



ORISSA HIGH COURT : CUTTACK

WA No.489 of 2025

In the matter of an Appeal under Article 4 of
the Orissa High Court Order, 1948
read with
Clause 10 of the Letters Patent constituting
the High Court of Judicature at Patna
and
Rule 6 of Chapter-III and Rule 2 of Chapter-VIII
of the Rules of the High Court of Orissa, 1948

And

I.A. No.1182 of 2025

In the matter of an Application for condonation
of delay in filing writ appeal

* * *

State of Odisha
Represented through
Additional Chief Secretary to Government
Water Resources Department
Government of Odisha
Rajiv Bhawan, Bhubaneswar,
District: Khordha. ... Appellant
(Opposite party No.1
in the writ petition)

-VERSUS-

1. Satyashri Mohapatra
Aged about 51 years
Son of Umesh Chandra Mohapatra
Permanent resident of Plot No.883/6
Millenium Colony, Nilakantheswar Marg
Baramunda, Unit-VIII, Bhubaneswar,
At present working against



the regular sanctioned post of AEE as Work Charged
Assistant Executive Engineer (Mechanical)
Office of the Executive Engineer
Mechanical Division
Laxmiposi, Baripada
District: Mayurbhanj. ...

Respondent
(Petitioner in
the writ petition)

2. Principal Secretary
Finance Department
Lokseva Bhawan
At/P.O.: Bhubaneswar
District: Khordha, PIN:751001.

3. Engineer-in-Chief
Department of Water Resources
Secha Sadan, Odisha
Bhubaneswar,
District: Khordha, PIN: 751001.

4. Chief Engineer (Mechanical)
Secha Sadan, Odisha
Bhubaneswar
District: Khordha, PIN: 751001. Proforma Respondents
(Opposite party Nos. 2, 3
& 4 in writ petition)

Counsel appeared for the parties:

For the Appellant : Mr. Saswat Das,
Additional Government Advocate

For the Respondent No.1 : Mr. Prafulla Kumar Rath,
Senior Advocate
assisted by
M/s. Rudra Narayan Parija and
L. Behera, Advocates

P R E S E N T:



**HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON**

AND

**HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN**

Date of Hearing : 17.07.2025 :: Date of Judgment : 24.07.2025

JUDGMENT

MURAHARI SRI RAMAN, J.—

Assailed in the writ appeal filed at the instance of the functionary of the Government of Odisha in Water Resources Department is the Judgment dated 28.10.2024 rendered by a learned Single Judge of this Court in W.P.(C) No.14996 of 2024, beseeching the following relief(s):

“Under these circumstances, the Appellants most humbly pray that this Hon’ble Court may graciously be pleased to admit this Appeal, call for the records and after hearing the parties be pleased to set aside the impugned order dated 28.10.2024 passed in W.P.(C) No.14996 of 2024 vide Annexure-3.

And be further pleased to pass any other order/orders as this Hon’ble Court deem just and proper.

And for this act of kindness, the appellant as in duty bound shall ever pray.”

FACTS:



2. Facts leading to filing of this writ appeal as adumbrated by the appellant-Water Resources Department and undisputed factual matrix depicted in the impugned Judgment of the learned Single Judge are described *infra*.

2.1. Appointed to work as NMR/DLR Graduate Engineer under the Department of Water Resources, the Petitioner in writ petition, arrayed as Respondent No.1 herein, along with nine other Civil Graduate NMRs/DLRs were engaged against regular vacant posts of Assistant Engineer on 27.02.2004.

2.2. Considering contentions and grievance in the petition, registered as WP(C) No.1748 of 2007, this Court disposed of *vide* Order dated 17.07.2012 in respect of nine writ petitioners (other than respondent No.1) with an observation that pendency of the writ petition would not be a bar for consideration of the case of the nine petitioners therein for the post of Work Charged Assistant Engineers. Accordingly, their services were brought over to the work charged establishment to perform as Assistant Engineers *vide* Notification dated 8th February, 2013 of the Department of Water Resources, except respondent No.1. Therefore, being discriminated, respondent No.1 approached the learned Odisha Administrative Tribunal, Cuttack Bench, Cuttack in Original Application under Section 19 of the



Administrative Tribunals Act, 1985, registered as O.A. No.2415(C) of 2015, which stood disposed of *vide* Order dated 03.03.2017 with the following observation:

“***

5. *Considering the submissions, we note that the issue with regard to appointment/regularization of the NMR graduate engineers is pending adjudication in the Hon'ble High Court in W.P.(C) No.1748/2007. However, as per liberty given by the Hon'ble High Court, respondent authorities have brought nine graduate engineers to work charged establishment vide order at Annexure-7 as those NMR/DLR employees were engaged prior to 12.04.1993. Government vide their letter dated 5.6.1993 as at Annexure-9 have reiterated their earlier view that the ban imposed by the Government for engagement of NMR/DLR employees is to be followed strictly but with an exception that where it is considered necessary such recruitment shall be made with prior approval of the Government. For better appreciation, the relevant portion of the instruction of the Government is extracted as follows:-*

Similarly, a ban has also been imposed for engagement of N.M.R./D.L.R./H.R. or by whatever nomenclature they may be called in his department letter no.14300 dated 18.4.1990 and No.33956 dated 13.9.90. It was made clear in the Department letter No.2670 dated 28.1.1991 that if it is considered necessary for engagement of any such worker, prior approval of Government before engaging the N.M.Rs should be taken. In spite of this, it has come to the notice of the Government that



such engagement still continue without prior approval of Government.

In view of the above position, it is once again reiterated that the ban on recruitment to the work charged and N.M.R./DLR should be strictly followed. All future recruitments in violation of Government instructions should be treated as unauthorised and the officer(s) making such engagements and disbursing their wages shall be personally held responsible. Also it is made clear that there will be no transfer/promotion/reversion of work charged employees/wages employee nor any post be filled up as instructed in letter No.39658 dated 15.12.1992 without prior approval of Government and the staff found surplus in one project should be redeployed in other new and on going projects. If it is considered necessary for appointment/engagement of any work charged, NMR/DLR etc. prior approval of Government should be taken by furnishing suitable proposals with sufficient justification.

