



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.1099 of 2025

In the matter an Appeal under Section 10 of the Letter Patent of the Patna High Court, read with Article-4 of the Orissa High Court Order, 1948.

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***State of Odisha, represented through its
Commissioner-Cum-Secretary to Government
of Odisha, Energy Department.***

... ***Appellant***

-Versus-

1. B. Abakash

... ***Respondent***

***2. Principal Secretary to Government of
Odisha, General Administration Department.***

***3. Secretary, Odisha Public Service
Commission, Cuttack***

... ***Proforma
Respondents***

Advocates Appeared in this case:

For Appellant - Mr. S.B. Mohanty, AGA.

For Respondents - Mr. Biswabihari Mohanty
Advocate for R.1 on caveat.

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HON'BLE MR. JUSTICE KRISHNA SHRIPAD DIXIT

HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Hearing & Judgment : 25.03.2026

PER KRISHNA S. DIXIT, J.

This Intra Court Appeal by the State essentially lays challenge to a learned Single Judge's order dated 21.01.2025, whereby WPC(OA) No. 3285/2018 filed by Respondent-employee herein, having been favoured, relief has been according to him in the following terms:



“7.4 Therefore, the ground on which Petitioner's claim has been rejected vide the impugned order dt.30.07.2018 under Annexure-11 as per the considered view of this Court is not sustainable in the eye of law. Therefore, this Court is inclined to quash the said order and while quashing the same directs Opp. Party No.1 to provide appointment to the Petitioner as against the vacancies caused due to non joining of the candidate placed as Sl. Nos. 2 & 4 with due adjustment of the candidates placed at Sl. Nos.7 & 9 against those two vacancies and appointing the Petitioner as against the vacancy caused on such adjustment of the candidates, placed at Sl. NO.7 & 9 in SEBC category.

7.5 This Court accordingly Opp. Party No.1 to provide appointment to the Petitioner within a period of four (4) weeks from the date of receipt of this order. But such order of appointment shall be prospective in nature and Petitioner will not claim any benefit of seniority vis-à-vis the candidates appointed in terms of Annexure-5 or appointment of the candidate placed at Sl. No.13, who was appointed vide order dt.03.03.2017. Petitioner is directed to file an undertaking that he will not claim any seniority after being provided with the appointment in terms of the present order at the time of his joining.”

2. Learned AGA appearing for the Appellant-State vehemently argues that the impugned order is in violation of the 50% ceiling limit to the reserved posts; secondly, the said order speaks of re-arrangement of the ranking of candidates to the prejudice of those who are already in the employment having been engaged in the SEBC category; and lastly, that it is a settled position of law where mere inclusion in Select List does not ensure appointment to the post unless a comparatively merit deficient candidate in the same category has been appointment against the post in question, and the Respondent-employee figures below the appointed candidates. So contending he seeks indulgence of this Court in the matter.

3. Learned Counsel for Respondent-employee appearing on caveat, vehemently makes submissions in justification of the impugned order of the learned Single Judge. He places before us certain rulings of the Apex Court, contending that the impugned order is structured on the principles laid down by the Apex Court and therefore, the same is inexplicable. So contending he seeks dismissal of this appeal. He submits that, his client's Appeal needs to be



favoured by granting him the benefit of impugned order by quashing the last paragraph which reads as under:

“7.5 This Court accordingly Opp. Party No.1 to provide appointment to the Petitioner within a period of four (4) weeks from the date of receipt of this order. But such order of appointment shall be prospective in nature and Petitioner will not claim any benefit of seniority vis-à-vis the candidates appointed in terms of Annexure-5 or appointment of the candidate placed at Sl. No.13, who was appointed vide order dt.03.03.2017. Petitioner is directed to file an undertaking that he will not claim any seniority after being provided with the appointment in terms of the present order at the time of his joining.”

He submits that learned Single Judge is not justified in denying the benefit of seniority and asking his client to file an undertaking to forego the same. Learned AGA retorts that, this portion of the order is a product of exercise of discretion in the fitness of things.

