considering the grievance of the present Appellant. In this respect the certified copy of the order dated 10.4.2023 passed in WPC (OAC) No.2105/2017 is annexed along with this petition and marked as **ANNEXURE-1**.



18. That, the present Appellant being aggrieved against the order Dated 10.4.2023 filed a review petition bearing RVWPET No.303/2023 on various grounds as stated in the Review Petition and prayed therein to review the order dated 10.4.2023 passed in WPC(OAC)2105/2017 and further prayed to give a direction to the Respondent No.1 to 3 to select and give appointment to the present appellant in place of Respondent No.4 In this respect the copy of the Review Petition bearing RVWPET

No.303/2023 along with all its annexures is annexed along with this Writ Appeal and marked as **ANNEXURE-2.**

**19.** That, the respondent No.4 filed the counter affidavit before the learned Single Judge in Review Petition bearing RVWPET No.303/2023. In this respect the copy of the counter affidavit filed by the Respondent No.4 is annexed along with this petition and marked as **ANNEXURE-3**

**20.** That, the present appellant filed a written Notes of submission before the learned Single Judge in RVWPET No.303/2023. In this respect the copy of the written Notes of submission filed by the appellant is annexed along with this petition and marked as **ANNEXURE-4.**

Adv
SAILABALA JENA
ADVOCATE
E. No.-O-555/1998
Mob.-7008035441

**21.** That, the learned single judge without considering the grievance of the appellant and legality of the order dated 10.4.2023 dismissed the RVWPET No.303/2023 vide order dated 5/1/2024. In this respect the certified copy of the order dated 5.1.2024 is annexed along with this petition and marked as **ANNEXURE-5**

NOTARY CUTTACK GOVT. OF ORISSA N. S. GHOSE NOTARY CUTTACK TOWN Regd. No. 2003

Being aggrieved against the order Dated 05.1.2024 passed in

RVWPET No.303/2023 arising out order dated 10.4.2023 passed in WPC(OAC) 2105/2017 by the Hon'ble Single Judge, the appellant prefer this appeal on the following amongst other:-

## GROUNDS

**A.** FOR THE REASON THAT, the Hon'ble Single Judge has totally overlooked to the fact that the present Appellant has secured more marks than the Respondent No.4. Hence, allowing the Respondent No.4 to continue in the job of the Assistant Section Officer is per se illegal.

SAILABALA JENA
ADVOCATE
E. No.-O-555/1998
Mob.-7008035441

**B.** FOR THE REASON THAT, the order dated 10.4.2023 passed in WPC (OAC) No.2105/2017 is contrary to law.

NOTARY CUTTACK GOVT. OF ORISSA

**C.** FOR THE REASON THAT, the order dated 10.4.2023 passed in WPC(OAC) No.2105/2017 takes out the right of the present Appellant, even if the present Appellant has secured more marks then Respondents No.4.

**D.** FOR THE REASON THAT, the order dated 10.4.2023 passed in WPC(OAC) No.2105/2017 is the outcome of the fraud played by the

Respondents No.4. The Respondents No.4 neither mentioned nor made Abhilas Bhoi a party or the present Appellant a party.

E. FOR THE REASON THAT, the order dated 10.4.2023 passed in WPC(OAC) No.2105/2017 is the outcome of a suppression of fact made by the Respondents No.4, wherein the Respondent No.4 has been communicated vide letter dated 19.5.2018 regarding cancellation of his name from the merit list. And the Abhilas Bhoi has secured more marks than the Respondent No.4. since, the Respondent No.4 has neither made any other candidate who has secured more marks than him including Abhilash Bhoi, hence, he has played a fraud on the court.

Adv
SAILABALA JENA
ADVOCATE
E. No.-O-555/1998
Mob.-7008035441

F. FOR THE REASON THAT, the order dated 10.4.2023 passed in WPC(OAC) No.2105/2017 is not sustainable in the eyes of law as the present Appellant has secured more marks then Respondents No.4.

G. FOR THE REASON THAT, the error in the order dated 10.4.2023 passed in WPC (OAC) No.2105/2017 is apparent in the face of record. Hence the same was required to be reviewed by the Hon'ble Single Judge.

NOTARY CUTTACK * GOVT OF ORISSA * S. GHOSE NOTARY CUTTACK TOWN

**H.** For the reason that, the Learned Court has failed to appreciate that, the Present Appellant has never slept over his right. He has approached the appropriate forum as and when aggrieved, particularly in OA No.1962(C)/2018 and WP(C) No.2916/2020 for the redressal of his grievances by arraying Respondent No.4 as a party. Hence, the Judgment pronounced vide order dated 05.01.2023 in RVWPET No.303/2023 is bad in the eyes of law.

**I.** That, the order dated 10.4.2023 passed in WPC (OAC) 2105 of 2017 and the order dated 05.01.2024 passed in RVWPET 303/2023 are bad and not tenable in the eyes of law.

Adv
SAILABALA JENA
ADVOCATE
E. No.-O-555/1998
Mob.-7008035441

**22.** That, the Appellant most humbly submits that, the Present Appellant and the Respondents No.4 belong to the same category, i.e. Scheduled Tribe.

**23.** That, in view of the above facts and circumstances unless this Hon'ble Court interferes into this matter, then the Appellant will be deprived to get appointment even if by securing more marks than the Respondent No.4.

**24.** That, the Appellant takes shelter of this Hon'ble Court finding no other speedy, efficacious and

NOTARY CUTTACK
N. S. GHOSE
NOTARY
CUTTACK (ORISSA)

alternative remedy for redressal of his grievances. The Appellant humbly prays before this IIon'ble Court, that he may be allowed to take additional grounds if any, at the time of hearing.

**25.** That, the Appellant most humbly submits that, in case the order dated 10.4.2023 passed in WPC(OAC) No.2105/2017 and order dated 5.1.2024 passed in RVWPET No.303/2023 by the Hon'ble Single Judge, vide Annexure-1 & 5 respectively , is not set aside by this Hon'ble Court, then great prejudice will be caused to the Appellant which cannot be compensated in any other term.

Adv
SAILABALA JENA
ADVOCATE
E. No.-O-555/1998
Mob.-7008035441

## PRAYER

It is therefore most respectfully prayed that, this Hon'ble `Court may be graciously pleased to admit this appeal and set-aside the order dated 05.1.2024 passed in RVWPET No.303/2023 arising out order dated 10.4.2023 passed in WPC(OAC) 2105/2017 by the Hon'ble Single Judge, vide Annexure-1 & 5 respectively and thereby be pleased to give a direction to Respondents No.1 to 3 to select and give appointment to the present Appellant as Assistant Section Officer in place of Respondents No.4.

NOTARY CUTTACK GOVT. OF ORISSA

This Hon'ble Court may also be pleased to pass any other further order and orders, direction/directions, as deemed fit and proper in fact and circumstances of the case.

Cuttack By the Appellant through

Date 5/2/24 Adv
ADVOCATE
(SAILABALA JENA),
ADVOCATE,
Enrolment No.O-555-1998,
Ph. No. 7008035441,
G-168-170, Sector-6,
CDA, Cuttack.

**CERTIFICATE**

It is also certified that I have gone through the contents of the writ appeal and found substantial grounds for filing of the writ appeal. I undertake to argue on those points during the proceeding.

Cuttack By the Appellant through

Date 5/2/24 Adv
ADVOCATE

SAILABALA JENA
ADVOCATE
E. No.-O-555/1998
Mob.-7008035441

NOTARY CUTTACK

# AFFIDAVIT

I, Mohan Kanhar, aged about 33 years, S/o- Sadasiba Kanhar, At/ P.O- Muniguda, Dist- Rayagada, do hereby solemnly affirm and state as follows:-

1. That I am the Appellant in this case.
2. That the facts stated above are all true to the best of my knowledge and belief.

**Identified by:**

Mohan Kanhar
**Deponent**

Adv
**Advocate**

**SAILABALA JENA**
**ADVOCATE**
**E. No.-O-555/1998**
**Mob.-7008035441**

## CERTIFICATE

Due to non-availability of the cartridge paper this petition has been typed in thick white papers.

Cuttack

By the Appellant Through

Date 5/2/24

Adv
Advocate

**SAILABALA JENA**
**ADVOCATE**
**E. No.-O-555/1998**
**Mob.-7008035441**

The above named deponent being identified by Mr./Ms. ..... Advocate appear/s before me at ..... AM/PM. on this the ..... day of ..... 20..... solemnly affirms that the facts stated are true to his/her knowledge and belief.

NOTARY
CUTTACK TOWN
5/2/24

ANNEXURE-1

DISP/
4 cases
17.7.23

# IN THE STATE ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH, CUTTACK:

**O. A. No. 2105 (C) of 2017**

**Between:**

Dinabandhu Munda, aged about 32 years, Son of Surendra Munda, at present working as Assistant Section Officer (ASO), Panchayatiraj Department in the Odisha Secretariat, At-Secretariat Building, P.O-Bhubaneswar, Dist.- Khurda.

**... Applicant**

**- Versus –**

1. State of Odisha, Represented through its Principal Secretary in the Home Department, At-Secretariat Building, P.O-Bhubaneswar, Dist.- Khurda.
2. State of Odisha Represented Through Commissioner cum Secretary Panchayat Raj Department, At-Secretariat Building, P.O-Bhubaneswar, Dist.- Khurda.
3. Odisha Public Service Commission, represented through its Secretary, At- Cantonment Road, PO-GPO, Buxi Bazar, Town/Dist-Cuttack.

**... Respondents**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**WPC (OAC) No.2105 of 2017**

**Dinabandhu Munda** .... **Petitioner**
Mr. S.K. Das, Advocate

*-versus-*

**State of Odisha & Others** .... **Opposite Parties**
Mr. R.N. Mishra,
Addl. Govt. Advocate

**CORAM:**
**JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER**
**10.04.2023**

**Order No**
**05.** **1.** This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

**2.** Heard Mr. S.K. Das, learned counsel appearing for the Petitioner and Mr. R.N. Mishra, learned A.G.A.

**3.** The present Writ Petition has been filed challenging the notice dated 25.07.2017 issued by the Orissa Public Service Commission under Annexure-7.

**4.** Learned counsel for the Petitioner contended that after facing due recruitment process and on being found suitable, the Petitioner was appointed as an Asst. Section Officer in the Odisha Secretariat Service (Group-B) vide order dated 05.10.2016 issued under Annexure-5. It is contended that in terms of the said order, the Petitioner joined in the service on 01.11.2016. However, it is contended that while continuing as such,

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**WPC (OAC) No.2105 of 2017**

**Dinabandhu Munda** .... **Petitioner**
Mr. S.K. Das, Advocate

*-versus-*

**State of Odisha & Others** .... **Opposite Parties**
Mr. R.N. Mishra,
Addl. Govt. Advocate

**CORAM:**
**JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER**
**10.04.2023**

**Order No**
**05.** **1.** This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

**2.** Heard Mr. S.K. Das, learned counsel appearing for the Petitioner and Mr. R.N. Mishra, learned A.G.A.

**3.** The present Writ Petition has been filed challenging the notice dated 25.07.2017 issued by the Orissa Public Service Commission under Annexure-7.

**4.** Learned counsel for the Petitioner contended that after facing due recruitment process and on being found suitable, the Petitioner was appointed as an Asst. Section Officer in the Odisha Secretariat Service (Group-B) vide order dated 05.10.2016 issued under Annexure-5. It is contended that in terms of the said order, the Petitioner joined in the service on 01.11.2016. However, it is contended that while continuing as such,

the order of appointment so issued in favour of the Petitioner on 05.10.2016 when was cancelled vide the impugned notice dated 25.07.2017. The Petitioner challenged the same before the Tribunal in OA No.2105(C ) of 2017. The Tribunal while issuing notice of the matter vide order dated 11.08.2017 passed an interim order by staying the operation of the impugned notice dated 25.07.2017.

**4.1.** Mr. S.K. Das, learned counsel appearing for the Petitioner contended that by virtue of the interim order, the Petitioner was allowed to continue in that post and he is also continuing till date. Mr. Das also contended that the order of appointment so issued in favour of the Petitioner was cancelled vide the impugned notice under Annexure-7 on the ground that one Abhiram Bhoi when was found to have secured more marks than the Petitioner, in order to accommodate the said Abhiram Bhoi, the order of appointment issued in favour of the Petitioner was cancelled. However, it is contended that in the meantime basing on the order passed by this Court in W.P.(C ) No.33586 of 2018, Sri Abhiram Bhoi has been appointed as against the post of ASO vide order dated 11.05.2020 under Annexure-9 to the rejoinder. It is contended that since the petitioner has no fault with regard to his selection and appointment as against the post of ASO vide order at Annexure-5, the impugned notice cancelling such appointment under Annexure-7 is not sustainable in the eye of law.

It is also contended that since the Petitioner is continuing since his initial date of joining and in the meantime, he had rendered service for more than 6(six) years, in view of the decision of the of this Court in the case of ***Bikash Mahalik vs. State of Odisha & Others***, the petitioner is eligible and entitled to get the benefit as prayed for. This Court in Para 8 and 28 of the judgment has held as follows:

> ***8.*** *There is no dispute with regard to the fact that the petitioner appeared in the written test and secured 234 marks out of 400 marks and also secured marks in practical skill test out of 50. Opposite party no.3 prepared a select list taking into account marks secured in the written test as well as practical skill test and placed the petitioner at Sl. No.2 of the merit list. Subsequently, opposite party no.2 found out that marks secured in the practical skill test, being qualifying in nature, should not be added to the marks secured in the written test. Consequentially, he directed opposite party no.3 to redraw the final merit list on the basis of marks secured by the petitioner in the written test i.e. 234 marks excluding the marks secured in the practical skill test, in which the petitioner had qualified by securing 31 marks, which is above the qualifying mark of 15, out of 50 marks. But fact remains pursuant to merit list prepared by opposite party no.3, the petitioner has already joined and his service book has been opened. The amount towards GIS has been deducted from his salary and he has also been enrolled in the contributory pension scheme of the Government. As a result a right has been accrued in his favour to continue in his post. Now, after lapse of one year / months, as per direction given by opposite party no.2, opposite party no.3 has redrawn the merit list and called upon the petitioner to show-cause why he shall not be removed from service. Whether such action of opposite party no.3 is hit by principle of estoppel, is the short question to be decided in the facts and circumstances of this case.*
>
> *xxx xxx xxx*
>
> ***28.*** *In view of the law and fact, as discussed above, the irresistible conclusion is that the show-cause notice dated 31.03.2015 under Annexure-13 issued by opposite party no.3, the letter dated 09.02.2015 under Annexure-13/1 issued by opposite party no.2 to opposite party no.1 and letter dated 26.03.2015 under Annexure-13/2 issued by the Government of Odisha, Revenue and Disaster Management Department to opposite party no.2 cannot sustain. Therefore, the same are liable to be quashed and hereby quashed. Pursuant to interim order passed on 07.04.2019 by the Odisha Administrative Tribunal since the petitioner is still continuing, he shall be allowed to continue with all service and financial benefits as due and admissible to him in accordance with law."*

**5.** Mr. R.N. Mishra, learned A.G.A on the other hand made his submission basing on the stand taken in the counter affidavit.

It is contended that the Petitioner though was duly appointed as against the post of ASO vide order at Annexure-5, but while complying order passed by the Tribunal so passed in the case of Abhiram Bhoi, it was found that Sri Abhiram Bhoi because of his wrong placement in the merit list, was not given the benefit of appointment at the initial stage. On subsequent verification when it was found that Shri Bhoi is placed above the Petitioner in the merit list, the impugned notice was issued by cancelling the appointment of the Petitioner. Therefore, it contended that there is no illegality or irregularity with regard to the impugned notice in cancelling the order of appointment, so issued in favour of the petitioner.

**6.** Having heard learned counsel for the parties and taking into account the fact that the other candidate Sri Abhiram Bhoi has been appointed in the meantime vide order dated 11.5.2020 under Annexure-9 to the rejoinder and the petitioner since is continuing as before in terms of the interim order passed on 11.08.2017, it is the view of this Court that Sri Abhiram Bhoi has been appointed as against a vacant post. Therefore, placing reliance on the decision of this Court in the case of Bikash Mahalik, as cited supra, this Court is inclined to quash the notice dated 25.7.2017 under Annexure-7. While quashing the same, this

Court directs the opp. Parties to allow the Petitioner to continue as before.

The Writ Petition accordingly succeeds and disposed of.

Sd/- B.P Satapathy.J.

*sangita*

Comp by
Misc
26.7.23

True Copy
attested
by
KS
Adv

ANNEXURE -2



**IN THE HIGH COURT OF ORISSA CUTTACK,**

**RVWPET No. 303 /2023**

**(Arising out of WPC (OAC) No.2105 / 2017 disposed of on 10.4.2023)**

**Code:**

Mohan Kanhar .....Petitioner

**Vrs**

State of Odisha & Ors. .....Opp. Parties

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| | | VAKALATNAMA | |

Cuttack By the petitioner through

Date- 18-7-23 ADVOCATE

**IN THE HIGH COURT OF ORISSA CUTTACK,**

**RVWPET No. 303 /2023**

**(Arising out of WPC (OAC) No.2105 / 2017 disposed of on 10.4.2023)**

**Code:**

IN THE MATTER OF:

An application under Chapter –VIII Rule -23, Orissa High Court Rules, 1948 read with order XLVII Rule -1of the CPC.

AND

IN THE MATTER OF:

An Application seeking review /recall of the order dated 10.4.2023 passed in WPC(OAC) No.2105/2017.

AND

IN THE MATTER OF:

Mohan Kanhar, aged about 33 years, S/o- Sadasiba Kanhar, At/ P.O- Muniguda,Dist- Rayagada ,

...Petitioner

-Vrs-

1. State of Odisha, represented through its Commissioner –cum- secretary, Home Department, Secretariat Buildings Bhubaneswar, Dist- Khurda.