Learned counsel for the applicant submitted that Government vide letter dt.27-10-1999 (Annexure-1) approved the engagement of the applicant. The said letter of the Government reads as follows:

*‘Government of Orissa
Department of Water Resources
No._____/WR. Bhubaneswar, the*

From

*Shri P. Swain
Deputy Secretary to Government*



To

*The Enginer-in-Chief
Subarnarekha Irrigation Project
Laxmiposi*

*Sub: Engagement of Sri Satyashri Mahapatra, a
Mechanical Engineering Graduate on D.L.R.
basis.*

Sir

*In inviting a reference to your letter no.13956
dated 6.10.1994 on the above subject. I am
directed to say that your proposal to engage Sri
Satyashri Mahapatra, A Mechanical
Engineering Graduate on D.L.R. basis for the
maintenance work of the water supply system
in Laxmiposi Irrigation Colony has been
approved by Government.*

*Yours faithfully,
Deputy Secretary to Government'*

6. *From the contents of the letter it appears that
appointment of the applicant was found necessary,
for which Govt. approved the appointment of the
applicant. The order fully satisfies the requirement of
the letter of the Govt. dated 5.6.1993 (Annexure-9).
Since the engagement of the applicant after
12.4.1993 but with due approval of the Govt; he can
not be discriminated from other nine graduate
Engineers, who have been brought over to the work
charged establishment vide order at Annexure-7 and
has to be treated at par with them.*

*Accordingly, the O.A. is allowed, the respondent
authorities are directed to treat the applicant at par*



with the graduate Engineers, who have been brought over to the work charged establishment as per order vide Annexure-7 and appropriate notification be issued giving him all benefits as has been extended to his counter parts vide order at Annexure-7. However, the said order is subject to the outcome of the order of the Hon'ble High Court in WP(C) No.1748 of 2007¹. Action as per the observation be taken within a period of two months from the date of receipt of copy of this order.

7. With these orders, the O.A. is disposed of.”

2.3. Accordingly, Respondent No.1 was brought over to the work charged establishment with effect from 08.02.2013, i.e., date on which other similarly placed nine counterpart employees were brought over to the work charged establishment.

¹ By Order dated 14.03.2022 of a Division Bench of this Court, W.P.(C) No. 1748 of 2007 [Saroja Kumar Nayak and Others Vrs. State of Odisha and Others] stood disposed of with the following observations:

- “1. Learned counsel for the petitioners states that in a subsequent development, these very petitioners approached the Odisha Administrative Tribunal (OAT) with the original applications, i.e., O.A. No.1036(C) of 2016 and O.A. No.1089(C) of 2016 seeking regularisation of their services. An order dated 16th May, 2018 was passed by the OAT, Cuttack allowing the said OAs. It appears that the State Government has not challenged that order and it has attained finality. He further states that a contempt petition has been filed seeking implementation of the said order. The contempt petition is pending.*
- 2. It may be noted here that by an interim order passed by this Court in the present petition, it had been clarified by this Court that notwithstanding with the present petition the case of the petitioners for regularisation can still be considered. It appears that pursuant to the said interim order, the above developments have taken place.*
- 3. In view of the above developments, learned counsel for the petitioners seeks not to press the present petition with liberty to pursue the contempt petition which is stated to be pending.*
- 4. The writ petition is disposed of with the above liberty.*
- 5. An urgent certified copy of this order be issued as per rules.”*



2.4. By Resolution dated 21.03.2013, the Department of Water Resources restructured cadre of Odisha Engineering Service and Odisha Diploma Engineering Service. Respondent No.1 and other nine similarly placed employees preferred O.A. No.1036(C) of 2016 and O.A. No.1089(C) of 2016 before the learned Odisha Administrative Tribunal, Cuttack Bench, Cuttack, praying therein “to allow them to be posted in the work charged establishment as Assistant Executive Engineer” with effect from 21.03.2013. Said Original Application were disposed of by a common order dated 16.05.2018 directing the Department to treat applicants as Work Charged Assistant Executive Engineer against the post, which was upgraded and give them all the service and financial benefits from the date said posts were upgraded.

2.5. Nine other similarly situated persons by Notification dated 14.05.2019 were granted service and financial benefits with effect from 21.03.2013 attached to the post of Assistant Executive Engineer. Though the present respondent No.1 was brought over to the work charged establishment from the date from which the other nine similarly situated persons were brought over to the work charged establishment, similar benefits as were granted to those employees was not accorded to the respondent No.1. Therefore, a representation made to the competent



authority, led to filing of an Original Application, being O.A. No.1160(C) of 2019, before the learned Odisha Administrative Tribunal. Said O.A. came to be disposed of *vide* Order dated 05.07.2019 with a direction to the authorities to consider and dispose of representation within stipulated period. The authority concerned having rejected the said representation, the respondent no.1 approached this Court by way of filing writ petition, i.e., W.P.(C) No.24000 of 2019, which was disposed of *vide* Judgment dated 07.12.2022 with the following observations:

“22. Though a stand has been taken in the Counter Affidavit that W.P.(C) No.1748 of 2007 is still pending for consideration before this Court and the learned Counsel for the Petitioner also did not controvert the said averments made in the Counter Affidavit filed by the State-Opposite Parties, this Court made a query, as to present status of the said Writ Petition in the Website, and it came to the notice of the Court that the said Writ Petition has been disposed of on 14.03.2022 with the following Order:

*‘***’*

23. In view of the admitted facts on record, as discussed in detail in the fore-going paragraphs, so also settled position of law, it is not open for the Opposite Parties to take a contrary stand denying the claim made by the Petitioner to treat him at par with his counterparts, who were applicants in O.A. No.1089(C) of 2016 and the impugned Order of rejection, as at Annexure-1, dated 26.11.2019 being



illegal, arbitrary and discriminatory, and contrary to judgment dated 03.03.2017 in O.A. No.2415(C) of 2015, deserves to be set aside and accordingly, the same is hereby set aside.

