



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.832 of 2024

State of Odisha

....

Appellant

Mr. S.K. Jee, AGA

-versus-

***Dr. Swarupa Nanda Mallick
& another***

....

Respondents

Mr. S.K. Das, Advocate
For Respondent No.1

Mr. A. Behera, Advocate
for Respondent No.2

CORAM:

JUSTICE KRISHNA SHRIPAD DIXIT

JUSTICE CHITTARANJAN DASH

ORDER

24.03.2026

Order No.

06.

State and its officials have preferred this Intra-Court Appeal. They call in question a learned Single Judge's order dated 02.05.2023 entered in Respondent's W.P.(C).(OAC) No. 853 of 2018 & W.P.(C)(OAPPC) No.282 of 2016, whereby a direction has been issued to the OPSC to recommend name of the Respondent for the post of Assistant Professor of Surgery coupled with a direction to the Appellants to issue appointment order in terms of such recommendation.



2. Learned AGA appearing for the Appellants submits that earlier the OPSC had sent the Waiting List at the instance of the Government itself; however, because of certain litigations that were fought at the level of the Hon'ble Apex Court, OPSC was directed to withdraw the Waiting List and accordingly, it withdrew. He also submits that, power to issue a direction would also include the power to recall the direction and to undo what has been done pursuant to such direction in view of Section 22 of the Orissa General Clauses Act, 1937. This aspect having not been considered by the learned Single Judge, there is an error of great magnitude warranting interference of this Court.

3. Learned counsel representing the private Respondent vehemently opposes the Appeal contending that the principle of Section 22 would not be applicable in matters like this; the Government itself had directed the OPSC and accordingly the Waiting List was prepared and submitted; abruptly, the Government could not have turned around and instructed the OPSC to recall the Waiting List, quoting certain untenable grounds. He also tells that his client has been working as Associate Professor of Surgery on *ad hoc* basis and justice would



have been served to him by virtue of impugned order of the learned Single Judge and therefore, regardless of arguable infirmities in the impugned order, this Court should not interfere. Learned Panel Counsel appearing for the OPSC maintains equidistance from both the sides and tells that his client has already submitted the Waiting List in terms of the impugned order to the Government.

4. Having heard learned counsel for the Parties and having perused the Appeal papers, we decline indulgence in the matter for the following reasons:

4.1. The Government, which had directed the OPSC to prepare and submit a Waiting List, all of a sudden, could not have turned around and recalled its instructions to the OPSC, which had already acted upon such instructions. In such a situation, we are not sure if the Rule underlines Section 22 of 1937 Act would be readily invocable. That apart, ours is a Government by Rule of law and therefore, all its actions should be animated by reason, justice and fair play, arbitrariness being anathema to the Rule of law vide **E.P. Royappa v. State of Tamil Nadu (AIR 1974 SC**



555). The reasons assigned by the Government in instructing the OPSC to recall the Waiting List are not germane to the issue. Therefore, the action of the Government being vulnerable learned Single Judge has rightly interfered with the same.

4.2. Learned counsel appearing for the private Respondent is right in telling the Court that his client being absolutely qualified has been discharging his duty as Associate Professor of Surgery, of course, on *ad hoc* basis. The experience, which a candidate like this has acquired in the course of employment, has its own advantage in public service. It is not that his client would be made Associate Professor of Surgery on regular basis, if the impugned order is implemented. What he would get would be the post of Assistant Professor on Regular basis. Thus, even equity weighs towards the Respondent. All this is inarticulately viewed in the impugned order.

4.3. Learned counsel appearing for the private Respondent is more than justified in contending that his client should be given notional benefit of retrospective appointment with effect from the date first of the appointment made pursuant to OPSC Select List



dated 17.10.2017. He is fair in submitting that his client would not lay a claim for any financial benefits of the previous service. We agree with this.

In the above circumstances, this Appeal being devoid of merits is liable to be dismissed and accordingly it is. The impugned order of the learned Single Judge shall be given effect to in letter & spirit within an outer limit of eight (08) weeks keeping in view our observations hereinabove, failing which, the Appellants run the risk of contempt action.

Cost having been made easy.

Web copy of this order to be acted upon by all concerned.

(Krishna Shripad Dixit)
Judge

(Chittaranjan Dash)
Judge