2. Secretary to Government of Odisha, General Administration Department, Secretariat Building, Bhubaneswar, District-Khurda.

3. Odisha Public Service Commission, represented through its Secretary, P.K.Parija Road, Cuttack, AT/PO/Dist.- Cuttack.

4. Dinbandhu Munda, Asst. Section Officer, PR & DW Department, Orissa Secretariat, Bhubaneswar, Dist- Khurda.

.....Opp. Parties

That, the matter out of which this Review petition arises was never before this Hon'ble Court except WPC No.2916/2020 which was disposed of on 06.02.2020.

To,

The Hon'ble Chief Justice of Orissa High Court and his lordship's companion justices.

The humble petition of the petitioner above named

**MOST RESPECTFULLY SHEWETH:-**

1. That, the petitioner files this Review petition to review the order dated 10.4.2023 passed in WPC (OAC) No.2105/2017, where in this Hon'ble Court has directed to allow the Opp. Party No.4 to continue as Assistant Section Officer without considering the grievance of the present petitioner.

2. That, the brief fact of the case is that, in pursuance to an advertisement to fill up the Assistant Section Officer, the Opp. Party No.3 i.e. OPSC conducted the competitive examination.

3. That, it is most humbly submitted that, the selection in pursuance to such competitive examination was challenged by many candidates in OA 925(C ) /16 and batch before the Orissa Administrative Tribunal, Cuttack Bench, Cuttack as the then was.

4. That, the learned Orissa Administrative Tribunal, Cuttack Bench, Cuttack vide its order dated 9.12.2016 directed the Opp. Parties 1 to 3 to review the entire process of examination transparently and consider it to be beyond reproach, along with other directions. In this respect the true copy of order dated 09.12.2016 has been annexed along with this Review Petition and marked as **ANNEXURE-1.**

5. That, in pursuance to the order dated 09.12.2016 vide Annexure-1 the Opp. Party No.3 reviewed the examination process and published a new merit list vide order dated 25.7.2017. In this respect the true copy of such order dated 25.07.2017 has been annexed along with this Review Petition and marked as **ANNEXURE-2.**

6. That, as per the order dated 25.7.2017 the candidature of the Opp. Party No.4 was cancelled.

7. That, thereafter the Opp. Party No.4 challenged the order dated 25.7.2017 vide Annexure-2, before learned Orissa Administrative Tribunal, Cuttack Bench, Cuttack as it then was in OA 2105(C )/2017, praying therein that he should be allowed to continue as Assistant Section Officer . In this respect the true copy of such OA 2105(C ) /2017 has been annexed along with this Review Petition and marked as **ANNEXURE-3.**

8. That, thereafter the Opp. Party No.1 complied the decision of the OPSC regarding the cancellation of the candidature of the Opp. Party No.4 vide letter dated 19.5.2018. In this respect the true copy of such letter dated 19.05.2018 has been annexed along with this Review Petition and marked as **ANNEXURE-4.**

9. That, the petitioner most humbly submits that, in the letter dated 19.5.2018 vide Annexure-4 the Opp. Party No.4 has clearly intimated about the cancellation of his candidature, stating therein that one Abhilas Bhoi has been included in the list and the name of the Opp. Party No.4 has been removed.

10. That, the petitioner most humbly submits that, the Opp. Party No.4 by playing a fraud in the this Hon'ble Court by not making such Abhilas Bhoi a party, filed the OA 2105 (C ) /2017. vide Anexure-3, before the Orissa Administrative Tribunal, Cuttack Bench, Cuttack as the then was.

11. That, the petitioner most humbly submits that, in the meantime the petitioner also filed a writ petition before this Hon'ble Court in WP(C) No.2916/2020 praying therein for a direction to consider his case regarding his appointment as Assistant section Officer citing the name of the petitioner and the Opp. Party No.4. In this respect the true copies of mark sheets of the petitioner and Opp. Party No.4 has been annexed along with this Review Petition and marked as **ANNEXURE-5 Series.**

**12.** That, the petitioner most humbly submits that, the order of this Hon'ble Court, passed in in WP(C) No.2916/2020 is quoted below:

> *6.2.2020* *Heard learned counsel for the Petitioner.*
>
> *It appears, the petitioner on the selfsame ground has already approached the Tribunal in O.A. No.1962(C)/2018 as appearing from Annexure-5. The Tribunal on disposal of the Original Application directed respondent no.2, the present O.P.3 to treat the Original Application as representation, consider the grievance and pass appropriate orders within one month from the date of receipt of a copy of the said order.*
>
> *Learned counsel for the petitioner submits that there is no disposal of the grievance of the petitioner in terms of the direction of the Tribunal, vide Annexure-5 as of now.*
>
> *Keeping this in view and as a decision is ultimately required to be taken by the present O.P.3 in such matter, this writ petition stands disposed of with direction to O.P.3 to take up the request of the petitioner within one month from the date of communication of this order. In the event, the petitioner is aggrieved by such order, it is open to the petitioner to approach this Court again.*
>
> *Issue urgent certified copy.*
>
> *Sd./-*
> *B.Rath (J)*

**13.** That, the petitioner most humbly submits that, the Opp. Parties after receiving the order of this

Hon'ble Court dated 6.2.2020, communicated to the petitioner that, since Abhilas bhoi was found at the top of the list, he has been given appointment and Dinabandhu Munda (Opp. Party No.4) has been removed from the selection list. In this respect the true copy of such letter dated 10.06.2020 has been annexed along with this Review Petition and marked as **ANNEXURE-6.**

**14.** That, it is further submitted that, Abhilas Bhoi, who was selected in place of Opp. Party No.4 has secured more marks than the present petitioner and was given the offer of appointment even if three of them qualifying in the skill test (practical) which is qualifying in nature.

**15.** That, as per the terms and conditions of the advertisement, the merit list has to be prepared on the basis of mark secured in other subjects except the skill test in computer i.e. which is purely qualifying in nature.

**16.** That, since the petitioner secured less marks then Abhilas Bhoi, the petitioner remained silent and satisfied on the letter dated 10.6.2020.

**17.** That, thereafter in the month of May 2023 the petitioner could know that this Hon'ble Court has been pleased to direct the Opp. Parties 1 to 3 to

allow Opp. Party No.4 to continue as Assistant Section Officer without considering the grievance of the present petitioner. In this respect the certified copy of the order dated 10.4.2023 passed in WPC (OAC) No.2105/2017 is annexed along with this petition and marked as **ANNEXURE-7.**

**18.** That, the present petitioner is seeking the review of the above order dated 10.4.2023 passed in WPC(OAC) No.2105/2017 on the following grounds amongst others:

## GROUNDS

**A.** FOR THE REASON THAT, this Hon'ble Court has totally overlooked to the fact that the present petitioner has secured more marks from the petitioner in WPC(OAC) No.2105/2017, i.e. Opp. Party No.4.

**B.** FOR THE REASON THAT, the order dated 10.4.2023 passed in WPC (OAC) No.2105/2017 is contrary to law.

**C.** FOR THE REASON THAT, the order dated 10.4.2023 passed in WPC(OAC) No.2105/2017 takes out the right of the present petitioner, even if the present petitioner has secured more marks then Opp. Party No.4.

**D.** FOR THE REASON THAT, the order dated 10.4.2023 passed in WPC(OAC) No.2105/2017 is the outcome of the fraud played by the Opp. Party No.4. The Opp. Party No.4 neither intimated nor made Abhilas Bhoi a party or the present petitioner a party.

**E.** FOR THE REASON THAT, the order dated 10.4.2023 passed in WPC(OAC) No.2105/2017 is outcome of a suppression of fact made by the Opp. Party No.4 .Wherein the Opp. Party No.4 has been communicated vide letter dated 19.5.2018 regarding cancellation of his name from the merit list.

**F.** For the reason that, the order dated 10.4.2023 passed in WPC(OAC) No.2105/2017 is not sustainable in the eyes of law as the present petitioner has secured more marks then Opp. Party No.4.

**G.** For the reason that, the error in the order dated 10.4.2023 passed in WPC(OAC) No.2105/2017 is apparent in the face of record. Hence the same requires to be reviewed by this Hon'ble Court.

**19.** That, the Petitioner most humbly submits that, the Present Petitioner and the Opp. Party No.4 belong to the same category, i.e. Scheduled Tribe.

**20.** That, in view of the above facts and circumstances unless this Hon'ble Court interferes into this matter, the petitioner will be deprived to get appointment which cannot be compensated in any manner.

**21.** That, the petitioner takes shelter of this Hon'ble Court finding no other speedy, efficacious and alternative remedy for redressal of his grievances. The petitioner humbly prays before this Hon'ble Court, that he may be allowed to take additional grounds if any, at the time of hearing.

**22.** That, the Petitioner most humbly submits that, in case the order dated 10.4.2023 passed in WPC(OAC) No.2105/2017 is not interfered by this Hon'ble Court, then great prejudice will be caused to the petitioner which cannot be compensated in any other term.

**PRAYER**

It is therefore most respectfully prayed that, this Hon'ble Court may be graciously pleased to allow this review petition by reviewing /recalling the order dated 10.4.2023 passed in WPC(OAC) No.2105/2017 and thereby be pleased to give a direction to Opp. Party No.1 to 3 to select and give appointment to the present petitioner as Assistant Section Officer in place of Opp. Party No.4.

This Hon'ble Court may also be pleased to pass any other further order and orders, direction/directions, as deemed fit and proper in fact and circumstances of the case.

Cuttack By the petitioner through

Date ADVOCATE

## AFFIDAVIT

I, Mohan Kanhar , aged about 33 years, S/o- Sadasiba Kanhar, At/ P.O- Muniguda,Dist- Rayagada. do hereby solemnly affirm and state as follows:-

3. That I am the petitioner in this case.
4. That the facts stated above are all true to the best of my knowledge and belief.

**Identified by:**

Mohan Kanhar
**Deponent**

**Advocate**

## CERTIFICATE

Due to non-availability of the cartridge paper this petition has been typed in thick white papers.

Cuttack By the Petitioner Through

Date Advocate

**ORISSA ADMINISTRATIVE TRIBUNAL,**
**CUTTACK BENCH, CUTTACK.**

**Coram:**

**Hon'ble Shri B.K.Dash,**
**Acting Chairman**

**Hon'ble Shri M.M.Praharaj,**
**Member (Administrative)**

**1)O.A.No.925(c) of 2016.**
**2)O.A.No.2913(c) of 2016.**
**3)O.A.No.2886(c) of 2016**
**4)O.A.No.3047(c) of 2016.**
**5)O.A.No.3010(c) of 2016.**

**1)O.A.No.925(c) of 2016.**

**Deepak Kumar Baliarsingh ... Applicant.**

**-: Versus :-**

1. **State of Orissa, represented through the Commissioner-cum-Secretary, Department of G.A., Secretariat Building, Orissa, Bhubaneswar.**
2. **Odisha Public Service Commission, Represented through its Secretary, Dr. P.K.Parija Road, Cuttack.**
3. **Centre Supervisor, KIIT School of Law, At-KIIT Campus No.16, KIIT University, Bhubaneswar, Khurda.**

**... Respondents.**

**2)O.A.No.2913(c) of 2016.**

1) **Srikant Pradhan,**
2) **Susanta Kumar Nayak,**
3) **Satyanarayana Patra,**
4) **Sripati Giri,**

**... Applicants**

**-: Versus :-**

1. **State of Orissa, represented through the Commissioner-cum-Secretary, Department of Home, Secretariat Building, Orissa, Bhubaneswar.**

2. Principal Secretary,
General Administration Department,
Secretariat Building, Orissa, Bhubaneswar.
3) Odisha Public Service Commission,
Represented through its Secretary,
Dr. P.K.Parija Road, Cuttack.
... Respondents.

Appearance:
For the applicants ... M/s R.Acharya,
T.Barik,
S.Hidayatullah,
N.Barik,
Advocates
(In O.A.No.925(c)/2016 &
O.A.No.2913(c)/2016)

For respondent State/Resp.... Sri H.K.Panigrahi,
Addl. Standing Counsel.

For respondent KIIT ... M/s J.S.Mishra,
H.Mishra,
C.Nayak,
S.Dash,
Advocates

For respondent (OPSC) ... Sri S.B.Jena,
Advocate.

3)O.A.No.2886(c) of 2016.
Bibhu Prasad Nayak ... Applicant
-: Versus :-
1. State of Orissa, represented through the
Commissioner-cum-Secretary,
Department of Home, Orissa, Bhubaneswar.
2) Odisha Public Service Commission,
Represented through its Secretary,
Cantonment Road, Cuttack.
... Respondents.

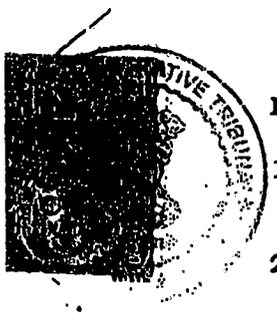
2. Principal Secretary,
General Administration Department,
Secretariat Building, Orissa, Bhubaneswar.
3) Odisha Public Service Commission,
Represented through its Secretary,
Dr. P.K.Parija Road, Cuttack.
... Respondents.

Appearance:
For the applicants ... M/s R.Acharya,
T.Barik,
S.Hidayatullah,
N.Barik,
Advocates
(In O.A.No.925(c)/2016 &
O.A.No.2913(c)/2016)

For respondent State/Resp.... Sri H.K.Panigrahi,
Addl. Standing Counsel.

For respondent KIIT ... M/s J.S.Mishra,
H.Mishra,
C.Nayak,
S.Dash,
Advocates

For respondent (OPSC) ... Sri S.B.Jena,
Advocate.



3)O.A.No.2886(c) of 2016.
Bibhu Prasad Nayak ... Applicant
-: Versus :-
1. State of Orissa, represented through the
Commissioner-cum-Secretary,
Department of Home, Orissa, Bhubaneswar.
2) Odisha Public Service Commission,
Represented through its Secretary,
Cantonment Road, Cuttack.
... Respondents.

**Appearance:**
**For the applicant** ... M/s K.K.Swain, P.N.Mohnaty, U.Chhotray, P.K.Mohapatra, Advocates

**For respondent No.1** ... Sri H.K.Panigrahi, Addl. Standing Counsel.

**For respondent No.2 (OPSC)** ... Sri S.B.Jena, Advocate.

**4)O.A.No.3047(c) of 2016**

1) Debasish Nayak,
2) Debashisa Sahoo,
3) Debasish Nayak,

... Applicants.

-: Versus :-

1. State of Orissa, represented through the Commissioner-cum-Secretary, Department of G.A., Secretariat Building, Orissa, Bhubaneswar.
2. Odisha Public Service Commission, Represented through its Secretary, Cantonment Road, Dr. P.K.Parija Marg, Cuttack.
3. Centre Supervisor, KIIT School of Law, At-KIIT Campus No.16, KIIT University, Bhubaneswar, Khurda.

... Respondents.

**Appearance:**
**For the applicants** ... M/s S.Das, S.K.Samal, S.P.Nath, S.D.Routray, Advocates

**For respondent No.1** ... Sri H.K.Panigrahi, Addl. Standing Counsel.

**For respondent No.2 (OPSC)** ... Sri S.B.Jena, Advocate.

For respondent No.3 (KIIT)... M/s J.S.Mishra,
H.Mishra,
C.Nayak,
S.Dash,
Advocates

5)O.A.No.3010(c) of 2016.

Debendra Kumar Pradhan ... Applicant.

-: Versus :-

1. State of Orissa, represented through the Commissioner-cum-Secretary, Department of G.A., Secretariat Building, Orissa, Bhubaneswar.
2. Odisha Public Service Commission, Represented through its Secretary, Cantonment Road, Dr. P.K.Parija Marg, Cuttack.
3. Centre Superintendent, KIIT School of Law, At-KIIT Campus No.16, KIIT University, Bhubaneswar, Khurda.

... Respondents.

Appearance:-

For the applicants ... M/s B.B.Mohanty,
B.Tripathy,
B.Samantray,
Advocates

For respondent No.1 ... Sri H.K.Panigrahi,
Addl. Standing Counscl.

For respondent No.2 (OPSC)... Sri S.B.Jena,
Advocate.

For respondent No.3 ... M/s J.S.Mishra,
H.Mishra,
C.Nayak,
S.Dash,
Advocates.

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Date of Order : On 09.12.2016.

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-: O R D E R :-

M.M.Praharaj, Member (Admn):- Since the issues raised in these original applications are similar in nature, all

these cases are taken up together for a common hearing and a common order is passed. However, for the sake of convenience O.A.No.925(c)/2016 is taken up as a lead case.

2. The applicant in O.A.No.925(c)/2016, who had applied for the post of Assistant Section Officer (ASO) pursuant to advertisement No.8 of 2012-2013 and had appeared in the written examination on 29.11.2015 and 30.11.2015 at School of Law, Campus No.16 KIIT University, Bhubaneswar, has challenged the conduct of the examination and prayed to declare the entire examination process conducted by respondent No.2, illegal, irregular and not sustainable in the eye of law, with further direction to conduct the written examination afresh in respect of all subjects including English and General Awareness within a reasonable time.

3. In O.A.No.2913(c)/2016, the applicants, who had appeared in the same recruitment examination have prayed for quashing of Provisional Select List issued by respondent No.3 vide Notification No.4892 dated 6.8.2016 at Annexure-3 series with direction to respondent No.2 to prepare a revised Select List of the candidates after following the due procedure and guidelines.