24. *The Opposite Parties are directed to release all the service and financial benefits to the Petitioner, as has already been granted to the counterparts of the Petitioners under Annexure-8, within a period of three months from the date of communication of the certified copy of this order.*
25. *Accordingly, the Writ Petition stands disposed of. No Order as to costs.*
26. *Needless to mention here that if the financial benefits in terms of the direction given by this Court is not granted to the Petitioner within the time stipulated, the same shall carry 8% interest from the date of Order till the date of actual payment is made by the Opposite Parties.”*

2.6. Since the authorities have not paid any heed to the plight of the respondent No.1, another writ of *mandamus* was sought for by him by way of W.P.(C) No.33 of 2024 with a prayer to regularise the respondent No.1 in the post of Assistant Executive Engineer (Mechanical) in the Department of Water Resources with effect from 08.02.2013 as has been accorded to similarly situated persons and to grant all consequential seniority and other service benefits. The said writ petition was disposed of *vide* Order dated 08.01.2024 with the following observation:



“***

6. *Considering the submissions made by the learned counsel for the respective parties and without expressing any opinion on the merits of the case, this Court disposes of the writ petition at the stage of admission with a direction to the Opposite Party No.1 to consider the representation of the Petitioner under Annexure-14 Series taking into consideration Annexure-13 in accordance with law within a period of two months from the date of production of certified copy of this order. It is needless to mention here that the representation of the Petitioner shall be considered and disposed of by passing a speaking and reasoned order. Any decision so taken on the said representation shall be communicated to the Petitioner within a period of two weeks thereafter.”*

2.7. The authority *vide* Order No.13074/WR, dated 07.05.2024 rejected such representation of the Respondent No.1, which led to filing of W.P.(C) No.14996 of 2024. Learned Single Bench having taken note of all the aforesaid facts and response of the appellant herein, considered the question whether the respondent No.1 is to be treated at par with eight others whose services have been regularised.

2.8. Having discussed the facts supported by evidence on record, learned Single Bench *vide* Judgment dated 28.10.2024 disposed of the said writ petition with the following observations:



“12. The Court, against the aforesaid backdrop, is to examine, whether, the services of the petitioner could have been regularized by the opposite parties instead of being rejected vide Annexure-1. Admittedly, the regularization of others vide Annexure-16 is a onetime measure as per Rules 4(a) & 7 of the Rules, 2012. It is revealed from Annexure-1, the reason as to why the petitioner’s case is differently treated and it is on the ground that he belongs to Mechanical Wing which cannot be equated with the eight other Work Charged Assistant Executive Engineer (Civil). Apart from the fact that such regularization of the later is a onetime relaxation as per the rules and that such grant of service and financial benefits to him w.e.f. 8th February, 2013 at par with the eight other Work Charged Assistant Executive Engineers (Civil) would cause injustice to the existing senior regular **Assistant Executive Engineers of Mechanical Wing of OES cadre, who have been upgraded and received such service benefits prospectively on and from 26th February, 2014. In the humble view of the Court, the above plea to deny the petitioner’s regularization is unfair and unjustified when all along he stood at par with his counterparts.** It can therefore be said that the petitioner cannot be differently with the stand taken by the opposite parties. Except the fact that the petitioner was appointed after the cutoff date, there is no dissimilarity and hence, there lies no justification to him unequally and that too, with the plea that he has no right as such to demand regularization.



13. *It is well settled law with reference to the case laws discussed earlier that one cannot claim regularization as a matter of right but any decision taken in that regard is certainly not to differentiate when all stand on the same footing. Any policy decision shall have to be in conformity with the above legal position, otherwise, it would result in unfair treatment and clearly discriminatory. In the case at hand, the Government took a policy decision for others as a onetime measure but in view of the law enunciated, the same is not to exclude the petitioner, who is in no less footing than his counterparts. Perhaps, the petitioner's case has been treated differently since his entry into service was at a time when there was a ban on appointment but as concluded already, the same cannot be a ground especially after it received approval and concurrence of the Government. The petitioner is in service for quite a long time and still waiting to be absorbed, whereas, the services of others at par with him have been regularized and considering the matter in its entirety, the Court reaches at a conclusion that it is fit case, where he should be treated equally. The Court approves of the view that a policy decision should not segregate equals but to apply evenly to all. With a plea that there shall be no precedence and attempting to draw and demarcate a line of distinction only to segregate him without any rational basis, in the considered view of the Court, is to treat the petitioner indifferently, when he deserves equal treatment like his counterparts and such is the conclusion based on the principles of law and authorities referred to and discussed herein above.*



14. *Hence, it is ordered.*

15. *In the result, the writ petition stands allowed. As a necessary corollary, opposite party No.1 is directed to take necessary steps towards regularization of services of the petitioner, an exercise which is to be concluded as early as possible preferably within a period of eight weeks from the date of receipt of a certified copy of this judgment.*

16. *In the circumstances, however, there is no order as to costs.”*

2.9. Dissatisfied with such observations and order of the learned Single Judge, the appellant preferred the instant intra-Court appeal with a prayer to set aside the impugned Judgment dated 28.10.2024 passed in W.P.(C) No.14996 of 2024.

Hearing:

3. The matter came up before this Court on 23.04.2025 for consideration of petition, registered as I.A. No.1182 of 2025, for condonation of delay of 85 days in filing the instant writ appeal. Mr. Rudra Narayan Parija, learned Advocate for the respondent No.1 appeared and waived issue of notice. Thereafter, the matter got adjourned on 30.04.2025, 05.05.2025, 24.06.2025 and 07.07.2025 for consideration of the said Interlocutory Application for condonation of delay and hence, the matter is directed to be listed on 17.07.2025.



- 3.1. When the matter was taken up on 17.07.2025, as conceded by the learned counsels for both the sides, this Court took up the matter for final hearing at this stage.
- 3.2. Accordingly this Court heard the arguments advanced by Sri Saswat Das, learned Additional Government Advocate representing the appellant and Sri Prafulla Kumar Rath, learned Senior Advocate assisted by Mr. Rudra Narayan Parija, learned Advocate appearing for the respondent No.1 with respect to merit of the matter *vis-à-vis* grounds of appeal.
- 3.3. Upon conclusion of hearing, the matter was kept reserved for delivery of Judgment.

