



IN THE HIGH COURT OF ORISSA AT CUTTACK

CONTC No. 3473 of 2026

Jitendra Kumar Sahoo

....

Petitioner

Mr. Asutosh Mohanty, Advocate

-versus-

***N. Thirumala Naik, IAS, Principal
Secretary to Government, School &
Mass Education Department,
Bhubaneswar***

....

Opposite party

Mr. Saswat Das, Additional Government Advocate

**CORAM:
HON'BLE THE CHIEF JUSTICE
AND
HON'BLE MR JUSTICE CHITTARANJAN DASH**

**ORDER
23.07.2026**

Order No.

02.

1. A preliminary objection is raised on the maintainability of the instant contempt application before this Bench.
2. The contempt application is basically founded upon an allegation that the alleged contemnor has deliberately and consciously violated the order dated 17th March, 2026 passed in W.A. No.895 of 2025. The said intra-Court appeal was filed assailing the order dated 8th August, 2024 passed by a learned single Judge of this Court in W.P.(C) No.13526 of 2024, which was disposed of directing the Secretary to Government in the School and Mass Education Department to consider the case of the petitioner for engagement as Shikshya Sahayak in the light of the ratio decided in



the case of *Smt. Mamta Nayak Vs. State of Orissa* (W.P.(C) No.10791 of 2022).

3. It was further observed in the said order that it is open to the authorities to consider the fact that despite the availability of vacancies at the relevant time, the petitioner's case was not considered, though as per the ratio of the said judgment, which should have been considered at the relevant time.

4. The State assailed the said order before the division Bench and the division Bench did not find any ground warranting interference with the said order, which would be evident from the conclusion as under:

“In the above circumstances, this Appeal fails both merits and on delay fails. The impugned order of the learned Single Judge shall be given effect to within an outer limit of three months, without driving the Respondent-employee to go for contempt action.”

5. It is thus manifest from the above quoted decision of the division Bench that the appeal was dismissed as the division Bench did not find any justification in interfering with the order passed by the single Bench and, therefore, the point arises in the instant contempt application whether the division Bench is an appropriate



and/or proper forum for considering an application for contempt of its own order.

6. Mere affirmation of an order passed by the single Bench does not in any sense override the decision of the single Bench, which remains operative and binding on the parties. Though the doctrine of merger operates in technical sense, for the purpose of contempt, it is a judgment and order of the single Bench which remained binding on the parties. In the event, the Court permits the contempt application to be filed before the highest Court of the country, as the litigation which travelled to it ended in dismissal, it would create a chaotic situation and would be opposed to the set legal parameters.

7. Even in civil proceedings, the decree passed by the Court of first instance, even if challenged up to the Hon'ble Apex Court, is required to be executed by the Court of first instance, meaning thereby, mere dismissal of an appeal does not take away the power of the Court of first instance to implement and/or execute its own order.

8. The Special Bench of the Calcutta High Court, to which one of us was a party thereto, had an occasion to consider the identical point in the case of *Sailesh Kumar vs. Smitha R., IAS and another*



reported in **2023 SCC Online Cal 1152** and answered in the following:

"22. XXX XXX XXX

It stands to reason that the statutory provision contained in the Rules is strictly applicable and therefore, the answer to the references is as follows:

- (i) In case of an affirmation of an order of Single Bench passed in exercise of the original jurisdiction either in Original Side or the Appellate Side, the contempt would lie before the Single Bench alleging the violation of the directions of orders passed by him.*
- (ii) In case of reversal, modification and setting aside the order of the Single Bench in an appeal under Clause 15 of the Letters Patent by the Division Bench, the contempt application would lie before the Judges constituting a Division Bench who passed the order.*
- (iii) In the event, an undertaking is given by the party to the proceeding before the Single Judge to do or not to do a certain thing and challenge to an order could not yield in reversal and/or modification of the original order is recorded the contempt would lie to a Judge before whom such undertaking was given."*



9. In view of the expedition of law, in the event, the appeal is dismissed affirming the order of the single Bench, the contempt application lies before the single Bench and not before the division Bench. Only in the event, the division Bench modifies and/or reverses the judgment and order of the single Bench, in such event, the contempt application would lie before the division Bench.

10. It is a case where the division Bench affirms the order of the single Bench and mere a direction to comply with the order impugned therein does not change the character of the disposal in perceiving the modification and/or addition to an original order.

11. We, thus, find that the contempt application is not competent before the division Bench. The same is, hereby, dropped. However, it is open to the petitioner to approach the appropriate forum ventilating the same grievance, if so advised in accordance with law.

(Harish Tandon)
Chief Justice

(Chittaranjan Dash)
Judge