4. In O.A.No.2886(c)/2016, the applicant has prayed for quashing of impugned notice dated 17.8.2016 issued by the OPSC, fixing the cut off marks for SEBC male candidates under Annexure-4 and for necessary direction to respondents to evaluate all the papers of the applicant in

respect of written examination in accordance the scheme of examination and to retfix the cut off marks for SEBC male candidates and publish the revised result in accordance with the scheme of examination and the skill test.

5. The applicants in O.A.No.3047(c)/2016 have prayed for a declaration that the written examination held on 29.11.2015 and 30.11.2015 in respect of all the subjects in different sitting at School of Law, Campus No.16 KIIT University, Bhubaneswar for the post of ASO conducted by the OPSC, is illegal, irregular and not sustainable in the eye of law and for a direction to respondent No.2 to conduct the written examination afresh in respect of all the subjects including "English" and "General Awareness" within a reasonable time limit.

6. Similarly, the applicant in O.A.No.3010(c)/2016 has prayed for a declaration that the written examination held on 29.11.2015 and 30.11.2015 in respect of all the subjects as illegal, irregular and not sustainable in the eye of law and for a direction to respondent No.2 to conduct the written examination afresh in respect of all the subjects including "English" and "General Awareness" within the reasonable time limit.

7. The grievance of the applicants in the above noted original applications are that the OPSC had published advertisement No.8 of 2012-2013 at Annexure-1 for recruitment to the post of Assistant Section Officer for Governor's Secretariat and State Secretariat and such

advertisement was also brought out in the website of the Commission. Pursuant to the said advertisement, the applicants in the above noted original applications and other candidates had applied for the post and after due verification, admit cards were issued to them to appear in the examination on 29.11.2015 and 30.11.2015 in respect of all the subjects in different sittings at different centers including the School of Law, Campus No.16 KIIT University, Bhubaneswar. Accordingly the written examination was held. The applicants appeared in the examination on the date fixed at the School of Law, Campus No.16 KIIT University, Bhubaneswar. The written examination of ASO of the first day consist of three papers i.e Paper-I English, Paper-II Essay (English and Oriya) and Paper-III General Awareness, which were scheduled to be held on 29.11.2015 at 10 – 11 AM, 12 Noon to 1 PM and 3 PM to 4 PM respectively. The examinations in paper I & II comprising objective type questions and answers were to be given in the OMR answer script format prepared for the purpose of examinations. Subsequently while the applicant was appearing the examination in English subject, he was served with OMR answer sheet captioned as "General Awareness" bearing Bar Code meant for "General Awareness" in stead of "English" vide Annexure-3. Being aggrieved, the applicant raised objection. He along with other candidates was instructed by the Invigilators and other officials, who were present in the examination hall to strike down the word

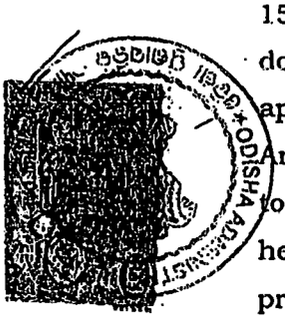
General awareness from the top of OMR answer sheets and in that place write "English" with further direction to fill up the OMR answer sheet in terms of the objective type questions meant for the paper English.

8. Being aggrieved by such irregularity, the candidates tried to draw the attention of the authorities e.g Center Superintendent who assured the candidates to address their grievances. However, by the next date of examination i.e 30.11.2015 when they had appeared in mathematics test of reasoning, and "computer application theory" no satisfactory action had been taken by the respondent authorities to sort out the problem of exchange of OMR sheet of examination papers held on 29.11.2015. When the applicants made representations ventilating their grievance to the Centre Superintendent a notice was affixed in the Notice Board that the Sub-Collector has been directed to enquire into the matter and submit a report. The applicants besides complaining about exchange of OMR sheet had also mentioned about 15 minutes delay in the process of clarifying the matter obtaining the instruction of the authority etc. Since no action was taken on the next date also they lodged legal complaint before the Inspector in charge, Infocity Police station vide Annexure-5 series so also representation before the OPSC, wherein inter alia it was submitted that OMR answer sheet of English and general awareness had different Bar codes and since the answer sheets are to be evaluated through a computerized process,

there was every possibility that their answer will not be accurately evaluated. They also raised question of delay of 15 minute due to such anomaly. Besides, it was categorically mentioned that though four types of question sets were prepared for each examination centre bearing "A" "B" "C" and "D" in order to curb mass mal practice but while distributing the question papers at each hall of the examination centre, the respondents instead of circulating the question papers in order of A,B,C and D, both by row and column among the candidates, distributed the same in improper manner giving questions bearing A to candidates sitting next to each other, which is in gross violation of instructions issued by the authorities, resulting in every chance of mal practice. Since the nature of examination was video graphic its footage can be utilized. The applicants have come across the letter dated 30.11.2015 issued by Centre Supervisor, KIIT Law School addressed to Additional District Magistrate, Bhubaneswar about the inter change of OMR sheets indicating that manual correction of OMR sheet has to be resorted to. Despite such correspondence, no action has been taken by the OPSC and since the examination has been conducted in a most irregular manner it would defeat the purpose of holding such competitive examination. In Clause 13 of the instruction issued by the OPSC, it is clearly mentioned that the candidate must not write on the answer sheet except the specific items of information asked for and several instructions have been imparted as at Annexure-8 in

this regard. It was submitted that the OPSC when contacted indicated their helplessness in the matter. But ignoring the said irregularities, they were going to publish the result of the examination which will adversely affect the career prospects of the applicants. It is therefore incumbent on the part of the respondents to make an enquiry and hold the examination afresh. Since the OMR sheets have been tampered and other irregularities have taken place, the entire process of selection is invalid and needs to be set aside.

9. In O.A.No.2913(c)/2016 the applicant after indicting above irregularities, submitted that the OPSC has neither up-loaded the model answer sheet nor invited any objection before publishing the provisional select list vide notification dated 6.8.2016. Thereafter they issued another notification dated 8.8.2016 notifying the programme schedule for verification of documents, to be held from 12.8.2016 to 29.2016. Another notification was published on 15.8.2016 proposing the schedule of verification of documents from 19.8.2016 to 26.8.2016. According to the applicants, OPSC has violated their own rules as notified at Annexure-4 in conducting skill test by not inviting objections to results or publishing keys of OMR answer and hence, is trying to hide its fault by hurrying through the process.



10. In O.A.No.2886(c)/2016, the applicant has mentioned that he is completely in dark about the mark

secured by him, besides the cut-off marks are to be decided prior to publication of result in the written test. But in this case the notice dated 17.8.2016 fixing cut-off mark for SEBC male candidates was issued only after publishing the result in the written test, which is contrary to the scheme of examination. Therefore, the notification dated 17.8.2016 of OPSC at Annexure-4 is not maintainable. He has made representation to the OPSC, but no action has been taken. The skill test has been scheduled to commence from 21.8.2016 to 26.8.2016 and hence, the impugned notice dated 17.8.2016 is not maintainable, keeping in view the examination pattern. Respondents need to reevaluate all the papers in the written examination and only after publication of revised result, the cut-off mark may be announced. The applicant has further averred that in the schedule of examination the total marks were fixed at 600 out of which 50 marks were earmarked for skill test in Computer (practical). So far as other subjects such as English, Mathematics, General Awareness, Test of Reasoning and Computer Application (Theory) are all multiple choice questions. Therefore, in respect of multiple choice question, either a candidate may secure "1" (one) mark or "0" mark; there was no possibility of getting decimal marks. But in notice dated 17.8.2016 the last cut-off marks for SEBC male candidate has been fixed to 348.817, which is contrary to the scheme of examination which is liable to be quashed.

11. Reiterating the stand taken by the applicants in other O.As., the applicants in O.A.No.3047(c)/2016, O.A.No.3010(c)/2016 have stated that they were asked to mark their objective type answer scripts in the OMR sheet meant for "General Awareness" as English and in the second half when they were asked to give their objective type answers in the OMR sheet meant for "English" as General awareness. It was incumbent on the part of the respondents to allow the applicants to fill up the answer sheets from the time of commencement of examination on 29.11.2015, but they were directed to fill up the answer sheet after passage of about half an hour of the scheduled time of examination. Though irregularities were immediately brought to the notice of respondent No.3 as well as respondent No.2, none of them till date, have taken any action and have conducted the examination in a most irregular manner, which is illegal, arbitrary and contrary to rules and regulations issued to the candidates by the OPSC.

12. The OPSC has filed counter in O.A.No.2913(c) /2016, O.A.No.2886(c)/2016 and O.A.No.3010(c)/2016

In the counter filed by the OPSC in O.A.No.2886(c)/2016, it has been averred that the questions of fixation of cut-off mark for SEBC Male candidates and giving direction to the respondents to re-evaluate all answer papers in accordance with the scheme of examination was referred to an expert Committee. On the basis of the report of Experts, the committee decided not to evaluate Question

No.32 of English and Question No.12 of Computer Application (Theory) and to give prorata marks in those two subjects as per the decision of the Hon'ble Apex Court in the case of Andhra Pradesh Public Service Commission –vrs- K.Prasad & another in Civil Appeal No.9140 of 2013, arising out of SLP(C) No.25209/2013. As per the said decision, 99 answers (100-1) were evaluated against total 100 marks in English and 49 answers (50-1) were evaluated against 100 arks in "Computer Application (Theory). Due to "prorated" marks, decimal marks occurred while awarding marks in he subjects English and Computer Application (Theory). Hence, no prejudice has been caused to the applicants on this score.

13. In the counter filed by the OPSC in O.A.No.3010(c)/2016 it has been averred that OMR sheets were packed center-wise by the Printing Press. The packet of OMR sheets for General English actually contained the OMR sheets for General Awareness. Except the name of the subject, there was no difference between the two OMR sheets. After distribution of OMR sheets to the candidates in the first sitting, some of the candidates saw the name of the wrong subject printed on the OMR sheet and brought it to the notice of Invigilators. The candidates were however, advised to keep on answering on the same OMR sheet and at the end of the examination, they were advised to write General English on the top of the OMR sheet and hand over the same and hence there is no reason for the candidates to

be worried and the candidates were satisfied and convinced. All of them also took the 2nd sitting examination in General Awareness and used the OMR sheet on which General English was printed and as instructed by Invigilator, it was accordingly corrected by them. It has been further averred in the counter that at the KIIT Law School Centre, 464 numbers of candidates appeared in the examination and their answer sheets had been accepted for evaluation. Mere change of caption in blank OMR sheets will not carry any problem for evaluation. In both the papers, there were 100 questions each and the OMR sheets had also 100 spaces for marking each answer. Having conducted on the spot enquiry, the Addl. District Magistrate, Khordha, Bhubaneswar in the capacity of Zonal Coordinator of the Examination had informed OPSC about the incident and OPSC had taken appropriate decision to evaluate the OMRs. The reports of ADM, Khordha and Director of Law, KIIT University are Annexure-A/2 and B/2 respectively. It is submitted that out of 464 candidates, 12 candidates have qualified in the written examination to appear in the skill test and the percentage of success in Law KIIT School Centre is 2.58%. Out of 55975 candidates in total all over the State, 1328 candidates have been qualified in the written examination. The percentage of success in whole of Odisha is 2.37%.

14. The OPSC got OMR sheets evaluated with the help of technical experts and its officials and staff who have

expertise to get the answer sheets evaluated through the OMR computer based system. The Technical Officers/staff associated with OPSC opined that mere change in the heading of the Answer sheet will not affect evaluation of OMR sheets.

15. Experts in different subjects, invited by the Commission, offered their opinion regarding correctness of the questions and answer keys in series "A" of the subject in English, General Awareness, Mathematics, Computer Application (Theory), Test of Reasoning & Mental ability. On the basis of the reports of the experts, the Commission decided not to evaluate the question No.32 of English and Question No.12 of Computer Application (Theory) and to give 'prorate" marks in those two subjects, keeping in view the ratio decided by the Hon'ble Apex Court in the case of Andhra Pradesh Public Service Commission –vrs- K.Prasad & another in Civil Appeal No.9140 of 2013, arising out of SLP(C) No.25209/2013, referred to earlier. Accordingly, final Answer keys of those subjects were prepared taking into account the corresponding Question Nos. in Series B,C and D of the subjects. It was submitted that due to the prorated marks, decimal marks occurred while awarding marks in the subject English and Computer Application (Theory). Hence, the Commission have not adopted the negative marking system in the evaluation of answer papers as alleged.

16. In the report dated 29.11.2015 the ADM, Khordha, who was also the Zonal Coordinator of ASO

examination in Khordha district, after examination of whole issue intimated as at Annexure-A/2 that there was no anomaly at all in conducting the examination at any level except for the fact that packing of the OMR sheets was changed. The Centre Superintendent had suggested to open the OMR packet meant for "General Awareness" at the appointed time and if OMR for "General English" is found inside that the principle of manual correction would be followed without disturbing the candidates. There is however, no complaint from the candidates in this regard. Further in the report of Prof. (Dr.) N.K.Chakrabarti, Director, School of Law, KIIT University at Annexure-B/2, it has been indicated that "All the examinations started and completed on time. However, only first day, in first sitting because of discrepancy in OMR sheet and Question Booklet due to faulty packing by OPSC, the examination started late for which extra time was also given to them. There was no complaint received during examination regarding time mismanagement to the undersigned or the Coordinator, Hence, the alleged chart submitted by the candidates has been cooked up and not true." Similarly in para-2 of Annexure-B/2, it has also been mentioned that "Though the Question Booklets and OMRs were distributed on time, candidates started complaining about the discrepancy for which they wasted about 10 minutes. In consultation with OPSC, they were asked to continue with the same OMR

expertise to get the answer sheets evaluated through the OMR computer based system. The Technical Officers/staff associated with OPSC opined that mere change in the heading of the Answer sheet will not affect evaluation of OMR sheets.

15. Experts in different subjects, invited by the Commission, offered their opinion regarding correctness of the questions and answer keys in series "A" of the subject in English, General Awareness, Mathematics, Computer Application (Theory), Test of Reasoning & Mental ability. On the basis of the reports of the experts, the Commission decided not to evaluate the question No.32 of English and Question No.12 of Computer Application (Theory) and to give 'prorate" marks in those two subjects, keeping in view the ratio decided by the Hon'ble Apex Court in the case of Andhra Pradesh Public Service Commission –vrs- K.Prasad & another in Civil Appeal No.9140 of 2013, arising out of SLP(C) No.25209/2013, referred to earlier. Accordingly, final Answer keys of those subjects were prepared taking into account the corresponding Question Nos. in Series B,C and D of the subjects. It was submitted that due to the prorated marks, decimal marks occurred while awarding marks in the subject English and Computer Application (Theory). Hence, the Commission have not adopted the negative marking system in the evaluation of answer papers as alleged.

16. In the report dated 29.11.2015 the ADM, Khordha, who was also the Zonal Coordinator of ASO

sheet and write their subjects on OMR. Extra time was provided to all."

17. Heard learned counsel for the applicants and learned Standing Counsel as well as learned counsel appearing on behalf of the OPSC as well as learned counsel appearing on behalf of the interveners. We have carefully gone through the pleadings of the parties and the documents annexed thereto.

18. The points to be adjudicated upon and the conclusion arrived in these O.As are as follows:

(a) Whether wrong caption in the OMR answer sheets supplied to the applicants during the written examination conducted by respondent No.2 on 29.11.2015 at School of Law, Campus No.16 KIIT University, Bhubaneswar i.e during the written examination of English paper, the OMR answer sheets were captioned as "General Awareness" and subsequently in the "General awareness" written examination, the answer sheets were captioned as English, prejudiced the applicants so much as to call for quashing of the written examination. The materials available on record including the averments of the applicants read with report of ADM at Annexure-A/2 so also the report of Director of School of Law, Campus No.16 KIIT University, Bhubaneswar at Annexure-A/3, makes it clear that the question papers were wrongly captioned as "General Awareness" for the paper "English", whose examination commenced at the first sitting on 29.11.2015, there was

some commotion among the applicants which was attended to by the Invigilators and other staff. The matter was brought to the notice of the Zonal Coordinator as well as OPSC authority and after obtaining clarification that mere change of caption would in no way affect the examination, the applicants were asked to write their answers, erase out "General Awareness" and in stead write "English". Since the entire process did not take more than 15 minutes, 15 minutes extra time was allowed beyond the specified time. The same was repeated during examination on "General Awareness" paper in the afternoon, where in stead of "General Awareness" OMR answer sheets had been captioned as "English". Instruction similar to the earlier was given to the applicants who went ahead with the answering the question. In this view of the matter, we are of the view that this anomaly i.e wrong caption of answer sheet, would not have prejudiced the applicants from answering objective type questions as per the ability in the answer sheets.

19. As regards different Bar Code on the English and General Awareness in the OMR answer sheets, it was brought out in the counter and other documents produced that only caption has been printed wrongly and there has been no change in the Bar Code and hence it is not likely to affect evaluation of the answer sheet by the computerized process.

20. It was submitted that though four types of question sets were prepared for each examination centre

bearing "A" "B" "C" and "D" in order to curb mass mal practice, but while distributing the question papers at each hall of the examination centre, the respondents instead of circulating the question papers among the candidates, distributed the same in an improper manner giving questions bearing A to candidates sitting next to each other. In view of the submission that all the answer papers had equal number of spaced for answering the questions and the applicants have to choose one of the the conclusion is that distribution of question papers, as has been done, shall in no way affect the result of the examination.

21. As regards the OPSC not up-loading the model answer sheets and calling for objections before going ahead with skill test and publishing result (as brought out in O.A.No.2913(c)/2016), as submitted by the learned counsel for the OPSC Annexure-4 is only a notice and not a rule. Mean-while, many other agencies conducting objective type tests in the recruitment in OMR sheets like UPSC, have also decided to publish the key and model answer sheet only after recruitment process is over. The same principle shall be followed by the OPSC hence forth. Hence, this cannot be a ground for quashing the result.