Contentions and submissions of rival parties:

4. Sri Saswat Das, learned Additional Government Advocate submitted that the Assistant Engineers appointed on *ad hoc* basis were regularized through Orissa Service of Engineers (Validation of Appointment) Act, 2002 in upgraded post of the rank of Assistant Executive Engineer with effect from 26.02.2014 after a decision of the Cabinet was taken on 24.02.2014 and was published in the Notification No.5484/WR, dated 26.02.2014, but the eight numbers of Work Charged Assistant Engineer (Civil) and the respondent No.1 was upgraded to Work Charged Assistant Executive Engineer with effect from 21.03.2013 by Resolution No.9660,



dated 21.03.2013, which is in violation of the existing rules and guidelines of the Government. Therefore, he vehemently contended that the respondent No.1 was to be treated as Work Charged Assistant Executive Engineer with effect from 26.02.2014 and would be regularized in the regular vacant post after completion of ten years of service, i.e., 26.02.2024. Therefore, placing heavy reliance in the case of Hon'ble Supreme Court in *Managing Director, Ajmer Vidhyut Vitran Nigam Ltd., Ajmer & another Vs. Chiggan Lal and others*, reported in (2022) LiveLaw (SC) 296, he submitted that it is matter within the domain of the employer to fix date from which regularization is to be granted. Such fixation depends upon very many factors and decision being dependent upon facts of each year no parity can be claimed based on regularization made in earlier years. Therefore, he urged that the learned Single Bench should have appreciated and applied the principles as laid down in said reported decision to the present fact situation.

4.1. He, therefore, submitted that the appellant having taken rightful decision in terms of relevant instructions relating to work charged employee and Finance Department Resolution which could not have been interfered with by the learned Single Bench.

4.2. He further submitted that the respondent No.1 has claimed parity with eight civil NMR/DLR graduate



Engineers, whose services have been regularized from 08.02.2013 if such benefit is granted to the respondent No.1, it may open floodgates for other NMR/DLR employees serving in different Department.

- 4.3. Having argued the matter extensively on merit, the appellant insisted for allowing the petition for condonation of delay and decide the appeal on merit.
- 4.4. During course of hearing Sri Saswat Das, learned Additional Government Advocate placed on record instructions received *vide* Letter No.11489/WR [File No.WR-FE-II-CASEOP-0047-2024], dated 16.07.2025 from the Department of Water Resources which stated as follows:

“***

In the present case, the petitioner Sri Satyashri Mohapatra is continuing against a sanctioned post and claiming for regularisation of his services at par with similarly situated nine NMR?DLR Graduate Engineers of the State Government who were regularised by the Department of Water Resources in the Civil Cadre. It appears from the recent Judgment on 18th June, 2025 passed in W.A. No.408 of 2025 : State of Odisha and Another Vrs. Arun Kumar Nath and Others that the Hon'ble Court have stated that from several notifications issued by the G.A. Department in the year 2013 and 2014 conveys a laudable message that the contractual employees may come in a regular employment after completion of six years service. This perhaps speaks of



the intention of the Hon'ble Court towards the regularisation of the contractual employees working in the State.

While analysing the issue involved in the case of Sri Satyashri Mohapatra the State have never objected to the regularisation of services of the present petitioner Sri Mohapatra except the dispute on the date from which the petitioner is to be regularised. The petitioner Sri Mohapatra was brought over to the work charged establishment from 08.02.2013 on the basis of the orders of the Hon'ble Odisha Administrative Tribunal. As per the relevant guidelines issued by the erstwhile P&S Department [Odisha Work Charged Employees (Appointment and Conditions of Service) Instructions, 1974²] along with Finance Department Resolution No.22764/F., dated 15.05.1997 as regards the regularisation of the work charged employees and taking

² Instruction No.15 of the Odisha Work Charged Employees (Appointment and Conditions of Service) Instructions, 1974 reads as follows:

"15. The employees shall be allowed gratuity at the rate of half a month's pay for every completed year of service subject to the maximum of 15 months' pay on retirement, invalidation except where it is caused by intemperance and death while in service subject to the condition that this concession shall be allowed only to the employees rendered continuous service for a minimum period of 10 years. Pay for this purpose shall be the pay last drawn:

Provided that employees whose service conditions are governed by special enactment or labour laws would be entitled to gratuity as provided under such special enactment or laws, and not under the above instructions.

Provided further that an employee who after having rendered continuous service for **a minimum period of 10 years is absorbed** under the regular establishment, shall be entitled to gratuity admissible under these instructions for the period of service under the work-charged establishment, if the appointing authority gives a certificate that the employee would have continued to serve in the work-charged establishment on or after 19.08.1974 but for his absorption in the regular establishment. In such cases, the gratuity admissible will be paid to the employee at the time of retirement, invalidation or death while in service along with pension and or gratuity for the period of service under the regular establishment."



into account the subsequent amendment of Odisha Work Charged Employees (Appointment and Conditions of Service) Instructions, 1974 as per G.A. Department Notification No.1391-GAD-SC-GCS-0111/2023/Gen., dated 19.01.2015³ the employees can be brought over to the regular establishment after a continuous service of five years as work charged employee. Keeping this in view the petitioner can be regularised from 08.02.2018 as the petitioner has been brought over to work charged establishment as Assistant Engineer with effect from 08.02.2018 as the petitioner has been brought over to work charged establishment as Assistant Engineer with effect from 08.02.2013. ”

5. *Per contra*, opposing with vehemence, Sri Prafulla Kumar Rath, learned Senior Advocate relying on Notification dated 07.11.2022 under Annexure-C/4 as enclosed to the counter affidavit filed by appellants in the writ petition issued by the Water Resources Department submitted that in the said notification, eight numbers of Work Charged Assistant Executive Engineers (Civil) were working under the Department of Water Resources and regularized in the post of Assistant Executive Engineers

³ Following is the amendment to Instruction No.15 of the Odisha Work Charged Employees (Appointment and Conditions of Service) Instructions, 1974 by General Administration Department Notification dated 19.01.2015 published *vide* Odisha Gazette, Extraordinary dated 22.01.2015:

*“General Administration Department
Notification*

The 19th January, 2015

No. 1391-GAD-SC-GCS-0111/2013/Gen.—

The following amendment is made to the “Odisha Work-charged Employees (Appointment and Conditions of Service) Instructions, 1974.”.