4. Having heard learned counsel for the parties and having perused the Appeal papers, we decline indulgence in the Appeal with some observations as under and for the following reasons:

4.1. Pursuant to the selection process initiated vide Advertisement No.02/2012-13, the Orissa Public Service Commission on 17.07.2013 recommended 38 candidates in several categories. In the said recommendation, name of Respondent-employee figures at No.14 and that of Susil Kumar Meher figured at Sl. No.13 in SEBC category. Challenging the recommendation, one Anjelina Pattanaik approached the Tribunal by filing OA No.2478 (C) of 2013, which came to be allowed vide order dated 29.01.2014 directing preparation of a fresh Select List confining reservation to 50% of the vacancies. This order was challenged by the Respondent-employee along with others by filing WP(C) Nos.3454 & 2907 of 2014. Pursuant to the interim order made, a fresh Select List was prepared by the Commission recommending 29 candidates in various categories and this was



followed by appointment orders dated 27.02.2015. Out of these 29 persons, those placed from Sl. Nos. 1 to 12 got the benefit of appointment in UR/SEBC category. Candidates placed at Sl. Nos.2,3,4, 5 & 10 in the Select List were from the UR category though they belonged to SEBC. Candidates placed at Sl. Nos.7,9,11 & 12 were selected under SEBC category.

4.2. That W.P(C) Nos.3454 & 2907 of 2014 came to be disposed off vide judgment dated 29.06.2017 by confirming Tribunal's order with certain observations inter alia in relation to the vacancies that eventually remained unfilled on account of selected candidates not joining the posts, despite issuance of appointment order. These candidates were at Sl. Nos.1,2 & 4 in the Select List. The candidate at Sl. No.2 though belonged to SEBC category, was appointed as against the vacancy meant for UR category, taking into account his ranking in the Merit List. Similarly, candidate placed at Sl. No.4 too. Due to non-joining of the candidate belonging to SEBC category at Sl. No.12, the SEBC candidate at Sl. No.13, was adjusted to the said slot. Learned Single Judge is right in making the following observations at paragraph 7.3 of the impugned order:

“7.3. As further found from the pleadings, due to non-joining of the candidate appointed at Sl. No.12 who belongs to SEBC category, candidate placed at Sl. No.13 and belonging to SEBC category was adjusted. The stand taken by the opp. Parties while rejecting the petitioner's claim that due appointment of the person placed at Sl. No.13 against the vacancy caused due to non-joining of candidates at observing that since SEBC candidates placed at Sl. Nos. 2 & 4 were appointed as against UR vacancies, on account of their ranking in the Merit List though belong to SEBC category, taking into account the position of the employee in the Merit List at Sl. No.14 and the Position off the candidates placed at Sl. Nos. 7 & 9 both of whom belong to SEBC category, Sl.Nos.7 & 9 should have been adjusted against the vacancies caused at Sl. Nos.2 and 4. After such adjustment of the candidates placed at Sl. Nos. 7 & and 9, employee should have been appointed as against one of the vacancies caused at Sl. Nos.7 & 9.”



4.3. Learned Counsel for Respondent-employee is right in placing reliance on Apex Court decision in ***R.K. Sabharwal v. State of Punjab***, AIR 1995 SC 1371 wherein relevant para 4 reads as under:

“4. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation... As mentioned above the roster point which is reserved for a backward class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the backward class. The fact that considerable number of members of a backward class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/Rules providing certain percentage of reservations for the backward classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the backward classes against the general category posts the given percentage has to be provided in addition...”

The above view is reiterated in ***BSNL v. Sandeep Choudhary***, (2022) 11 SCC 779.

4.4. Learned Single Judge at paragraph 7.5 of the impugned order, made the appointment of the Respondent-employee to be prospective in nature, thereby denying the benefit of entire seniority as against those who have already been employed pursuant to the fresh Select List. We agree with the submission of learned counsel that a wholesale denial of seniority, in the fitness of the facts, is not justified, especially when the employee has been made to fight the legal battle over and over again, no fault being attributable to him. That being said, the equity weighs with him halfway through. Some adjustment of competing claims has to be worked out. In our considered view, though the employee cannot get the



back wages, the seniority for half the period of notional service has to be accorded to him, provided he files the undertaking foregoing the rest within four weeks. Otherwise, that benefit also, he stands to lose. In view of this observation, the Writ Appeal stated to have been filed by the first Respondent-employee, which is yet to be numbered, can be disposed off by the Roster Bench.

In the above circumstances and with the above observations, this Appeal is disposed off. The order of the learned Single Judge, as modified by this judgment vide paragraph No. 4.6 *supra*, shall be implemented within an outer limit of six weeks. Costs made easy.

Web copy of judgment to be acted upon by all concerned.

(Krishna Shripad Dixit)
Judge

(Chittaranjan Dash)
Judge