22. As regards the submission (in O.A.No.2288(c)/2016) that there was no possibility of decimal mark in the written examination, where as the cut off mark for SEBC Male candidates has been fixed to 348.817 and thereby suggesting that minus marking has been

resorted to, which has not been mentioned in the advertisement and therefore, prejudiced to the applicants, it was submitted by respondent No.2 that all the questions in various subjects, was reviewed by Experts and the view of the Experts was that question No.32 of English and Question No.12 of Computer Application Theory was not to be evaluated and hence "prorate" marks were awarded. Such "prorate" marks were awarded in view of the decision of the Hon'ble Apex Court in the case of Andhra Pradesh Public Service Commission –vrs- K.Prasad & another in Civil Appeal No.9140/2013 arising out of SLP (C) No.25209/2013. In case such a procedure is adopted, there can be decimal mark which has accordingly been reflected in the cut off mark for SEBC Male candidates. In the above circumstances, we do not find force in the claim of the applicants with regard to minus marking or any other irregularity in the evaluation of the answer sheets on this score.

23. In view of the above analysis, we do not find any ground to quash the entire process of examination, but one has to keep in mind that when recruitment process is conducted by a constitutional body, like respondent No.2 i.e OPSC, the entire process of examination needs to be viewed transparently and considered to be beyond reproach. Accordingly, respondent No.2 is directed to publish the code of answer of all the written examination papers including English and General Awareness in their website within seven

days of receipt of copy of this order, if the same has not been published so far. Further reasonable opportunities shall be given to the applicants and other candidates to submit their objections/ grievance, if any, relating the marks awarded to them. Upon a fresh evaluation of such objection, if the applicants and other candidates are found to have secured more marks than the cut off marks, they shall be permitted to appear in the skill test and the remaining process of selection. In the event they are found suitable, they be offered appointment from the date their juniors got such appointment, with all service and financial benefits. The entire exercise be completed within a period of two months from the date of receipt of copy of this order.

24. It may be noted here that M.P.No.1022(c)/2016 has been filed by four intervenors namely Dillip Kumar Rout, Satyaranjan Behera, Pravat Kumar Biswal and Jayanta Kumar Behera in O.A.No.3047(c)/2016 praying to implead them as respondents as they are necessary parties for proper adjudication of the matter. It has been further submitted that since they are similarly placed as that of the applicants in the above O.As, they may be allowed to intervene in this proceeding to protect their interest.

25. Considering such submission, we note that the order passed in the present original applications shall also be binding to the above interveners.

26. With these observations, all the O.As so also M.Ps are disposed of.

Send copies.

Sd/-
(M. M. Praharaj)
Member (Administrative)

I agree.
Sd/-
(B. K. Dash)
Acting Chairman

No. CA 332/17
Name of the applicant. Laknath Sahoo, A/c, CHC, Cuttack
Date of Presentation of Application for Copy 31/07/2017
No. of Pages 22 (Twenty-two) pages
Copying Fee Rs. 5.00
Grand Total Rs. 28.00
Total Deposit Rs. 33.00
Date when copy was ready 31/07/2017
Date which fixed for delivery 01/08/2017
Date of preparation of copy 01/08/2017
Date of delivery of copy 01/08/2017

Certified to be True Copy

Examiner, Judicial Department
Odisha Administrative Tribunal, Cuttack
Application under Section 76 of Indian Evidence Act.

Section Officer, Judicial
Odisha Administrative Tribunal
CUTTACK

1/8/17

42

**ODISHA PUBLIC SERVICE COMMISSION**

**CUTTACK**

**Notice**

**No. 4778 /PSC, DT. 25/7/17**
**(DR - IV) (2PH-1-2012-13)**

In continuation to this Office Notice No. 5502/PSC, dt. 10.09.2016, the Commission recommends one S.T. candidate bearing Roll No. 1300196 viz:- Abhilash Bhoi for recruitment to the post of Assistant Section Officer in (Group - B) of Odisha Governor's Secretariat and State Secretariat Service, pursuant to Advt. No. 08 of 2012-13 as per the orders of the Hon'ble Tribunal passed in O.A. No. 925 (c) of 2016 and a batch of different O.As. disposed of on 09.12.2016.

Similarly, due to lower rank in the merit list, the selection of one S.T. candidate bearing Roll No. 1312172 viz:- Dinabandhu Munda, recommended earlier by the Commission vide this Office Notice No. 5502/PSC, dt. 10.09.2016 for the above recruitment, is hereby cancelled.

25/7/17
Secretary

TCS/EMP/307039

## SERVICE CERTIFICATE

This is to certify that Mr. Dinabandhu Munda was employed by us and his particulars of service are as under:

| | |
|---|---|
| 1. Name | : Mr. Dinabandhu Munda |
| 2. Designation | : I.T. Analyst |
| 3. Department | : Computer Consultancy |
| 4. Gross Annual Compensation | : Rs. 812035 /- |
| 5. Date of Joining | : October 24, 2008 |
| 6. Date of Leaving | : October 31, 2016 |
| 7. Reason for Leaving | : Resigned |

Dated: November 15, 2016

Ritu Anand

Ritu Anand
Deputy Head - Human Resources

TATA CONSULTANCY SERVICES
Tata Consultancy Services Limited
TCS House, Raveline Street 21 D.S.Marg Fort Mumbai 400 001 India
Tel 91 22 6778 9999 Fax 91 22 6778 9000 e-mail corporate.office@tcs.com website www.tcs.com
Registered Office 9th Floor Nirmal Building Nariman Point Mumbai 400 021
Corporate Identification No.(CIN) L22210MH1995PLC084781

- 36 - ANNEXURE-3

- 3 AUG 2017

**FORM NO. I**
**See Rule – 4)**

AN APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNAL'S ACT, 1985

For use in Tribunal's Office
Date of filing: 3/8/17
Or
Date of Receipt:
Registration No. OA 2105(C)/17

Signature
Registrar

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**IN THE STATE ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH, CUTTACK.**

**O. A. No. 2105 (C) of 2017**

Dinabandhu Munda ... **Applicant.**

**- Versus -**

State of Odisha and others ... **Respondents.**

**INDEX**



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**Cuttack**
**Dtd.3.08.2017**

**(Sameer Kumar Das)**
**Advocate for the applicant.**

**IN THE STATE ADMINISTRATIVE TRIBUNAL:**
**CUTTACK BENCH, CUTTACK:**

**O. A. No._____ (C) of 2017**

**Between:**

Dinabandhu Munda, aged about 32 years, Son of Surendra Munda, at present working as Assistant Section Officer (ASO), Panchayatiraj Department in the Odisha Secretariat, At-Secretariat Building, P.O-Bhubaneswar, Dist.- Khurda.

**... Applicant**

**- Versus -**

1. State of Odisha, Represented through its Principal Secretary in the Home Department, At-Secretariat Building, P.O-Bhubaneswar, Dist.- Khurda.
2. State of Odisha Represented Through Commissioner cum Secretary Panchayat Raj Department, At-Secretariat Building, P.O-Bhubaneswar, Dist.- Khurda.
3. Odisha Public Service Commission, represented through its Secretary, At- Cantonment Road, PO-GPO, Buxi Bazar, Town/Dist-Cuttack.

**... Respondents**

**DETAILS OF APPLICATION**

1. **Particulars of the Applicant:**
   - i) Name of the Applicant : Same as cause title.
   - ii) Name of the Father :
   - iii) Designation and office in which employed :
   - iv) Office Address :
   - v) Address for service of all notices : C/O-**Sri Sameer Kumar Das**, Advocate, Orissa High Court, Cuttack.
2. **Particulars of the Respondents:**
   - i) Name and / or designation of the respondents : Same as cause title
   - ii) Office address of the respondents : Same as cause title.
   - iii) Address for services of all notices : Same as cause title.
3. **Particulars of the order against which this application is made:**

   The application is against the following orders:

   - i) **Order No.** : 4778
   - ii) **Date** : 25.07.2017
   - iii) **Passed by** : Respondent No.3

iv) **Subject in brief**: the applicant in the case challenges the legality and propriety of the notice no. 4778/PSC dtd: 25.07.2017 issued by the Respondent no.3 cancelling the recommendation in favour of the applicant for recruitment/appointment as ASO in the Odisha Secretariat. Such decision of the OPSC after the applicant has already been appointed by the State Government and joined in his post of ASO in the department of Panchayat Raj since 01.11.2016 is illegal and clear violation of principal of natural justice and also the order of this Hon'ble Tribunal dtd: 09.12.2016 passed in O.A.No.925(C) of 2016 and batch of cases. Therefore the petitioner prays for quashing of the notice dtd: 25.07.2017 under Annexure-7.

4. **Jurisdiction of this Tribunal**:

The applicant declares that the subject matter of the order against which he wants redressal is within the territorial jurisdiction of this Hon'ble Tribunal.

5. **Limitation**:

The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunal's Act, 1985.

6. **Facts of the case**:

The facts of the case are given below:

**6.1** That the applicant is a B-Tech in Metallurgical Engineering passed out in the year of 2008. He is a Schedule Tribe (ST) person. Having been selected from the campus of IGIT, Sarang, Dhenkanal the applicant was appointed in TCS (TATA Consultancy Services) on 24.10.2008.

**6.2** That while the applicant was so continuing advertisement no. 8/2012-13 was issued by the OPSC for recruitment to the post of ASO in the Governor's and State Secretariat of Odisha. Copy of the advertisement is annexed herewith as **Annexure-1**.

**6.3** That it is not out of placed to mention here that about 180 post of ASO advertised to be filled up in the State Secretariat through ST candidates and 02 posts in the Governor's Secretariat as per the advertisement along with its corrigendum. Accordingly the petitioner had appeared the written test and got selected for which he was called to the skill test. Before the skill test the verification of the testimonials certificates of the petitioner was made by the authorities concern on 19.08.2016 followed with skill test on 21.08.2016. Copy of the admit card and intimation with regard to verification of the documents are annexed herewith as **Annexure-2 and 3** respectively.

**6.4** That the applicant having been found suitable for appointment his name was published in the final merit list on 10.09.2016. The name of the applicant found place at **serial no. 786** of the common merit list. Copy of the relevant extract of the final merit list publishes on dtd: 10.09.2016 in annexed herewith as **Annexure-4**.

**6.5** That on completion of the process of selection a Nijukti Mela/ work shop was organized for the purpose of issuance of appointment orders to the selected candidates. Accordingly the applicant was handed over the order of appointment dtd: 05.10.2016 on 06.10.2016 in the work shop by the Hon'ble Chief Minister of the State. The applicant issued with the appointment order in the post of ASO in the Odisha State Secretariat Service (Group-B) in the PB-2 with grade pay of Rs.4200/-. He was posted in the department of Panchayat Raj. It is pertinent to mention here that in the appoint order there was a rider that his appoint will be subject to the final outcome in **W.P.(C) No. 7504 of 2014, W.P.(C). No. 8516 of 2015 and O.A. No.3965(C) of 2012**. It is needless to mention here that to the best of the

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information of the applicant the aforesaid cases reflected in his order of appointment relates to reservation in SCBC category which have also set a rest by now. Therefore the applicant had nothing to be worried as he belongs to ST category and also selected against the vacancy for the ST category. Copy of the appointment order dtd: 5.10.2016 is annexed herewith as **Annexure-5**.

**6.6** That at the outset it is humbly submitted that as the applicant was serving as an Engineer in TCS in the designation of IT-Analyst, he has tendered resignation on getting the appointment as ASO, but relieved from TCS on 31.10.2016 in order of enable him to join in the Odisha Secretariat as an ASO. Accordingly he joined as an ASO in Panchayat Raj department on 01.11.2016. Copy of the service certificate issued by TCS is annexed herewith as **Annexure-6**.

**6.7** That while the applicant was so continuing and discharging his duty with due diligence and sincerity to the best of the satisfaction of the authorities concern he came across with notice from the website of the OPSC bearing no. 4778/PSC dtd:. 25.07.2017 wherein his recommendation by the OPSC to the State Government for appoint as an ASO has been cancelled on the plea of the order dtd: 09.12.2016 passed in **O.A. No. 925(C) of 2016** and batch of cases by this Hon'ble Tribunal. At the same time one Abhilash Bhoi has been recommended for engagement as ASO. Copy of the notice dtd: 25.07.2017 is annexed herewith as **Annexure-7**.

**6.8**. That it is respectfully submitted that such notice dtd: 25.07.2017 of the OPSC taken the applicant to surprise in as much as the OPSC without verifying the fact that the applicant had already joined in duty and was also not a party in the aforesaid O.A. has

cancelled the recommendation of the applicant. Immediately the applicant has collected the copy of the judgment/ order of this Hon'ble Tribunal in O.A. No. 925(C) of 2016 in order to ascertain the fact as to whether any such direction is there from this Hon'ble Tribunal to cancel the recommendation of the applicant. But after going through the judgment nowhere the applicant found any such direction by this Hon'ble Tribunal. On the contrary it has been directed to conduct fresh evaluation of the objection of candidates those who applies and if somebody secure more mark then the cut off mark they shall be allowed to appear in the skill test and remaining process of selection. In the event they found suitable they may be appointed from the dated their juniors got such appoint with all service and finance benefit. But no direction was there to terminate any selected candidate or to cancel any earlier recommendation. Such direction could not have been made as the selected candidates were not made parties in the case. For better appreciation of the case the order dtd: 09.12.2016 in passed in O.A. No. 925(C) of 2016 and bench of cases is annexed herewith as **Annexure-8.**

**6.9** That it is further humbly submitted that on a closed reading of the entire judgment/order under annexure-8 nowhere the applicant found that this Hon'ble Tribunal has directed for cancellation of the recommendation of any candidates already recommended by the OPSC. It is a matter of fact on record that the present applicant though a selected candidate not made a party in any of those original applications. Therefore the order is not binding on him. Be that as it may consciously this Hon'ble Tribunal did not directed for cancellation of the recommendation who have already appointed. Therefore the impugned notice dated 25.07.2016 of the OPSC under

annexure-7 is not only illegal and arbitrary but also an outcome of total non-application of mind and an act of contempt of this Hon'ble Tribunal. This Hon'ble Tribunal has categorically directed that if after evaluation some candidate found suitable may be appointed. Undisputedly OPSC is not the appointing authority, but it is the State Government who is the appointing authority of the ASOs. In such circumstances the direction by this Hon'ble Tribunal in O.A No. 925(C) of 2016 was never intend to terminate or cancel any selected candidate. Therefore the notice dtd: 25.07.2017 is completely illegal and liable to set aside.

**6.10** That it is further humbly submitted that the law is well settled that an order having penal/civil consequence could not to have passed without following the principal of natural justice. In the instant case cancelling the recommendation in favour of the applicant without issuing a show cause notice is quite illegal and gross violation of principles of natural justice. Therefore the impugned notice under annexure-7 cannot be used against the applicant as it violation of principal of natural justice. On this ground alone the notice dtd: 25.07.2017 under annexure-7 is unsustainable in law and hence liable to quashed.

**6.11** That it is respectfully submitted that the applicant has left the job from TCS (TATA Consultancy Services) after getting the present Govt. service and has been discharging his duties for last 9 years. Furthermore the State Govt. is the appointing authority of the applicant. Till now no order has been passed by the Govt. in respect of the applicant. Now at this stage if the applicant will be thrown out then he will be nowhere and will be highly prejudiced. Therefore the

order under annexure-7 is not sustainable in the eye of law and accordingly liable to be quashed and the applicant should be allowed to continue in his post.

**7. Relief (s) sought for:**

Under the above circumstances it is therefore, humbly prayed that the Hon'ble Tribunal be graciously pleased to quash the order dtd. 25.7.2017 under annexure-7 and direct the respondents to allow the applicant to continue in his post of ASO as such or else he will be highly prejudiced.

And further the Hon'ble Tribunal be pleased to direct the Respondents to pay the consequential service and financial benefits to the applicant.

And /or pass any other order/orders in the fact and circumstances of the case to give complete justice to the applicant.

**8. Interim order if prayed for:**

As an interim the Hon'ble Tribunal be pleased to stay the operation of the order dtd. 25.7.2017 under annexure-7 till finalization of the case.

**9. Details of the remedies exhausted:**

The applicant declares that he has availed of all the remedies available to him under the relevant service rules etc. since there is no other remedies available to this application seeks redressal of this Hon'ble Tribunal by filing this Original Application.

**10. Matter not pending before any other Court etc.**

The applicant further declares that the matter regarding which this application has been made is not pending before any other court

of law or any other authority or has not been rejected by any court of law or other authority.

**11. Details of Index**

An index in duplicate containing the details of the documents to be relied upon in this Original Application is enclosed.

**12. List of enclosures:**

The list of enclosures as per the index attached to this Original Application.

**VERIFICATION**

I, Dinabandhu Munda, aged about 32 years, Son of Surendra Munda, at present working as Assistant Section Officer (ASO), Panchayatiraj Department in the Odisha Secretariat, At-Secretariat Building, P.O-Bhubaneswar, Dist.- Khurda, do hereby verify and state that the fact stated in this original application are all true to the best of my knowledge and the documents available to me. I have not suppressed any material fact on record.