Amendment

In the “Odisha Work-charged Employees (Appointment and Conditions of Service) Instructions, 1974” for the figure ‘10’ appearing in Instruction 15 and the second proviso thereunder, the figure ‘5’ shall be substituted.”



(Civil), Junior Class-I (Group-A) service of Odisha Engineering Service Cadre by one time relaxation of Rule 4(9) and Rule 7 of the Odisha Engineering Service (Method of Recruitment and Conditions of Service), Rules, 2012 read with provisions of erstwhile Odisha Service of Engineers Rules, 1941. Such regularization has been given with effect from 08.02.2013.

5.1. He strenuously argued that those eight Assistant Executive Engineers after being allowed to avail the benefit of Department of Water Resources by Resolution dated 21.03.2013, subsequently, the Respondent No.1 having granted benefit of promotion in the rank of Assistant Executive Engineer with effect from 08.02.2013. Since the respondent No.1 has been discriminated, W.P.(C) No.14996 of 2024 was filed and the judgment rendered whereof is in this writ appeal at the instance of the State and he, therefore, emphatically urged to dismiss the writ appeal.

5.2. He would lay stress not to allow the petition for condonation of delay inasmuch as the explanation is not plausible warranting consideration of the writ appeal on merit.

DISCUSSIONS AND ANALYSIS:

6. The writ appeal has been filed with a delay of 85 days. An Interlocutory Application being I.A. No.1182 of 2025



has been filed by the appellant praying therein to condone the delay in preferring appeal.

6.1. An objection to the prayer of the appellant to condone the delay has been set out by the respondent No.1. The appellant ought to have filed appeal on or before 27.11.2024. Though certified copy of the impugned judgment was applied on 04.11.2024 and delivered on 04/05.11.2024, the appeal was filed on 21.02.2025. It is submitted by the respondent No.1 that no germane cause has been shown by the appellant to suggest that the delay in preferring appeal was unintentional.

6.2. The appellant having availed opportunity, filed reply affidavit by stating that upon official process the opinion was sought for and the Finance Department has not given clear views, but stated that “Finance Department has no objection if administrative department decides to implement the Court order after taking Government approval.” Paragraph 5 of said reply reveals the following explanation:

“5. That, the averments made in Paragraphs-3 of the objection petition it is pertinent to mention here that, the orders of the Hon’ble Court was pronounced on 28.10.2024 and was received in the Department from the Respondent on dt.05.11.2024. After receipt of the order, the matter was processed in the Department for opinion of related referral Departments as it was not possible on the part of the



Water Resources Department to take a decision without proper examination and consultation of the related referral Departments as regards to the regularization of the present respondent for which the matter has been delayed in filing of the present writ appeal. The file was endorsed to GA & PG Department on 28.11.2024 and then to Finance Department on 29.11.2024 and to Law Department on 02.12.2024 making several part of the file to save delay. Views of GA & PG Department was received on 08.04.2025 and initial views of Finance Department was received on 30.12.2024 and finally from Law Department on 21.02.2025.

The views of Finance Department is as follows:

“Finance Department has no objection if A/D decides to implement the Court order after taking government approval.”

Finance Department did not clarify on their Finance Department Resolution No.22764/F, Dt.15.05.1997 and Circular No.17815-WF-II-0180/92-F, dt.12.04.1993 in order to comply the orders of Hon’ble High Court dtd.28.10.2024 by regularizing the services of the Petitioner and hence view of Finance Department was again sought for on 12.03.2025 and the views of Finance Department received on 29.04.2025 is as follows:-

“As the matter of order dtd.28.10.2024 of Hon’ble High Court in WP(C) No.14996 of 2024 filed by Satyashri Mohapatra-Vrs-State of Odisha & Other is under writ appeal, there is no need for the Finance Department to offer any view on this matter.”



The Views of G.A. & P.G. Department received on 08.04.2025 are as follows.

“The Water Resources Department have endorsed the file seeking considered view of this department on regularization of service of Sri Satyashree Mohapatra, AEE(Mech.) Work Charged at par with the 08 (Eight) other Work Charged who have been regularized in OES Cadre vide their Department order No.29127, dtd.07.11.2022 retrospectively w.e.f. 08.02.2013 (date of brought over to the sanctioned post of Assistant Engineer) and Asst. Executive Engineer (Civil) with retrospective effect from dtd.26.02.2014 [from the date of up gradation of the post of Asst. Executive Engineer (Civil)].

The proposal reveals that except date of appointment after the cutoff date of i.e. 12.04.1993, all the facts of both the cases of petitioner and other 9 Counter parts are similar. In both the case, they have been brought over to the work charged establishment subsequently but given retrospective effect. 8 Counter Parts Work charged Asst. Executive Engineer (Civil) were regularized in the post Asst. Engineer (Civil) with retrospective effect from dtd.08.02.2013 & Asst. Executive Engineer (Civil) with retrospective effect from 26.02.2014 from the date of upgradation of the post of Asst. Executive Engineer (Civil) due vide DOWR to restructuring Notification No.29127, dtd.07.11.2022 in compliance to the Hon’ble High Court Order dtd.15.01.2021 passed in W.P.(C) No.1465/2021.

In this respect, it is stated that in the case of the other 9 counterparts, this Department had



offered views. As such, the A/D are advised to take action in the case of the petitioner as per earlier views offered as linked above.”

Earlier views of G.A. & P.G. Department in the case of similarly situated 9 Engineers of Civil Cadre on 24.06.2022 are as follows:

*“GA & PG Department it reveals that A/D have complied the common order passed by the Hon’ble OAT dated 16.05.2018 in OA No.1036(C)/2016 & OA No.1089 (C)/2016 partially. The orders passed by the Court of Law should either be challenged before the higher forum with sufficient justification or need to be complied in toto. **In the instant case in compliance to the order dated 16.05.2018 of the Hon’ble OAT the A/D have already converted the status of the petitioners to work charge Asst. Executive Engineer against the upgraded post with all service and financial benefits with effect from the date of up-gradation i.e. from 21.03.2013 vide Notification No-11157, dtd.14.05.2019 on obtaining the concurrence of the Law Department and approval of the Government.** As such, there are no other alternative available before the A/D than to take the policy decision for their regularization in the OES Cadre by following the following steps as a policy decision by way of compliance of the orders passed by the HHC.*

- 1) *Though, the conversion of work charge Group-C and Group-D employees to regular cadres are being made by way of relaxation of the provisions of the relevant cadre Rules as per the principles outlined in Finance Department*



Resolution No.22764, dated 15.05.1997, the A/D have to follow the same principles in the instant case to comply the Court orders.