Dinabandhu Munda

**Cuttack**

**Dtd:** **Verificant.**

Annexure-1

## ODISHA PUBLIC SERVICE COMMISSION

**ADVERTISEMENT NO. 08 OF 2012-13**

**Recruitment of Assistant Section Officers of Governor's Secretariat & State Secretariat.**

**WEBSITE – http://opsconline.gov.in**

**WARNING: (1) ONLINE APPLICATION FORM WILL BE AVAILABLE TILL 30.11.2012 BY 11:59 P.M.**

**(2) LAST DATE FOR RECEIPT OF APPLICATION FEE AT ANY SBI BRANCH IS 03.12.2012.**

Applications are invited On-line through the Proforma Application to be made available on WEBSITE (http://opsconline.gov.in) from **10.10.2012** to **30.11.2012 (Note: 03.12.2012 is the last date for payment of application fees)** for recruitment to **811(11-Governor's Secretariat +800-State Secretariat )** posts of Assistant Section Officer in (Group-C) of Odisha Governor 's secretariat Service and Odisha Secretariat Service under Home Department in the scale of pay of Rs.9300-34800/- carrying Grade Pay of Rs.4200/- with usual Dearness and other Allowances as may be sanctioned by the Government of Odisha from time to time. The posts are permanent.

2. **VACANCY POSITION: As per requisition filed by the Home Department, the vacancy position along with reservation thereof are given below:**

1. Odisha Governor Secretariat Service

| Category | No of Vacancies |
|---|---|
| UR | 01 |
| SEBC | 03(1-W) |
| ST | 05(2-W) |
| SC | 02(1-W) |
| TOTAL | 11(4-W) |

2. Odisha Secretariat Service

| Category | No of Vacancies |
|---|---|
| UR | 190(63-W) |
| SEBC | 216(72-W) |
| ST | 317(106-W) |
| SC | 077(026-W) |
| TOTAL | 800(267-W) |

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-45-
ANNEXURE-4

Odisha Secretariat,
Sachivalaya Marg,
Bhubaneswar-751001
FAX No. 0674-
2392115
E-mail-
homesec.od@nic.in

ଓଡ଼ିଶା ସରକାର
ଗୃହାଙ୍କ ବିଭାଗ

BY FAX/E-mail/ SPEED POST

**Government of Odisha**
**Home Department**
*******

No. 22487 /OSS, Bhubaneswar Dated the 19th May, 2018
HOME-OSS-APMT1-0002/2016

From
Sri S.K. Pradhan,OAS (S)
Joint Secretary to Government

To
Sri Dinabandhu Munda, ASO,
PR & DW Department

**Sub: Show cause notice**

Sir,

I am directed to say that the Odisha Public Service Commission (OPSC) had communicated a select list of 810 candidates to Home Department vide their L. No. 5651 Dated 17.09.2016 for appointment of ASOs against the advertisement No.08/2012-13. Now, adhering to the orders of Hon'ble OAT in OA No. 925 (C) and a batch of different OAs disposed of on 09.12.2016, the Commission have communicated a revised select list vide their L. No. 4781 Dated 25.07.2017 for due course of action.

Communicating the revised list, it has been intimated by the OPSC that one Sri Abhilash Bhoi (ST) having Roll No. 1300196 has been included at Sl. No. 775 i.e. in between Asish Hembram (Sl. No. 774) and Gopabandhu Mohanty (Sl. No. 776) and the name of Sri Dinabandhu Munda at Sl. No. 786 of the pre revised list has been deleted in the revised list for securing lower rank in the merit list. Moreover, OPSC has also requested to correct the records available in this Department accordingly so as to implement the orders of Hon'ble OAT.

Further, your appointment was made vide this Department Order No.35258 ( 786 ) Dated 05.10.2016 subject to the final outcome of W.P.( C ) No. 7504/2014 – State of Odisha & Others- vrs- Amar Chattoi, W.P.( C ) No 8516/2015 – State of Odisha & Others – Vrs- Sudipta Kumar Mohanty and OA No. 3965( C ) and any other case .

P.T.O

1. The candidates are required to submit the hard copy of the on line application form (indicating their Roll Nos. at the top right corner) along with self attested copies of all relevant certificates, documents etc & duly filled in **"Attestation Form"** (to be downloaded from the website) **in person** to the officials of OPSC present in the Centre on the day of verification.
2. The Admission Certificates of the candidates **along with "Instructions to Candidates for Skill Test in Computer (Practical)"** for recruitment to the post of A.S.O., pursuant to Advertisement No. **08 of 2012-13** are will be uploaded in the website of the Commission on **13.05.2017.** The above candidates are therefore required to download their **"Admission Certificates"** and **"Instructions to Candidates"** for the above Skill Test from the website of the Commission (**http://www.opsc.gov.in**). and produce the same at the Centre Supervisor as mentioned above for admission to the Examination Centre.

It is also made clear that the candidature of these candidates for the above test is **purely provisional.** The candidature is liable to rejection in the event of inadequacy/deficiency found at any stage before or after the Skill Test and is subject to fulfilment of terms & condition laid down in the Advertisement.

**List of Documents to be furnished in the following order.**

1. Hard copy of on line application form.
2. Attestation Form duly filled-in (to be downloaded from website of the Commission)
3. Adhar Card (Original & Xerox copy)
4. H.S.C. or Equivalent Certificate in Support of declaration of age
5. Intermediate / +2 Examination Certificate
6. Bachelor's Degree Certificate
7. Required Odia Pass Certificate, wherever applicable
8. Caste Certificate by Birth in support of claim as ST.
9. Discharge Certificate, in case of Ex-Serviceman, wherever applicable
10. Identity Cards issued by Director of Sports, Odisha (in case of Sports person candidates), wherever applicable
11. Disability Certificate (Indicating % of disability) issued by concerned Medical Board, wherever applicable;
12. No Objection Certificate in case of in-service candidates; wherever applicable

TRUE COPY ATTESTED

Deputy Secretary to Govt.
Home Department

14.10.2017
Secretary

Further, you are hereby informed that your name does not find place in the revised select list submitted by OPSC and as such your appointment is not legal and no right of further continuance in service is lawful.

In view of the facts stated above, you are hereby called upon to submit your explanation within a period of 30 days from the date of issue of this notice as to why you shall not be removed from the services with immediate effect. In case, no reply is received within the stipulated time, action will be taken as deemed proper and it will be presumed that you have no explanation to submit.

Yours faithfully,

19/5/18

Joint Secretary to Government

TRUE COPY
ATTESTED

Deputy Secretary to Govt
Home Department

# ODISHA PUBLIC SERVICE COMMISSION

**WRITTEN EXAM. FOR RECRUITMENT TO THE POSTS OF ASST. SECTION OFFICER**

**[Advt. No. 08 of 2012-13]**

**Marks Secured in the Examination**

Roll No. : 4000649

Registration No. : 081213511400

Name : MOHAN KANHAR

| Sl. No. | Subject | Secured Marks |
|---|---|---|
| 1 | English | 55.555 |
| 2 | Mathematics | 48 |
| 3 | Essay (English) | 6 |
| 4 | Essay (Odia) | 6 |
| 5 | General Awareness | 45 |
| 6 | Test of Reasoning / Mental Ability | 68 |
| 7 | Computer Application (Theory) | 42.857 |
| | Total Marks | 271.412 |
| | Skill Test in Computer(Practical) | |

[Log Out]

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# ODISHA PUBLIC SERVICE COMMISSION

## WRITTEN EXAM. FOR RECRUITMENT TO THE POSTS OF ASST. SECTION OFFICER

## [Advt. No. 08 of 2012-13]

## Marks Secured in the Examination

Roll No. : 1312172

Registration No. : 0812[illegible]1670

Name : DINABANDHU MAHTA

| Sl. No. | Subject | Secured Marks |
|---|---|---|
| 1 | English | 41.444 |
| 2 | Mathematics | 30 |
| 3 | Essay (English) | 9 |
| 4 | Essay (Odia) | 14 |
| 5 | General Awareness | 45 |
| 6 | Test of Reasoning / Mental Ability | 66 |
| 7 | Computer Application (Theory) | 46.734 |
| | Total Marks | 265.178 |
| | Skill Test in Computer(Practical) | 48 |

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Welcome to Odisha Public service Commission Online Application System

# ODISHA PUBLIC SERVICE COMMISSION

WRITTEN EXAM. FOR RECRUITMENT TO THE POST OF
ASST.SECTION OFFICER
[Advt.No.08 of 2012-13]
Marks Secured in the Examination

Roll No.13412172

Registration No.081213113670

Name:-Dinabandhu Munada

| Sl. No. | Subject | Secured Marks |
|---|---|---|
| 1. | English | 55.555 |
| 2. | Mathematics | 48 |
| 3. | Essay ( English) | 6 |
| 4. | Essay( Odia) | 6 |
| 5. | General Awareness | 45 |
| 6. | Testing of Reasoning /Mental Ability | |
| 7. | Computer Application( Theory) | 42.857 |
| | Total Marks | 271.412 |

Skill Test in Computer( Practical)

Type Copy attested by K3 Adv

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**By Speed Post**

ANNEXURE-6

**ODISHA PUBLIC SERVICE COMMISSION**
**19, Dr. P.K. Parija Road, Cuttack**

No. 2924 /PSC., Dt. 10/6/20

**From**

Sri. Judhisthir Naik, OAS
Deputy Secretary.

**To**

Sri Mohan Kanhar,
S/o- Sadasiba Kanhar,
At/Po- Muniguda,
Dist-Rayagada.

**Sub:** WP(C) No.2916/2020 filed by Mohan Kanhar-Vrs-State of Odisha.

Sir,

I am to say that the Hon'ble Orissa High Court in its order dated 06.02.2020 while disposing of the aforesaid Writ Petition had directed to OP No.3 (Govt. in GA & PG Deptt.) to take up the request of the petitioner within one month from the date of communication of this order. In the event, the petitioner is aggrieved by such order, it is open to the petitioner to approach this Court again.

Pursuant to the aforesaid order of the Hon'ble Orissa High Court, the matter was considered by the Odisha Public Service Commission (OP No.2) and it is found from the relevant records that the petitioner (Mohan Kanhar) was a candidate for ASO written examination, pursuant to Advertisement No.08 of 2012-13 and he belongs to ST(Male) category. It is seen that the last ST (Male) normal candidate called for skill test secured 272.504 marks, whereas the petitioner (Mohan Kanhar) secured 271.412 marks. As such, Roll No. of the petitioner did not find place in the list of the candidates, selected for skill test.

Besides, it is seen that Dinabandhu Munda (Roll No.1312172), the last ST (Male) candidate whose name found place in the select list, was called for skill test as a ST-Male (Sports Person) who failed to furnish the required Sports Certificate. Since no other ST (Male) candidates were

P.T.O.

available out of the candidates called for skill test his name found place in the said select list.

Further, as per orders passed by the Hon'ble Tribnunal on 09.12.2016 in O.A. No.925 (C)/2016 with batch of cases, objections were invited from the candidates about awarded of marks to them. After scrutiny of the objections, the Commission decided to conduct another skill test in Computer (Practical) in respect of 10 ST Male (normal) candidates including **Mohan Kanhar (ST) for recruitment to the post of ASO on** 19.05.2017. After skill test, finally the Commission recommended one ST candidate, Abhilash Bhoi (ST) in place of Dinbandhu Munda (ST). Accordingly, revised merit list along with recommendation were sent to Government vide this office letter No.4781/PSC, dt.25.07.2017. It is seen that the finally selected Abhilash Bhoi secured 272.471 marks, whereas the petitioner (Mohan Kanhar) secured 271.412 marks. As such, the name of the petitioner did not find place in the final merit list.

Yours faithfully,

Deputy Secretary

Available out of the candidates called for the skill test his name found place in in the said select list.

Further , as per orders passed by the Hon'ble Tribunal on 09.12.2016 in O.A. No.925(C )/2016 with batch cases, objection were Invited from the candidates about awarded of marks to them . After Scrutiny of the objections, the Commission decided to conduct another skill Test in Computer (Practical)in respect of 10 ST Male (Normal) candidates Including Mohan Kanhar (ST) for recruitment to the post of ASO on 19.5.2017. After skill test , finally the Commission recommended one ST candidate, Abhilas Bhoi (ST) IN PLACE OF Dinabandhu Munda (ST). Accordingly, revised merit list with recommendation were sent to Government vide this office letter No.4781/PSC,dt. 25.07,2017. It is seen That the finally selected Abhilash Bhoi secured 272.471 marks , whereas The petitioner (Mohan Kanhar ) secured 271.412 marks. As such , the name Of the petitioner did not find place in the final merit list.

Yours faithfully
Sd/-
Dt. 10.6.2020
Deputy Secretary

Type Copy of Page 76.
attested
Adv

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**WPC (OAC) No.2105 of 2017**

**Dinabandhu Munda** .... **Petitioner**
Mr. S.K. Das, Advocate

*-versus-*

**State of Odisha & Others** .... **Opposite Parties**
Mr. R.N. Mishra,
Addl. Govt. Advocate

**CORAM:**
**JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER**
**10.04.2023**

**Order No**
**05.** **1.** This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

**2.** Heard Mr. S.K. Das, learned counsel appearing for the Petitioner and Mr. R.N. Mishra, learned A.G.A.

**3.** The present Writ Petition has been filed challenging the notice dated 25.07.2017 issued by the Orissa Public Service Commission under Annexure-7.

**4.** Learned counsel for the Petitioner contended that after facing due recruitment process and on being found suitable, the Petitioner was appointed as an Asst. Section Officer in the Odisha Secretariat Service (Group-B) vide order dated 05.10.2016 issued under Annexure-5. It is contended that in terms of the said order, the Petitioner joined in the service on 01.11.2016. However, it is contended that while continuing as such,

the order of appointment so issued in favour of the Petitioner on 05.10.2016 when was cancelled vide the impugned notice dated 25.07.2017. The Petitioner challenged the same before the Tribunal in OA No.2105(C ) of 2017. The Tribunal while issuing notice of the matter vide order dated 11.08.2017 passed an interim order by staying the operation of the impugned notice dated 25.07.2017.

**4.1.** Mr. S.K. Das, learned counsel appearing for the Petitioner contended that by virtue of the interim order, the Petitioner was allowed to continue in that post and he is also continuing till date. Mr. Das also contended that the order of appointment so issued in favour of the Petitioner was cancelled vide the impugned notice under Annexure-7 on the ground that one Abhiram Bhoi when was found to have secured more marks than the Petitioner, in order to accommodate the said Abhiram Bhoi, the order of appointment issued in favour of the Petitioner was cancelled. However, it is contended that in the meantime basing on the order passed by this Court in W.P.(C ) No.33586 of 2018, Sri Abhiram Bhoi has been appointed as against the post of ASO vide order dated 11.05.2020 under Annexure-9 to the rejoinder. It is contended that since the petitioner has no fault with regard to his selection and appointment as against the post of ASO vide order at Annexure-5, the impugned notice cancelling such appointment under Annexure-7 is not sustainable in the eye of law.

It is also contended that since the Petitioner is continuing since his initial date of joining and in the meantime, he had rendered service for more than 6(six) years, in view of the decision of the of this Court in the case of ***Bikash Mahalik vs. State of Odisha & Others***, the petitioner is eligible and entitled to get the benefit as prayed for. This Court in Para 8 and 28 of the judgment has held as follows:

> ***8.*** *There is no dispute with regard to the fact that the petitioner appeared in the written test and secured 234 marks out of 400 marks and also secured marks in practical skill test out of 50. Opposite party no.3 prepared a select list taking into account marks secured in the written test as well as practical skill test and placed the petitioner at Sl. No.2 of the merit list. Subsequently, opposite party no.2 found out that marks secured in the practical skill test, being qualifying in nature, should not be added to the marks secured in the written test. Consequentially, he directed opposite party no.3 to redraw the final merit list on the basis of marks secured by the petitioner in the written test i.e. 234 marks excluding the marks secured in the practical skill test, in which the petitioner had qualified by securing 31 marks, which is above the qualifying mark of 15, out of 50 marks. But fact remains pursuant to merit list prepared by opposite party no.3, the petitioner has already joined and his service book has been opened. The amount towards GIS has been deducted from his salary and he has also been enrolled in the contributory pension scheme of the Government. As a result, a right has been accrued in his favour to continue in his post. Now, after lapse of one year / months, as per direction given by opposite party no.2, opposite party no.3 has redrawn the merit list and called upon the petitioner to show-cause why he shall not be removed from service. Whether such action of opposite party no.3 is hit by principle of estoppel, is the short question to be decided in the facts and circumstances of this case.*
>
> *xxx xxx xxx*
>
> ***28.*** *In view of the law and fact, as discussed above, the irresistible conclusion is that the show-cause notice dated 31.03.2015 under Annexure-13 issued by opposite party no.3, the letter dated 09.02.2015 under Annexure-13/1 issued by opposite party no.2 to opposite party no.1 and letter dated 26.03.2015 under Annexure-13/2 issued by the Government of Odisha, Revenue and Disaster Management Department to opposite party no.2 cannot sustain. Therefore, the same are liable to be quashed and hereby quashed. Pursuant to interim order passed on 07.04.2019 by the Odisha Administrative Tribunal since the petitioner is still continuing, he shall be allowed to continue with all service and financial benefits as due and admissible to him in accordance with law."*

**5.** Mr. R.N. Mishra, learned A.G.A on the other hand made his submission basing on the stand taken in the counter affidavit.

It is contended that the Petitioner though was duly appointed as against the post of ASO vide order at Annexure-5, but while complying order passed by the Tribunal so passed in the case of Abhiram Bhoi, it was found that Sri Abhiram Bhoi because of his wrong placement in the merit list, was not given the benefit of appointment at the initial stage. On subsequent verification when it was found that Shri Bhoi is placed above the Petitioner in the merit list, the impugned notice was issued by cancelling the appointment of the Petitioner. Therefore, it contended that there is no illegality or irregularity with regard to the impugned notice in cancelling the order of appointment, so issued in favour of the petitioner.

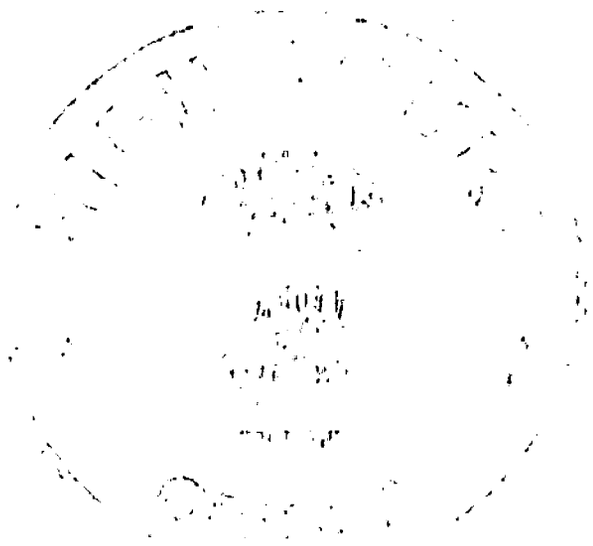
**6.** Having heard learned counsel for the parties and taking into account the fact that the other candidate Sri Abhiram Bhoi has been appointed in the meantime vide order dated 11.5.2020 under Annexure-9 to the rejoinder and the petitioner since is continuing as before in terms of the interim order passed on 11.08.2017, it is the view of this Court that Sri Abhiram Bhoi has been appointed as against a vacant post. Therefore, placing reliance on the decision of this Court in the case of Bikash Mahalik, as cited supra, this Court is inclined to quash the notice dated 25.7.2017 under Annexure-7. While quashing the same, this

Court directs the opp. Parties to allow the Petitioner to continue as before.

The Writ Petition accordingly succeeds and disposed of.

**(Biraja Prasanna Satapathy)**
**Judge**

*sangita*





True copy
K Nath
Advocate

ANNEXURE-2

*SAMEER KUMAR DAS*
*Enrollment No.O-635/92*
*Ph. No.9437172660*

**IN THE HIGH COURT OF ORISSA, CUTTACK**

**RVWPET No. 303 of 2023**

Mohon Kuamr ... **Petitioner**

**-Versus-**

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

**COUNTER AFFIDAVIT FILED ON BEHALF OF THE OPPOSITE PARTY NO.4:**

I, Sri Dinabandhu Munda, aged about 39 years, son of Surendra Munda, at present working as Asst. Section Officer (ASO), Panchayatiraj Department in the Odisha Secretariate, At-Secretariate Building, Bhubaneswar, Dist-Khurda, do hereby solemnly affirm and state as follows:-

1. That I am the Opp. Party No.4 in this case. I have gone through the Review Petition filed by the review petitioner and have understood the contest made therein.

2. That the review petitioner prayed for review of the order dtd: 10.04.2023 passed in W.P.C (OAC) No. 2105 of 2017.

3. That at the outset it is humbly submitted the present review petitioner has no locustandi to question the validity and legality of the judgment/order of this Hon'ble Court sought to be review, for the simple reason he is a fance

sitter. On the bare perusal of the pleading of the review petition it is clear that the review petitioner was waiting for the result of the case filed by different persons including the present Opp. Party No.4 and waiting for the opportunity. After long lapse of five years of the recruitment test pursuant to the Advertisement No. 8 of 2012-13 and after all the persons were selected and appointed, he has moved this Hon'ble Court, in a calculated manner and therefore the review petitioner is an opportunistic litigant and a fance sitter not entitled to any relief. He had adopted falsehood by saying that he has approached the Hon'ble Tribunal in O.A. No. 1962 (C) of 2012 with the self-same relief what he has made in the year 2020. The Advertisement No. 8 of 2012-13 was issued in the year 2013 and the written examination was conducted on 29.11.2015 and 30.11.2015. He never choosed to challenge any such result but waited till Sri Abhilash Bhoi filed a case and get appointment. Subsequently the Opp. Party No.4 has succeeded in his case. Therefore such a petition is not acceptable in law. Hence the Review Petition is liable to be dismissed.

**4.** That it is further humbly submitted that the present Opp. Party No.4 was duly selected and appointed as Asst. Section Officer and when his selection was cancelled by the OPSC, immediately he has approached the Learned Tribunal and also obtained an interim order of stay. The Opp. Party No.4 has also filed a Review Petition against the order passed in favour of Sri

Abhilash Bhoi, where he has not made a party. However the Opp. Party No.4 was allowed to continue in service with the strength of the interim order and at the same time Sri Abhilash Bohi was also appointed against an existing vacancy without affecting the right of the Opp. Party No.4. In such view of the matter by taking note of the fact and the law holding the field that the Opp. Party No.4 was not at fault either in the entire selection or in the appointment, this Hon'ble Court directed the authorities to allow him to continue in service because the other candidate Sri Abhilash Bhoi has already been appointed during pendency of the case. There is no illegality or irregularity in the order of this Hon'ble Court passed in W.P.C (OAC) No. 2105 of 2017. Since there is no apparent error on the face of the record such a review petition is not maintainable against the order under Annexure-7. Be that as it may a fance sitter like Review Petitioner is not entitled to any relief.

**5.** That the facts stated above are all true to the best of my knowledge and belief.

**Identified by**

**Advocate's Clerk**

Arinabandhu Munda

**Deponent.**

**Certificate**

Certified that due to want of cartridge papers this affidavit is typed in this thick white papers.

**Advocate.**

True copy
K3dd
attested

 ANNEXURE-4

**IN THE HIGH COURT OF ORISSA : CUTTACK**

**RVWPET No.303 of 2023**

**In the matter of:**

Mohan Kanhar ..... Review Petitioner

**-Vrs-**

State of Odisha & Ors Opp. Parties

**WRITTEN NOTE OF SUBMMISSION FILED BY THE REVIEW PETITIONER**

1. That, the present review petitioner most humbly submits that, the review petitioner has locus standi to file the present Review Petition to review the order dated 10.4.2023 and for a further direction to give appointment to the review petitioner in place of the Opp. Party No.4 for the simple reason that the review petitioner has secured more marks than the Opp. Party No.4 which is evident from Annexure-5 Series at page 47 and 48 of the Review Petition. Apart from that, since the rights and interest of the Review Petitioner is affected by the order dated 10.04.2023, the Review Petitioner has locus standi to challenge the same as per the Judgment passed by the Hon'ble Supreme Court in

the case of *Union of India vs. Naresh Kumar,* copy of which is filed and the same is on record.

2. That, it is crystal clear that, the review petitioner has secured 271.412 marks and the Opp. Party No.4 has secured 265.178 marks , which is evident from the page 47 and 48 of the review Petition.

3. That, the marks secured in the skill test computer (Practical) is qualifying in nature which is evident from the Advertisement No.8 of 2012-13. Which is evident from page 11 of the Appendix –I at note (2) copy of which has been filed by the review petition by way of additional affidavit.

4. That, the review Petitioner has qualified in the skill test in computer (Practical) is evident from page -50 of the Review Petition at Annexure-6. Hence a cogent reading of page- 47, page -48, page -49, page-50 of Review Petition and Page-11 of the Advertisement No.8 of 2012-13 it is clear that, what is to be considered for merit and appointment is the mark secured in the competitive examination except the mark secured in the skill Test Computer (Practical). In such circumstances, it is further submitted that , the petitioner has secured 271.412 marks Opp. Party No.4

has secured 265.178 marks. Hence the Present review Petitioner is a more potential candidate than the Opp. Party No.4. As a result it cannot be said under any circumstances that, the petitioner does not have locus standi to challenge the impugned order dated 10.04.2023 and to further pray for his appointment in place of Opp. Party No.4.

5. That, on perusal of the above stated facts, it can be concluded that, since the present petitioner has secured more marks than the Opposite Party no.4 but he is deprived of his rightful selection as the Opposite Party No.4 is sustaining in the post on the basis of the impugned order dated 10.04.2023 hence, that makes the present petitioner "an affected party". Therefore, the petitioner has *locus standi* to challenge the judgment dated 10.4.2023 , since the petitioner is aggrieved by the impugned order and as per the judgment passed by the Hon'ble Supreme Court in ***Union of India vs. Nareshkumar Badrikumar Jagad & Ors.*** which has been taken into record by this Hon'ble Court

*"19. ..... we have no hesitation in enunciating that even a third party to the proceedings, if he considers himself an aggrieved person, may take*

*recourse to the remedy of review petition. The quintessence is that the person should be aggrieved by the judgement and the order passed by this Court in some respect.*"

Therefore, the present petitioner being aggrieved by the impugned order has unwavering *locus standi* to file the present Review petition.

**6.** That, it is humbly submits that, the Review Petitioner is not a fence sitter, he has been pursuing his grievance by repeatedly approaching the appropriate forum i.e. Orissa state Administrative Tribunal, Cuttack Bench , Cuttack in O.A.No. 1962(C) /2018 (Which is mentioned inadvertently as O.A. No.1962/2012) which is clarified from WP(C) 2916/2020 , which was called for by this Hon'ble Court during course of hearing.

**7.** That, after abolition of the Orissa Administrative Tribunal the petitioner approached this Hon'ble Court in WP(C ) No.2916/2020 for the redressal of his grievance which was perused by this Hon'ble Court being called for during the course of hearing. Hence it is crystal clear that, the petitioner is perusing his grievance continuously by approaching the Orissa Administrative tribunal and this Hon'ble Court. Hence

it cannot be said that the petitioner is a fence sitter and he was not pursuing his own grievance deligently.

**8.** That, the petitioner became satisfied with the letter of the OPSC vide Annexure-6 of the Review Petiton, which was communicated to the petitioner in compliance to the order passed in WP(C) No. 2916 /2020, wherein it has been stated that, the Opp. Party No.4 failed to produce sportsperson certificate during scrutiny and in his place one Abhilas Bhoi has been appointed and said Abhilas Bhoi secured more marks than the present review petitioner. After receiving this communication from the OPSC, the present petitioner has to be satisfied that, he did not get appointment since Abhilas Bhoi secured more marks than him, and got selected in place of the Opposite Party No.4. it was not within the knowledge of the Petitioner that, the Opp. Party No.4 got a stay order on his removal. Apart from that, the Opp. Party No.4 did not make either the Review Petitioner a party or Abhilash Bhoi a party intentionally to obtain a stay order by misleading the court and behind the back of the Review Petitioner and Abhilash Bhoi.

**9.** That, thereafter when it came to the knowledge of the present review petitioner that, Opp. Party No.4 has

been allowed to continue by this Hon'ble Court in pursuance to the order dated 10.4.2023. He immediately challenged the same in RVWPET No.303/2023. Hence under no circumstances it can be said that, the present petitioner has slept over his own grievance and is a fence sitter.

**10.** That, the present review petitioner has never adopted falsehood at any point of time rather the Opp. Party No.4 has adopted falsehood , mislead the Court, practice fraud which is evident from the documents available before this Hon'ble Court more particularly described herein below:

a. The Opp. Party No.4 knows very well that, Abhilas Bhoi and the Present review petitioner have secured more marks than him but he purposefully, neither made Abhlas Bhoi a Party nor the Present Review Petitioner a party. Hence he has mislead this Hon'ble Court.

b. That, Opp. Party No.4 being a candidate of reserved category (ST) claimed further reservation by purporting himself to be a sportsperson having a valid sports certificate,

which is evident from the letter of the OPSC at page 49 & 50 of the review petition. Hence the Opp. Party No.4 has adopted falsehood , mislead the Court played a fraud with the Government and OPSC first then before this Hon'ble Court. Hence, the interim order passed by this Hon'ble Court and subsequently directing the Opp. Parties not to remove Opp. Party No.4 from the service is erroneous and illegal, which is apparent on the face of the record. Hence the order dated 10.4.2023 requires to be reviewed and the present petitioner should be given appointment in place of the Opp. Party No.4 , since the petitioner has secured more marks than the Opp. Party No.4.

11. That, the judgment dated 10.4.2023 passed in WP(C) (OAC) No2105/2017 needs to be reviewed for the following error apparent on the face of the record.

a) That, the Opp. Party No.4 has been allowed to continue in spite of securing less marks than the present review petitioner which is violative of Article 14 and 16 of the constitution of India.

b) That, the logic /reasoning of allowing the Opp. party No.4 to continue in the job as narrated in the judgment dated 10.4.2023 is that since the Opp. Party No.4 is continuing as before in terms of the interim order passed on 11.08.2017 he should be allowed to continue which has been passed without considering the fact that candidates have secured more marks than the Opp. Party No.4 violating their rights under Article 14 & 16 of the Constitution of India.

c) That, it is a settled principle of law that, the act of court should harm no litigant, ***Actus Curiae neminem gravabit***. Since somebody was given interim protection that cannot be the only ground for giving final relief.

d) That, from the interim relief granted by the court no right accrues to the parties.

e) That, allowing the Opp. Party No.4 to continue in the job amounts to circumventing on the advertisement which is sacrosanct in nature. In this respect it is humbly submitted that, by allowing the Opp. Party No.4 to continue in the job against a post over and above the advertised vacancy has

silently and inadvertently taken out the rights of the many aspiring candidates including the present review petitioner which is violative of Artcle 14 and 16 of the Constitution of India.

f) That, allowing the Opp. Party No.4 to continue in the job amounts to transgracing in to the administrative functioning's of the State. For the reason that the State Government has to make further provision to pay the salary and other service benefits to Opp. Party No.4 who is not a deserving candidate.

g) For the reason that, the judgment of Bikash Mahalik as cited in the impugned order is not applicable in the present case of the Opp. Party No.4, since in the case of Bikash Mahalik there was fault of the Government but in the present case, the Opp. Party No.4 has played a fraud with the Government by purporting himself to belong to sports person category then failing to produce the same during scrutiny , which is evident from the letter of the OPSC. In the circumstances above the judgment dated 10.4.2023 may be reviewed and a direction may be given to the State Government to

give appointment to the present petitioner in place of Opp. Party No.4.

**12.** That, in conclusion, it is most humbly submitted that, since the Review Petitioner is an aggrieved party of the Judgment dated 10.04.2023 and has secured more marks than the Opp. Party No.4, the judgment dated 10.04.2023 should be reviewed and the Review Petitioner should be given appointment in place of the Opp. Party No.4 in the interest of justice.

Cuttack — By the Review Petitioner through

Date — Advocate

(JACQUILINE JENA),

ADVOCATE.

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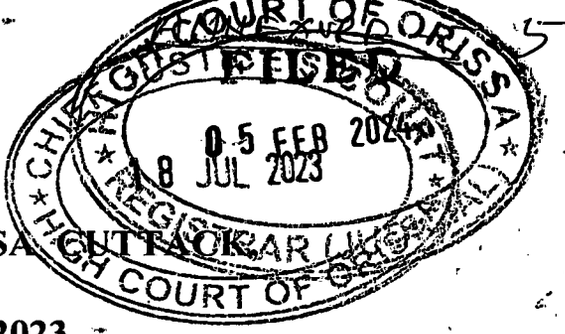



**IN THE HIGH COURT OF ORISSA, CUTTACK**

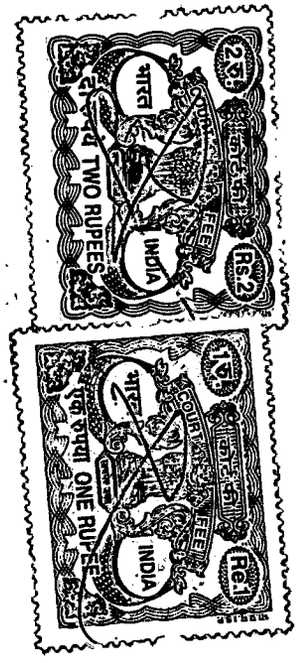
**RVWPET No.303 /2023**

**(Arising out of WPC (OAC) No.2105 / 2017 disposed of on 10.4.2023)**

**Code:** 310799

IN THE MATTER OF:

An application under Chapter –VIII Rule -23, Orissa High Court Rules, 1948 read with order XLVII Rule -1of the CPC.



AND

29304

Presented in Court
18/7/23
B.O.

IN THE MAITTER OF:

An Application seeking review /recall of the order dated 10.4.2023 passed in WPC(OAC) No.2105/2017.

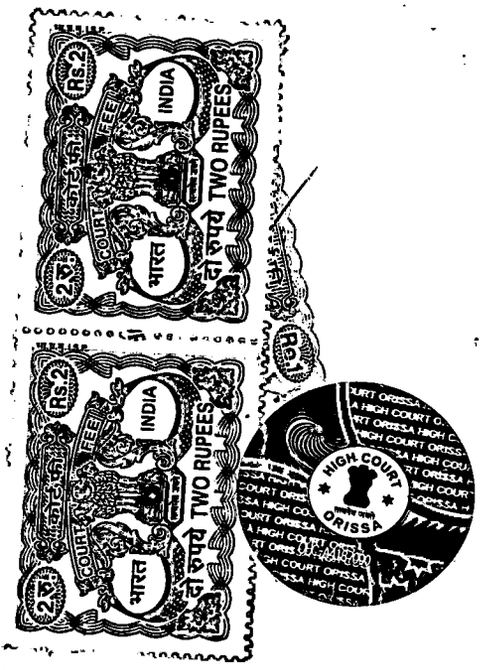
AND

IN THE MAITTER OF:

Mohan Kanhar, aged about 33 years, S/o- Sadasiba Kanhar, At/ P.O- Muniguda,Dist- Rayagada ,

...Petitioner

-Vrs-



18/07/2023

Surendra Prasad Dhal
Advocate
NOTARY, CUTTACK

1. State of Odisha, represented through its Commissioner –cum- secretary, Home Department, Secretariat Buildings Bhubaneswar, Dist- Khurda.

2. Secretary to Government of Odisha, General Administration Department, Secretariat Building, Bhubaneswar, District-Khurda.