- 2) The concerned work charge Engineers may be regularized in the OES cadre with effect from the date on which they were brought over to the sanctioned post of AE and continued against the said post as A/E work charge.*
- 3) The inter se seniority of the regularized w/c Engineers may be fixed below the stipendiary Engineers with all consequential service benefits w.e.f. 08.02.2013 to ensure full compliance of the orders of the Court and to avoid contempt of Court.”*

After the view of Law Department was sought for on 02.12.2024, the concerned Law Officer of the Law Department submitted the file to Hon’ble Minister Law on 28.01.2025 which was approved by the Hon’ble Minister Law on 17.02.2025 and the file was received in the Water Resources Department on 21.02.2025 is as follows.

“The A/D have endorsed the file seeking views of this Department to challenge the judgment dt.28.10.2024 passed in WP(C) No.14996 of 2024 by the Hon’ble High Court of Orissa, Cuttack, filed by Satyashri Mohapatra Vrs. State of Odisha & others. Vide this order, Hon’ble Court have directed the A/D to take necessary steps for regularization of service of the petitioner observing that the petitioner is in service for quite a long time and still waiting to be absorbed, whereas the services of others at par with him have been regularized. Hon’ble Court at the



same time have viewed that one cannot claim regularization as a matter of right. In the case of *Ajmer Vidhyut Vitran Nigam Ltd. Vrs. Chiggan Lal*, Hon'ble Supreme Court have held that "it is the settled position that the date from which regularization is to be granted is a matter to be decided by the employer keeping in view a number of factors like the nature of the work, number of posts lying vacant, the financial condition of the employer, the additional financial burden caused, the suitability of the workmen for the job, the manner and reason for which the initial appointments were made etc. The said decision will depend upon the facts of each year and no parity can be claimed based on regularization made in respect of the earlier years". Civil Appeal No.1875 of 2022 arising out of SLP(C) No.19181 of 2017. **In view of Government policy decision, while as a one time measure, services of similarly placed employees have been regularized, the petitioner has been treated differently.**

Therefore, Hon'ble Court have given direction to regularize the service of the petitioner. In that view, there is no scope to challenge the judgment dt.28.10.2024 passed in WP(C) No.14996 of 2024. The A/D may be advised to comply the same."

In the meantime the Respondent preferred a Contempt Petition vide CONTC No.398 of 2025, which was disposed of on 03.02.2025 with a direction to the present Appellant to comply the orders of the Hon'ble Court within a period of two weeks. **As the matter was urgent and there was no other alternate available with the**



Administrative Department to take a decision as the compliance of the order will lead to deviation from the instructions issued by the G.A. & P.G. Department in respect of Work-charged Employees Appointment & Conditions of Services, this Department decided on 04.02.2025 to challenge the orders of the Hon'ble Court in a writ appeal and accordingly proposal was submitted to the Advocate General, Odisha on 05.02.2025 and after discussion the Writ Appeal was filed on 21.02.2025.

Hence, the delay in filing of the writ appeal was no intentional by the Appellant as several necessary steps were taken by the Administrative Department before filing of the appeal and the objection raised by the respondent is unjust and not maintainable in the eyes of law.”

- 6.3. Considered the submissions and averments coupled with explanation proffered by the appellant in the reply affidavit as mentioned hereinabove. It seems that delay of 85 days in preferring the instant writ appeal is supported by plausible reason. Explanation of the appellant thus being placed on record with respect to circumstances which prevented the appellant in filing the writ appeal within period stipulated, this Court perceives that sufficient cause is shown by the appellant. There is no deliberate laches on the part of the appellant to file the writ appeal. Rather to collect the opinions of other departments took considerable length



of time. Therefore, this Court is inclined to allow the Interlocutory Application and, thereby condones the delay in filing the writ appeal.

7. As the learned counsel for the respective parties advanced arguments on merit of the writ appeal, this Court proceeds to discuss the merits of the matter with respect to Judgment dated 28.10.2024 passed in WP(C) No.14996 of 2024.

8. This Court at the outset examines the contention of the respondent No.1 and appellant and also the judgment dated 28.10.2024 passed in WP(C) No.14996 of 2024 diligently. As is apparent from the grounds of the writ appeal, the State seeks to re-argue what has long since been settled by the learned Odisha Administrative Tribunal, Cuttack Bench, Cuttack in Original Application No.2415(C) of 2015 *vide* Order dated 03.03.2017. Careful reading of paragraph-6 of the said order, it is found categorically observed that the respondent No.1 “cannot be discriminated from other nine Engineer, who have been brought over to work charge establishment” and directed for grant of all the benefits as was extended to such similarly situated employees.

8.1. The learned Single Bench having taken note of factual spectrum of the instant case, referred to *State of Karnataka and others Vrs. C. Lalitha, reported in (2006) 1*



SCR 971, Punendu Mukhopadhyay and others Vrs. V.K. Kappor and another, reported in (2007) 7 SCC 679 and State of Uttar Pradesh and others Vrs. Arvind Kumar Srivastava and others, reported in (2015) 1 SCC 347, to hold that since eight other employees were regularized with effect from 08.02.2013 in the post of Assistant Engineer but after such regularization they were allowed to take benefit of DoWR Notification No.9660, dated 21.03.2013 and upgraded as Assistant Executive Engineer. Denial of the benefit granted to them to the respondent No.1 is unfair and unjustified. It is held that the Appellant should have been more rational and could have treated the respondent No.1 as similarly situated with these counterpart employees and the respondent No.1 deserves same treatment.