3. Odisha Public Service Commission, represented through its Secretary, P.K.Parija Road, Cuttack, AT/PO/Dist.- Cuttack.

4. Dinbandhu Munda, Asst. Section Officer, PR & DW Department, Orissa Secretariat, Bhubaneswar, Dist- Khurda.

.....Opp. Parties



**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**RVWPET No.303 of 2023**

In the matter of an application under Chapter-VIII Rule-23, Orissa High Court Rules, 1948 read with order XLVII Rule-1 of the CPC.

.....

**Mohan Kanhar** .... **Petitioner**

*-versus-*

**State of Odisha & Others** .... **Opposite Parties**

**For Petitioner** : Ms. S. Jena, Advocate

**For Opp. Parties** : Mr. M.K. Balabantaray, AGA
Mr. S.K. Das, Advocate for O.P.No.4

**PRESENT:**

**THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY**

Date of Hearing:03.11.2023 and Date of Order: 05.01.2024

***Biraja Prasanna Satapathy, J.***

**1.** This Review Petition has been filed seeking review/recalling of order dated 10.04.2023, so passed by this Court in W.P.C(OAC) No.2105 of 2017 and with a further prayer to direct Opp. Party Nos.1 to 3 to select and give appointment to the Review-Petitioner as against the post of Asst. Section Officer in place of Opp. Party No.4.

**2.** It is the case of the Review-Petitioner that pursuant to the advertisement issued by the Odisha Public Service Commission (in short "Commission") vide Advertisement No.08 of 2012-13 for recruitment of Asst. Section Officer of Governors' Secretariat and State Secretariat, the Review-Petitioner made his application as a S.T. candidate. It is contended that in terms of the advertisement issued by the Commission, the Written Test was held on 29.11.2015 & 30.11.2015 in respect of all the subjects in different sitting and different centers of the State.

**2.**1. After conducting the Written Examination, provisional select list was issued by the Commission on 06.08.2016. Thereafter, vide notice dated 08.08.2016 all the candidates who were provisionally selected, were directed to appear for verification of documents to be held w.e.f. 12.08.2016 vide notice on 08.08.2016. But vide another notice issued on 15.08.2016, the date of verification of documents was fixed from 19.08.2016 to 26.08.2016.

**2.**2. It is contended that challenging the process of selection so adopted by the Commission, various

original applications were filed before the Tribunal. The Tribunal vide a common order dated 09.12.2016 in O.A. No.925(C) of 2016 and batch, while disposing all the original applications passed the following order in Para-23:-

> *"23. In view of the above analysis, we do not find any ground to quash the entire process of examination, but one has to keep in mind that when recruitment process is conducted by a constitutional body, like respondent No.2 i.e. OPSC, the entire process of examination needs to be viewed transparently and considered to be beyond reproach. Accordingly, respondent No.2 is directed to publish the code of answer of all the written examination papers including English and General Awareness in their website within seven days of receipt of copy of this order, if the same has not been published so far. Further, reasonable opportunities shall be given to the applicants and other candidates to submit their objections/grievance, if any, relating the marks awarded to them. Upon a fresh evaluation of such objection, if the applicants and other candidates are found to have secured more marks than the cut off marks, they shall be permitted to appear in the skill test and the remaining process of selection. In the event they are found suitable, they be offered appointment from the date their juniors got such appointment, with all service and financial benefits. The entire exercise be completed within a period of two months from the date of receipt of copy of this order."*

**2.3**. It is contended that in terms of the order passed by the Tribunal on 09.12.2016, Commission reviewed the examination process and published a fresh merit list vide notice dated 25.07.2017. As in the notice issued on 25.07.2017 the name of Opp. Party No.4/Petitioner (in W.P.C(OAC) No.2105 of 2017) was

not included, Opp. Party No.4 approached this Court in W.P.C(OAC) No.2105(C) of 2017. Since by the time a fresh merit list was issued on 25.07.2017, wherein name of Opp: Party No.4 was not included, taking into account the fact that Opp. Party No.4 had already been appointed, the Tribunal while issuing notice of the matter on 11.08.2017, passed an interim order to the effect that no consequential action be taken pursuant to the notice dated 25.07.2017 issued by the Commission, wherein the selection of the Opp. Party No.4 was cancelled.

**2.4.** It is contended that in the meantime Govt. in the Department of Home issued a notice on 19.05.2018 vide Annexure-4, wherein Opp. Party No.4 was issued with a show-cause calling upon him to submit his explanation, as to why he shall not be removed from his service with immediate effect. It is also contended that while the Review-Petitioner secured 271.412 marks, Opp. Party No.4 inspite of securing 265.178 marks was not only appointed but also allowed to continue by virtue of the interim order passed by the

Tribunal on 11.08.2017 and final order passed by this Court on 10.04.2023.

**2.5**. Learned counsel for the Review-Petitioner further contended that since as per the information provided by the Commission on 10.06.2020 under Annexure-6, cut off mark for S.T. (Male) category was fixed at 272.504 marks and Review-Petitioner having secured 271.412 marks, Review-Petitioner after being communicated with the information under Annexure-6, never took any further step with regard to his selection and appointment. However, when Review-Petitioner came to know that Opp. Party no.4 in terms of the interim order passed by the Tribunal on 11.08.2017 and final order passed by this Court 10.04.2023 has been allowed to continue as Assistant Section Officer, Review-Petitioner being aggrieved by such continuance of Opp. Party No.4 is before this Court seeking review of order dated 10.04.2023.

**2.6**. Learned counsel for the Review-Petitioner contended that since the Review-Petitioner admittedly has secured more mark than Opp. Party No.4 and both belong to S.T.(Male) category, Opp. Party No.4 having

secured 265.178 mark, his appointment and continuance as against the post of Asst. Section Officer is not permissible and accordingly the order dated 10.04.2023 so passed by this Court is liable to be reviewed.

**3.** Mr. S.K. Das, learned counsel for O.P. No.4/Petitioner (in W.P.C(OAC) No.2105 of 2017) made his submission basing on the stand taken in the counter affidavit so filed in the present Review Petition. It is contended that pursuant to the advertisement issued by the Commission vide Advertisement No.08 of 2012-13, the name of Opp. Party No.4 was reflected in the final select list published by the Commission on 10.09.2016. Pursuant to the merit list so published on 10.09.2016, Opp. Party No.4 was issued with the order of appointment as against the vacancy meant for S.T. catcgory vide order of appointment issued on 05.10.2016. It is contended that since at the relevant point of time, Opp. Party No.4 was serving as an Engineer in TCS, he tendered his resignation and on being relived from TCS on 31.10.2016, he joined as an

Assistant Section Officer on 01.11.2016 in terms of order of appointment issued on 05.10.2016.

**3.**1. It is contended that while so continuing pursuant to the order passed by the Tribunal on 09.12.2016 in O.A. No.925(C) of 2016 and batch, when in the notice dated 25.07.2017, the name of Opp. Party No.4 was not reflected and name of one Abhiram Bhoi was indicated in the merit list as against S.T. (Male) category, Opp. Party No.4 challenging notice dated 25.07.2017 filed O.A. No.2105(C) of 2017. The Tribunal while issuing notice of the matter, vide order dated 11.08.2017 passed an interim order by holding that no consequential action be taken against the Opp. Party No.4 pursuant to the notice issued on 25.07.2017, wherein the selection of the Opp. Party No.4 has been cancelled.

**3.2.** It is also contended that order of appointment issued in favour of Opp. Party No.4 was cancelled vide notice dated 25.07.2017 on the ground that one Abhiram Bhoi when was found to have secured more marks than Opp. Party No.4, the order of appointment issued in favour of Opp. Party No.4 was cancelled.

However, basing on the order passed by this Court in W.P.(C) No.33586 of 2018, Sri Abhiram Bhoi was appointed against the post of Asst. Section Officer vide order dated 11.05.2020. It is also contended that since Opp. Party No.4 had no fault with regard to his selection and appointment as against the post of Asst. Section Officer vide order dated 05.10.2016, O.P. No.4 in view of such long continuance, became entitled to continue as against the post in which he was so appointed on 05.10.2016. It is also contended that this Court taking into account long continuance of Opp. Party No.4 w.e.f. 01.11.2016 and the decision in the case of Bikash Mahalik Vrs. State of Odisha and Others as well as the appointment of Abhiram Bhoi vide order dated 11.05.2020, while disposing the Writ Petition allowed the Opp. Party No.4 to continue.

**3.3.** It is also contended that the Review-Petitioner was never a party to the Writ Petition filed by the Opp. Party No.4 in W.P.C(OAC) No.2105 of 2017, nor Review-Petitioner at any point of time challenged the selection and appointment of Opp. Party No.4, when the Opp. Party No.4 was so appointed vide order dated

05.10.2016 basing on the final merit list published on 10.09.2016.

**3.**4. It is also contended that Review-Petitioner at no point of time either challenged the initial final merit list published by the Commission on 10.09.2016 or consequent merit list published on 25.07.2017 basing on the order passed by the Tribunal on 09.12.2016 in O.A. No.925(C) of 2016 and batch. The petitioner all through remained silent and since at no point of time, the selection and appointment of the Opp. Party No.4 was challenged by Review-Petitioner or by any other person having belong to S.T.(Male) category, the prayer made in Review-Petition is completely misconceived and not at all entertainable after such long lapse of time.

**3.**5. It is also contended that Review-Petitioner is a fence sitter and in view of his inaction in challenging the merit list published by the Commission on 09.10.2016, wherein Opp. Party No.4 was found selected, and fresh merit list published on 25.07.2017, Review-Petitioner has no *Locus Standi* to seek for

review of order dated 10.04.2023, so passed in W.P.C(OAC) No.2105 of 2017.

**4.** To the submission made by the learned counsel for the Opp. Party No.4, learned counsel for the Review-Petitioner contended that since as per the information provided to him by the Commission on 10.06.2020 under Annexure-6, it was indicated that the cut off mark in S.T. (Male) category is fixed at 272.504 marks and Review-Petitioner has secured 271.412 marks, he did not take any further action after receipt of the information from the Commission. However, since Opp. Party No.4 having secured 265.178 mark was selected and appointed as against S.T. (Male) category and is now being allowed to continue, Review-Petitioner having secured 271.412 mark, the order passed by this Court on 10.04.2023 in allowing Opp. Party No.4 to continue as usual in terms of the order of appointment issued in his favour on 05.10.2016 is not sustainable in the eye of law and it needs to be reviewed.

**5.** Learned Addl. Govt. Advocate on the other hand made his submission basing on the stand taken by the State in its counter filed in W.P.C(OAC) No.2105 of

2017. It is contended that pursuant to the advertisement issued by the Commission vide Advertisement No.08 of 2012-13, final merit list was published by the Commission on 10.09.2016. Basing on his position in the merit list, Opp. Party No.4 was appointed vide order dated 05.10.2016, where he joined on 01.11.2016. But in terms of the common order passed by the Tribunal on 09.12.2016 in O.A. No.925(C) of 2016 and batch, the Commission while preparing a fresh merit list when found that one Abhiram Bhoi even though has secured 272.471 mark and has not been selected, name of Opp. Party No.4 was not reflected in the fresh merit list published by the Commission on 25.07.2017. However, challenging the exclusion of name of Opp. Party No.4 in the fresh merit list published by the Commission on 25.07.2017, Opp. Party No.4 approached the Tribunal in O.A. No.2105(C) of 2017. The Tribunal while issuing notice of the matter vide order dated 11.08.2017 passed an interim order by holding that no consequential action be taken against the Opp. Party No.4, pursuant to the notice issued by the Commission on 25.07.2017.

-109-

**5.**1. It is contended that Opp. Party No.4 since 01.11.2016 continued as against the post of Asst. Section Officer and Mr. Abhiram Bhoi who was found more meritorious than Opp. Party No.4 in the meantime was appointed as against the post of Asst. Section Officer vide order dated 11.05.2020 in terms of the order passed by this Court in W.P.(C) No.33586 of 2018.

**5.**2. Learned Addl. Govt. Advocate further contended that Review-Petitioner at no point of time has challenged the final merit list published on 10.09.2016 or the subsequent merit list published by the Commission on 25.07.2017.

**6.** To the submission made by the learned Addl. Govt. Advocate, learned counsel for the Review-Petitioner contended that the petitioner along with another had in fact approached the Tribunal in O.A. No.1962(C) of 2018 seeking publication of their result by the Commission. The Tribunal vide order dated 23.07.2018 while disposing the matter though directed the Commission to consider the grievance of the Review-Petitioner, but the said order when was not

- 110 -

implemented, the Review-Petitioner approached this Court in W.P.(C) No.2916 of 2020 *inter alia* with the following prayer:-

> *"It is therefore most respectfully prayed that, this Hon'ble Court may be pleased to give a direction to the Opp. Party No.1 to 3 to shortlist and give appointment to the present petitioner Assistant Section Officer in pursuance to the Advertisement No.8/2012-13 published by Odisha Public Service Commission (Opp. Party No.2) in place of Opp. Party No.4."*

**6.1.** It is contended that this Court vide order dated 06.02.2020 while disposing the Writ Petition, directed the Commission to consider the request made by the petitioner as directed by the Tribunal in its order dated 23.07.2018 in O.A. No.1962(C) of 2018. Pursuant to the order passed by this Court on 06.02.2020, Review-Petitioner was provided with the information vide letter dated 10.06.2020 under Annexure-6. Since in the said notice it was indicated that the Review-Petitioner having belong to S.T. Category has secured 271.412 mark and the cut off mark in S.T. (Male) category having been fixed at 272.504 marks, Review-Petitioner did not take any further action after being communicated with the information. However, on coming to know that Opp. Party No.4 having secured 265.178 marks has been allowed to continue in terms

of the order passed by this Court on 10.04.2023, Review-Petitioner being aggrieved by such selection and appointment as well as continuance of Opp. Party No.4 has filed the Review Petition seeking review of order dated 10.04.2023.

**7.** I have heard Ms. S. Jena, learned counsel for the Review-Petitioner, Mr. M.K. Balabantaray, learned Addl. Govt. Advocate for the State and Mr. S.K. Das, learned counsel appearing for O.P. No.4/Petitioner in W.P.C(OAC) No.2105 of 2017.

**8.** Having heard learned counsel for the parties and after going through the materials available on record, this Court finds that the Commission issued the advertisement vide Advertisement No.08 of 2012-13 for recruitment of Asst. Section Officer. In the said recruitment process, final merit list was published by the Commission on 10.09.2016. Basing on the position of the Opp. Party No.4 in the final merit list so published on 10.09.2016, Opp. Party No.4 was provided with appointment vide order dated 05.10.2016.

- 112 -

**8.1**. However, pursuant to the common order passed by the Tribunal on 09.12.2016 in O.A. No.925(C) of 2016 and batch when in the fresh merit list published by the Commission on 25.07.2017, name of Opp. Party No.4 was not reflected and in his place the name of one Abhiram Bhoi was included, Opp. Party No.4 challenging the notice dated 25.07.2017, so issued by the Commission, approached the Tribunal in O.A. No.2105(C) of 2017. The Tribunal while issuing notice of the matter on 11.08.2017 passed an interim order indicating therein that no consequential action be taken against Opp. party No.4 pursuant to the notice issued by the Commission on 25.07.2017. In terms of the interim order passed by the Tribunal on 11.08.2017 in O.A. No.2105(C) of 2017, Opp. Party No.4 was allowed to continue as against the post of Assistant Section Officer to which he was appointed vide order dated 05.10.2016 with his date of joining as 01.11.2016.



**8**.2. As found from the record, Review-Petitioner at no point of time has challenged the final merit list published by the Commission on 10.09.2016, basing

on which Opp. party No.4 was appointed vide order dated 05.10.2016. Review-Petitioner also never challenged the order of appointment of Opp. Party No.4 at any point of time nor he filed any application seeking his intervention in O.A. No.925(C) of 2016 which was disposed of vide order dated 09.12.2016. Review-Petitioner has also not challenged fresh merit list published by the Commission on 25.07.2017 in terms of the common order passed by the Tribunal on 09.12.2016.

Review-Petitioner only for the first time approached the Tribunal along with another person in O.A. No.1962(C) of 2018 *inter alia* with a prayer to direct the Commission to publish his result. The Tribunal vide order dated 23.07.2018 disposed of the O.A. by directing the Commission to consider the grievance of the Review-Petitioner.

**8.**3. Review-Petitioner after disposal of the matter by the Tribunal on 23.07.2018, never take any further step till he approached this Court in W.P.(C) No.2916 of 2020. Even though in the Writ Petition, Review-Petitioner made a prayer to direct Opposite Parties

- 114 -

therein to provide appointment to the Review-Petitioner, but the said prayer was not accepted by this Court. This Court vide order dated 06.02.2020 while disposing the Writ Petition, directed the Commission to comply with the order passed by the Tribunal on 23.07.2018 in O.A. No.1962(C) of 2018. Even though in terms of the order passed by this Court on 06.02.2020, Review-Petitioner was intimated about the decision of the Commission vide letter dated 10.06.2020 under Annexure-6, but Review-Petitioner after receipt of the said letter also did not take any further action to raise his claim for his appointment as against S.T. (Male) category.

**8.4.** Since the Review-Petitioner at no point of time has challenged the initial merit list published by the Commission on 10.09.2016 and the order of appointment issued in favour of the Opp. Party No.4 on 05.10.2016 nor the fresh merit list published by the Commission on 25.07.2017, it is the view of this Court that the prayer of the Review-Petitioner seeking review of order dated 10.04.2023, so passed in W.P.C(OAC)

No.2105 of 2017 is not at all entertainable in view of such conduct.

**9.** Accordingly, prayer for Review of order dated 10.04.2023 so prayed for is rejected. The Review Petition is accordingly dismissed.

Sd. B.P. Satapathy, J

***Orissa High Court, Cuttack***
***Dated the 5th January, 2024/Basudev***

Compared by

22/01/24

Date of Application :- 22
Date of Notification :- 00
Date of Supply :- 24 | 01. 2024
Date of Ready :- 24
Date of Delivery :- 25 | 01

C.A. No- 6223 /2024

MEMO OF COSTS

| | Rs. | P. |
|---|---|---|
| Application Fee | 10 | 00 |
| Searching Fee | — | - |
| Folios / No. Pages 20 | 40 | 00 |
| Hologram Fees | 20 | 00 |
| Photo Copy | 20 | 00 |
| For Typed | — | - |
| | 90 | 00 |

(Rupees) Ninety

24.01.24
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Dated 24/1/24
Assistant Registrar (Estt.)
ORISSA HIGH COURT
Authorised Under Section 76, Act-I of 1872

COURT OF ORISSA

# FORM OF VAKALATNAMA

IN THE HIGH COURT OF JUDICATURE ORISSA, CUTTACK

W.A No. 148 of 2024

Mohan Kanhar — Petitioner

Versus

State of Odisha — Opp. Parties

Know all men by these presents, that by this Vakalatnama,

I/We Mohan Kanhar, aged about 33 years, S/o – Sadasiba Kanhar, At/Po – Munigreda, Dist – Rayagada.

Plaintiff /Defendant /Appellant /Respondent /Petitioner /Opposite Party in the aforesaid Suit/Appeal Case do hereby appoint and retain **Sri/Ms. SAILABALA JENA, T.P.TRIPATHY, K.BADHEI, A.SAHU, [illegible] K.NANDA, [illegible] JACQUILINE JENA, G-168-170, Sector-6, CDA, Cuttack-753014**, Advocate(s) to appear for me/us in the above case, and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein including all applications for return of documents or receipt of any money that may be payable to me/us in the said case and also in applications for review in appeals under Orissa High Court order and in applications for leave to appeal to Supreme Court. I/We authorize my/our Advocate(s) to admit any compromise lawfully entered in the said case.

Dated ....5.2.2024

Received from the Executants( satisfied and accepted as hold no brief for the other side

Accepted as above

**Ms. SAILABALA JENA,**
Advocate
Enrollment No.O-555-1998,
Ph No. 7008035441.

Accepted as above

**Mr. TARINEE PRASAD TRIPATHY,**
Advocate
Enrollment No.O-660/2005
Ph No.7978960738

Accepted as above

**Mr. KIRRTTIRAJ NANDA,**
Advocate
Enrollment No.O-556.2020
Ph No.8917249091

Accepted as above

**Ms. JACQUILINE JENA,**
Advocate
Enrollment No. O-1366/2021
Ph No. 7008329380

Accepted as above

**Mr. KIRTAN BADHEI,**
Advocate
Enrollment No. O-577/2008
Ph No. 9778615427

Accepted as above

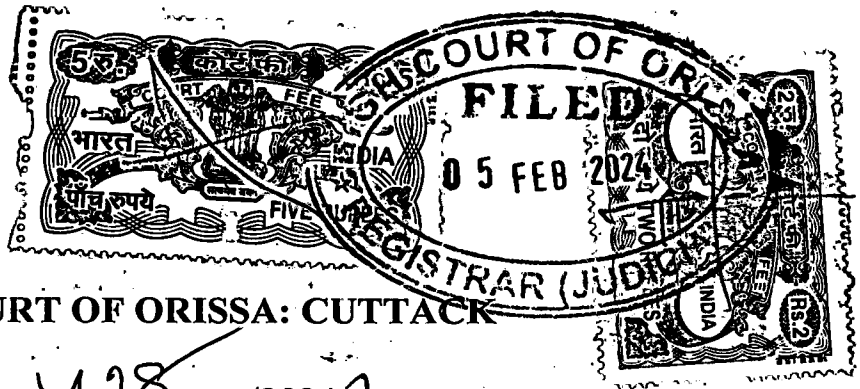
**Mrs. ARUNIMA SAHU,**
Advocate
Enrollment No.O-1314/2010
Ph No. 9777190734

Accepted as above

[illegible]
Ph No. [illegible]

Mohan Kanhar

**SIGNATURE OF EXECUTANT**




**IN THE HIGH COURT OF ORISSA: CUTTACK**

I.A. No. 428 /2024

(Arising out of Writ Appeal No. 148 /2024)

(CD-WA 5442/2024)

**IN THE MATTER OF:**

An application of Chapter-VI, Rule 27(A) of the Orissa high Court Rules.

AND

**IN THE MATTER OF:**

An application for stay of effect of order dated 10.4.2023 passed in WPC(OAC) No.2105(C)/2017 and order dated 5.1.2024 passed in RVWPET No.303/2023, vide Annexure-1 & 5 respectively, till the final disposal of the present Writ Appeal.

AND

**IN THE MATTER OF:**

Mohan Kanhar ... Appellant

-Vrs-

State of Odisha & Others and others .... Respondents

SAILABALA JENA
ADVOCATE
E. No.-O-555/1998
Mob.-7008035441

To,

The, Hon'ble Acting Chief justice of High Court of Orissa and his lordship's companion justices of the said Hon'ble Court.

The humble petition of the Appellant above named

**MOST RESPECTFULLY SHEWETH:-**

1. That, the Appellant has filed this Writ Appeal before filing of this I.A. . The averments made in the same Review Petition may be read as apart and partial of this I.A. which has been reproduced her for the sake of the brevity.

2. The Appellant has a good prima-facie case and there is likelihood of succeeding.

Adv
SAILABALA JENA
ADVOCATE
E. No.-O-555/1998
Mob.-7008035441

3. That, the balance of convenience lies in favour of the Appellant and against the Respondents.

4. That the Appellant most humbly submits that, the Respondent No.4 is continuing in the job by virtue of the illegal order vide Annexure-1 & 5 respectively.

5. That the Appellant most humbly submits that, unless the effect of order dated 10.4.2023 passed in WPC (OAC) No.2105/2017 and order dated 5.1.2024 passed

NOTARY CUTTACK ★ GOVT. OF ORISSA ★ N. S. GHOSE NOTARY CUTTACK TOWN

in RVWPET No.303/2023, vide Annexure-1 & 5 respectively, is stayed till the final disposal of the writ appeal, then great prejudice will be caused to the Appellant which cannot be compensated in any other term.

**PRAYER**

It is therefore most respectfully prayed that, this Hon'ble Court may be pleased to stay the effect of the order dated 10.4.2023 passed in WPC (OAC) No.2105/2017 and order dated 5.1.2024 passed in RVWPET No.303/2023, vide Annexure-1 & 5 respectively, till the final disposal of the writ petition.

This Hon'ble Court may also be pleased to pass any other further order and orders, direction/directions, as deemed fit and proper in fact and circumstances of the case.

Cuttack

Date 5/2/24

By the Appellant through

Adv

Advocate

(SAILABALA JENA),

ADVOCATE,

Enrolment No.O-555-1998,

Ph. No. 7008035441,

G-168-170, Sector-6,

CDA, Cuttack.

HIGH COURT OF ORISSA
FILED
05 FEB 2024
REGISTRAR (JUDICIAL)

# AFFIDAVIT

I, Mohan Kanhar, aged about 33 years, S/o- Sadasiba Kanhar, At/ P.O- Muniguda,Dist- Rayagada, do hereby solemnly affirm and state as follows:-

1. That I am the Appellant in this case.
2. That the facts stated above are all true to the best of my knowledge and belief.

**Identified by:**

Mohan Kanhar
**Deponent**

Adv
**Advocate**

SAILABALA JENA
ADVOCATE
E. No.-O-555/1998
Mob.-7008035441

## CERTIFICATE

Due to non-availability of the cartridge paper this petition has been typed in thick white papers.

Cuttack

By the Appellant Through

Date 5/2/2024

Adv
Advocate

SAILABALA JENA
ADVOCATE
E. No.-O-555/1998
Mob.-7008035441

The above named deponent being identified by Mr./Ms. S. Jena Advocate appears before me at ...AM/PM. on this the 5/2/24 20..... solemnly affirms the facts stated are true to his/her knowledge and belief.

5/2/24
NOTARY
CUTTACK (ODISHA)

**OFFICE OF THE ADVOCATE GENERAL, ODISHA**

SLNO: 448103 Date: 06-Feb-24 TIME: 11:26

CASETYPE: DWA No: 5442 YEAR: 2024

PETITONER / APPELANT: MOHAN KANHAR

RESPONDENT / OPP PARTY: STATE

☑ PETITION & MEMO ☑ IA ☐ EXTRA COPY

☐ COUNTER ☐ ADDL SET:

☐ REJOINDER ☐ CONSOLIDATED

MISC. COPY

ADDL. STANDING COUNSEL

CRR-2011 10035 of 10035

SCANNED

**COMPUTERISED FILING COUNTER**
**ORISSA HIGH COURT,CUTTACK**
**ACKNOWLEDGEMENT SLIP**

**Seat No : 2**

**Branch No : WRIT APPEAL**

Receipt No : 39868/2024 Date Of Receiving : 22/03/2024 Time : 03:05:07 PM

Filing No : D- **WA 5442/2024**

Case No : **WA 148/2024**

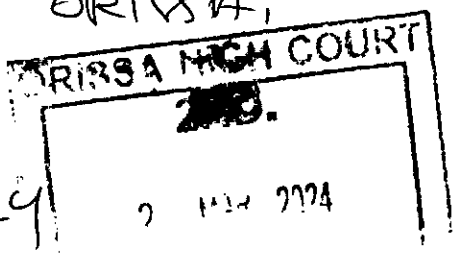
Received From : Petitioner

Filed By: ADVOCATE FOR PETITIONER

Document(s) Filed :

1- REQUISITE FOR OPS --- Postal Fee -Rs.85

IN THE HIGH COURT OF ORISSA,
CUTTACK




WA 148 / 2024

Mohan Kanhar .... Appellant

-V/S-

State of Odisha & Other .... Respondents

## Memo

Hereunder filed requisites for issuance of Notice by Speed Post with AD & Postage Stamp of Rs 85/- as per Computer Office Counts order.

By the appellant thru

Cuttack
Dt. 22.3.2024

K Sahu
Advocate

2

SCANNED

**OFFICE OF THE ADVOCATE GENERAL, ODISHA**

SLNO: 552187 Date: 22-Mar-24 TIME: 3:02 PM

CASETYPE: WA No: 148 YEAR: 2024

PETITONER / APPELANT: MOHAN KANHAR

RESPONDENT / OPP PARTY: STATE

ORISSA HIGH COURT
27 MAR 2024
SECTION OFFICER

- [ ] PETITION & MEMO
- [ ] MISC CASE
- [x] EXTRA COPY
- [ ] COUNTER
- [ ] ADDL
- [ ] REJONDER
- [ ] CONSOLIDATED

MISC. COPY

ADDL. STANDING COUNSEL

# Track Consignment

Quick help

* Indicates a required field.

* Consignment Number

EX851879497IN

Track More

| Booked At | Booked On | Destination Pincode | Tariff | Article Type | Delivery Location | Delivery Confirmed On |
|---|---|---|---|---|---|---|
| Chandinchowk H.O | 03/04/2024 10:24:00 | 751001 | 85.00 | Speed Post Parcel Domestic | Bhubaneswar G.P.O. | 04/04/2024 18:11:09 |

**Event Details For : EX851879497IN**

**Current Status : Item Delivered(Addressee)**

| Date | Time | Office | Event |
|---|---|---|---|
| 04/04/2024 | 18:11:09 | N.M.D Parcel Centre Bhubaneswar | Item Delivered(Addressee) |
| 04/04/2024 | 11:51:00 | N.M.D Parcel Centre Bhubaneswar | Out for Delivery |
| 04/04/2024 | 10:35:48 | N.M.D Parcel Centre Bhubaneswar | Item Received |
| 04/04/2024 | 08:59:45 | Bhubaneswar PH | Item Dispatched |
| 04/04/2024 | 08:36:28 | Bhubaneswar PH | Item Bagged |
| 04/04/2024 | 06:50:08 | Bhubaneswar PH | Item Received |
| 03/04/2024 | 16:56:59 | Chandinchowk H.O | Item Dispatched |
| 03/04/2024 | 16:29:58 | Chandinchowk H.O | Item Bagged |
| 03/04/2024 | 10:24:00 | Chandinchowk H.O | Item Booked |

## स्पीड पोस्ट द्वारा

Case No. WA/148/2024

## पावती

1. पाने वाले का नाम व पता / Name & Address of the Addressee

Dinabandhu Mureka, Asst. Secty Officer, ~~Office~~ PR&DW Department, Orissa Secretariat, Bhubaneswar, Dist- Khurda.

2. पाने वाले के हस्ताक्षर / Signature of Recipient

Dinabandhu Mureka 4.4.2024

3. प्राप्तकर्ता का प्रेषित से संबंध / Relation of Recipient with addressee (Please Tick)

☐ स्वयं / Self ☐ पत्नी / Wife

- परिवार का सदस्य (बताएं) / Family member (Specify)
- कोई अन्य (बताएं) / Any other (Specify)

4. वितरण की तिथी / Date of Delivery

## By Speed Post

2708

## Proof of Delivery

EMS SPEED POST

EZ851879497IN

To

High Court of Orissa,
Cuttack - 753002.

SCANNED

**COMPUTERISED FILING COUNTER**
**ORISSA HIGH COURT,CUTTACK**
**ACKNOWLEDGEMENT SLIP**

**Seat No : 2**

**Branch No : WRIT APPEAL**

Receipt No : 81047/2024 Date Of Receiving : 04/07/2024 Time : 03:40:39 PM

Filing No : D- **WA 5442/2024**

Case No : **WA 148/2024**

Received From : Respondent (4)

Filed By: M/S SAMEER KUMAR DAS

Document(s) Filed :

3- Vakalatnama --- Court Fee -Rs.12 (19575/2024)

IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No. 148 of 2024

Between

Mohan Kanhar ... Petitioner.

-Versus-

State of Odisha & ors ... Opp. Party.

Know all men by these presents. That by this vakalatnama I, Dinbandhu munda, Asst Section officer, PR & DW Department Orissa, Secretariat, Bhubaneswar Dist- Khurda, OP.NO-4 ~~Petitioner~~ in the aforesaid Case do hereby appoint and retain **SAMEER KUMAR DAS, Enrolment No. O-635/92, Mobile No.-9437172660, PRAKASH KUMAR BEHERA, Enrolment No. O-161/13, Mobile No.-9437106610, NIRAJAN JENA, Enrolment No. O-940/16, Mobile No.-9439955080.**

Advocate(s) to appear for me/us, In the above case and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application connected with the same, or any decree or order passed therein including all applications for return of documents or receipt of any money that may be payable to me/us in the said case and also in applications for review in appeals under Orissa High Court order and applications for leave to appeal to Supreme Court. I/We authorize my/our Advocate (s) to admit any compromise lawfully entered in the said case.

**Dated** 7.4. .2024

Received from the Executant (s)
Through certify that. I hold no brief
For the other side.
Satisfied ~~and accepted~~

**Advocate**

Accepted as above

**Advocate**

Accepted as above

**Advocate.**

Dinabandhu Munda

**Signature of the executants**

Hon'ble C. J. Court.

Division Matter

4/7/24

# IN THE HIGH COURT OF ORISSA: CUTTACK

## MENTION MEMO

1 Number of the Case : WA 148 / 2024

2 Name of the Parties :

Mohan Kanhar

Petitioner / Appellant

-: VERSUS :-

State of Odisha & ors

Opp. Party / Respondent.

3. Party seeking position : ~~Petitioner~~ / Opp. Party / ~~Respondent~~ Intervener / Appellant

4. Name of the Advocate of the Party seeking position : Sailabala Jena & Associates

5. Name of the Advocates appearing for the Opp. Party : State

6. Mention for : Admission, Order, Stay, Hearing.

7. Reason for Mention : That, the appellant challenging the order dated 10.4.2023 passed in WP(C) (OAC) No. 2105/2017 and the order dated 5.6.2024 passed by the Hon'ble Single Judge in RVWPET No. 303/2023 whereby the learned Court allow the Respondent No. 4 to continue in his service which is illegal. Hence, urgent mention.

8. Date on which posting is sought : On 4.7.2024

9. Whether any caveat has been filed or not : No

10. Indicate whether the matter is in the list before any other Bench : No

Cuttack

Date 3/07/2024

K Jena

*Signature of Advocate*

DRCL? List this matter on [illegible] Before Hon'ble C. J. & S. Rath J.

# IN THE HIGH COURT OF ORISSA : CUTTACK

## MENTION MEMO

1. Number of the Case : WA 148/2024
2. Name opf the Parties :

Mohan Kanhar — Peitioner / Appellant

-: VERSUS :-

State of Odisha & Ors — Opp. Party / Respondent

3. Party seeking position : ~~Petitioner~~ / ~~Opp. Party~~ / ~~Respondent~~ / ~~Intervener~~ / ~~Appellant~~

4. Name of the Advocate of the Party seeking position : Sailabala Jena & Associates

5. Name of the Advocates appearing for the Opp. Party : State — list

6. Mention for : ~~Admission~~, ~~Order~~, ~~Stay~~, ~~Hearing~~

7. Reason for Mention : Ref. the matter has been posted to 20.8.2024, but not listed till date. That due to stay order obtained before the Court below the Respondent Nos. continued on Service even tho he secured less marks as that the appellant. Hence urgent. Kindly taken up

8. Date of which posting is sought : on 28.11.2024
9. Whether any caveat has been filed or not : No
10. Indicate whether the matter is in the list before any other Bench : No list

Cuttack

Date 27/11/2024

Signature of Advocate