- 8.2. It is noticed by the learned Single Judge that apart from the fact that such regularization is one-time relaxation as per the rules and that such grant of service and financial benefits to him with effect from 8th February, 2013 at par with the eight other Work Charged Assistant Executive Engineers (Civil) would cause injustice to the existing senior regular Assistant Executive Engineers of Mechanical Wing of Odisha Engineering Service Cadre, who have been upgraded and received such service benefits prospectively on and from 26th February, 2014. To deny the respondent No.1 regularization is unfair and



unjustified when all along he stood at par with his counterparts. It can, therefore, be said that the respondent No.1 should not have been treated differently with the stand taken by the opposite parties.

8.3. It is noticeable to have reference to *Raman Kumar Vrs. Union of India*, 2023 SCC OnLine SC 1018 wherein it has been held that if certain persons have been regularised and others are left out, dissimilar treatment is not warranted. In the said case it was observed as:

- “5. 16 persons out of the remaining 30 employees filed contempt petition(s) alleging that the respondent(s)/ department(s) are not regularizing the services of the appellants, thereby committing contempt of Court.
6. ***It appears that, before the High Court, an affidavit was filed stating therein that the services of the appellants could not be regularized since the posts were not available.*** On this statement the contempt petition has been filed.
7. In the Constitution Bench judgment of this court passed in *Uma Devi* (2006) 4 SCC 1, though the Court has held that backdoor entries should not be permitted, it has permitted a one time measure to be conducted for regularization of the services of these employees who had completed the service of more than ten years.
8. Indisputably, the appellants herein have completed service of more than ten years. Even this Court in the case of *Ravi Verma Vrs. Union of India* (Civil



Appeal No(s).2795-2796 of 2018) decided on 13.03.2018 found that the act of regularizing the services of some employees and not regularizing the services of the others is discriminatory and violative of Article 14 of the Constitution of India.

9. *Mrs. Aishwarya Bhati, learned Additional Solicitor General of India appearing on behalf of the respondents, has vehemently opposed the petition. She submits that since posts were not available, and, thereafter, Group 'D' posts have been abolished, the appellants could not have been regularized.*
10. ***We are not inclined to accept the submission on behalf of the respondents.*** *When the Chief Commissioner of Income Tax has himself found that 65 persons were entitled to be regularized, the act of regularizing the services of only 35 employees and **not regularizing the services of other employees, including the appellants, is patently discriminatory and violative of Article 14 of the Constitution of India.***

8.4. Reference to paragraphs 4, 8, 9, 12 and 13 of *Ravi Verma and others Vrs. Union of India and others*, 2018 SCC OnLine SC 3860 may be had to, wherein the following are the observations of the Hon'ble Supreme Court of India:

- “4. *The appellants were appointed as casual employees in the Income Tax Department in the year 1993-1994 since then they were working continuously. On 30th January 2004 with respect to other similarly situated employees, temporary status was granted.*



The respondent No. 4 on 30th December 2004 recommended the case of the appellants for temporary status/regularization. Again it was recommended for regularization on 14.06.2005. In the meantime, the decision in the State of Karnataka Vrs. Uma Devi, (2006) 4 SCC 1 was pronounced by this Court, the same provided that the employees who had rendered services continuously for ten years without the cover of the court's order be regularized as the one-time measure.

- 8. Again on 07.11.2007/19.11.2007 information was forwarded along with a recommendation for the regularization of services of the appellant and again on 01.01.2008 and 31.01.2008 also, recommendations were made. However services were not regularized, through Chief Commissioner, Income Tax, U.P. West, Ghaziabad regularized similarly placed 88 casual employees on 30.01.2009. The Chief Commissioner, Income Tax Orissa, Bhubaneswar also regularized similarly situated eight employees on 12.03.2009; orders of regularization have been placed on record respectively as Annexures P1 and P2. However, similar treatment was not accorded to the appellants.*
- 9. On 01.06.2009 appellants 1, 2 and 3 were sanctioned minimum of regular pay scale of Group D employees with Dearness Allowance in accordance with DoPT Circular dated 31.05.2004 and in terms of the orders of CCIT dated 07.11.2007 and 06.12.2007 on conferral temporary of status on the employees. On 22.09.2009, Chief Commissioner, Income Tax, Kolkata also regularized 111 similarly*



situated casual employees and 17 employees on 15.10.1990 and Chief Commissioner, Income Tax, Lucknow regularized 59 similarly situated casual employees on 22.01.2010. There was further regularization of 35 employees of the office of Chief Commissioner, Income Tax, Patna on 20.08.2010. **However, the claim of the appellants was rejected by respondent No. 3 though they had served continuously for more than ten years and fulfil the requisite criteria for the purpose of regularization in terms of the circulars of DoPT and the decision rendered by this Court in Uma Devi (supra). The appellants have also given the vacancy position.**

12. Having heard learned counsel for the parties at length, we are of the considered opinion that appointments were only irregular one, this Court observed in para 53 Uma Devi (supra) thus:

‘53. ***’

13. In view of the aforesaid decision, **the circulars and regularization of the similarly situated employees at other places and various recommendation that were made the services of the appellants ought to have been regularized in the year 2006; discriminatory treatment has been meted out to them. As per the decision of Uma Devi (supra), they were entitled to regularization of services; they did not serve under the cover of court's order. Illegality has been committed by not directing regularization of services.”**



- 8.5. In the light of the view expressed by the Hon'ble Supreme Court the learned Single Judge has made the observation that *"In the case at hand, the Government took a policy decision for others as a onetime measure but in view of the law enunciated, the same is not to exclude the petitioner, who is in no less footing than his counterparts. Perhaps, the petitioner's case has been treated differently since his entry into service was at a time when there was a ban on appointment but as concluded already, the same cannot be a ground especially after it received approval and concurrence of the Government."* Therefore, this Court is of the firm view that no infirmity could be imputed against the decision of the learned Single Judge in this regard.
- 8.6. Having gone through the instructions dated 16.07.2025 as submitted by the Additional Secretary to the Government of the Department of Water Resources, there is no ambiguity in mind that the Judgment dated 28.10.2024 rendered by learned Single Judge of this Court in W.P.(C) No.14996 of 2024 does not suffer from any infirmity or irregularity.
- 8.7. Nevertheless, this Court perceives that when the respondent No.1 cannot be given discriminatory treatment as against the eight Assistant Executive Engineers, this Court appreciating the factual position clarifies that the respondent No.1 is required to be



extended same benefit as that was given to the similarly situated employees. On 07.11.2022 the counterparts being regularised in the post of Assistant Engineer with effect from 08.02.2013 are allowed to take benefit of DoWR Notification No.9660, dated 21.03.2013 and got upgraded as “Assistant Executive Engineers”. Furthermore, subsequently, the eight counterparts upon such regularisation have already been given promotional benefit on 02.08.2023. Therefore, the respondent No.1 cannot be left out.

Scope of interference in the Judgment of learned Single Judge in the writ appeal:

9. The learned Single Judge on factual analysis of the matter observed that the respondent No.1 cannot be discriminated to be extended with the benefits that the counterparts have been provided with. It is trite that it is not justice that is to be done, but it must manifestly and demonstrably seem to have been done. Therefore, it is held that the appellant is required now to work out the tenor of Judgment of the learned Single Judge.

9.1. This Court in this intra-Court appeal bears in mind the legal perspective as to scope of interference discussed in *State of Odisha & Others Vrs. Shradhanjali Dash, Writ Appeal No.1204 of 2022 vide Order dated 26.03.2025*. It is observed in the said case as follows:



“In the case of Management of Narendra & Company Pvt. Ltd. Vrs. Workmen of Narendra & Company, reported in (2016) 3 SCC 340, it has been observed as follows:

- ‘5. *** Be that as it may, in an intra-Court appeal, on a finding of fact, unless the Appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief.’*

In the case of Wander Ltd. Vrs. Antox India (P) Ltd., reported in 1990 Supp. SCC 727, following observation has been made:

- ‘14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. **In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions.** An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the Court below if the one reached by that court was reasonably possible on the material. The Appellate Court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered*



the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the Appellate Court would have taken a different view may not justify interference with the trial court's exercise of discretion.'

In the case of Anindita Mohanty Vrs. The Senior Regional Manager, H.P. Co. Ltd., Bhubaneswar reported in 2020 (II) ILR-CUT 398, this Court had the occasion to examine the scope of intra-Court appeal and observed as follows:

*'11. *** Let us first examine the power of the Division Bench while entertaining a Letters Patent appeal against the judgment/order of the Single Judge. This writ appeal has been nomenclatured as an application under Article 4 of the Orissa High Court Order, 1948 read with Clause 10 of the Letters Patent Act, 1992. Letters Patent of the Patna High Court has been made applicable to this Court by virtue of Orissa High Court Order, 1948. Letters Patent Appeal is an intra-Court appeal where under the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as vested in the Single Bench. (Ref: (1996) 3 SCC 52: Baddula Lakshmaiah Vrs. Shri Anjaneya Swami Temple). **The Division Bench in Letters Patent Appeal should not disturb the finding of fact arrived at by the learned Single Judge of the Court unless it is shown to be based on no evidence, perverse, palpably unreasonable or inconsistent with any particular position in law. This scope of interference is within a narrow compass.***



Appellate jurisdiction under Letters Patent is really a corrective jurisdiction and it is used rarely only to correct errors, if any made.'

*In the case of B. Venkatamuni Vrs. C.J. Ayodhya Ram Singh reported in (2006) 13 SCC 449, it is held that in an intra-Court appeal, **the Division Bench undoubtedly may be entitled to reappraise both questions of fact and law, but entertainment of a Letters Patent Appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the Single Judge.** Even a Court of first appeal which is the final Court of appeal on fact may have to exercise some amount of restraint. Thus a writ appeal is an appeal on principle where the legality and validity of the judgment and/or order of the Single Judge is tested and **it can be set aside only when there is a patent error on the face of the record or the judgment is against established or settled principle of law.** If two views are possible and a view, which is reasonable and logical, has been adopted by a Single Judge, the other view, howsoever appealing may be to the Division Bench; it is the view adopted by the Single Judge, which would, normally be allowed to prevail. If the discretion has been exercised by the Single Judge in good faith and after giving due weight to relevant matters and without being swayed away by irrelevant matters and if two views are possible on the question, then also the Division Bench in writ appeal should not interfere, even though it would have exercised its discretion in a different manner, were the case come initially before it. **The exercise of discretion by the Single Judge should manifestly be wrong which would then give scope of interference to the Division Bench.**"*



- 9.2. With the delineated position as enunciated in the aforesaid judgment of this Court, there is no confusion in mind that in case of finding of fact which has gone into the decision making process of the learned Single Judge if found to be perverse or *de hors* the evidence/ materials available on record, this Court in exercise of the power under Article 4 of the Rules of Orissa High Court, 1948 read with Clause 10 of the Letters Patent constituting the High Court of Judicature at Patna can interfere with the impugned judgment. The appellant miserably failed to justify its grounds in the writ appeal.
- 9.3. In the case at hand the view expressed by the learned Single Judge is supported by well-reasoned order with lucid discussion on merit of the case of the appellant as also the respondent No.1. Therefore, this Court does not find any perversity in returning factual finding or evaluation of evidence on record by the learned Single Judge.
- 9.4. Even otherwise, it is not a case of possibility of two views; rather the documents made part of the record relating to writ petition and not disputed by the appellant or the respondent No.1 before the learned Single Judge lead to suggest only one conclusion that is what is arrived at by the learned Single Judge in his Judgement dated 28.10.2024 rendered in W.P.(C) No.14996 of 2024.



CONCLUSION & DECISION:

10. Having considered the merit of the matter with reference to return of findings based on documents forming part of writ petition as made by the learned Single Judge *vis-a-vis* instructions supplied to the learned Additional Government Advocate by Letter dated 16.07.2025, there is no scope left for this Court to interfere with the Judgment dated 28.10.2024.

10.1. Appreciating the material so provided and available, this Court while upholding the Judgment dated 28.10.2024 rendered in W.P.(C) No.14996 of 2024 of the learned Single Judge, only extends the period stipulated in paragraph 15 thereof for a further period of eight weeks.

11. In fine, the writ appeal, being devoid of merit, is dismissed, as a consequence thereof the Judgment of the learned Single Judge rendered in the writ petition stands upheld, but in the circumstances without any order as to costs. Pending interlocutory applications, if any, are disposed of accordingly.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE