



IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) Nos.32208/2023, 27325/2023, 30969/2023,
30974/2023, 30977/2023, 31468/2023, 31471/2023,
31476/2023,32199/2023,32201/2023,32205/2023,33
078/2023 & 25894/2024**

In W.P.(C) No.32208/2023

Dhaneswar Das & Ors ... Petitioners

-versus-

State of Odisha & others ... Opposite Parties

For Petitioners : Mr. J.K.Rath,
Senior Advocate,
Mr. B.Satapathy, Advocate
For Opposite Parties : Mr. S.N.Patnaik, A.G.A

In W.P.(C) No.27325/2023

Jayanta Kumar Biswal & Ors ... Petitioners

-versus-

State of Odisha & others ... Opposite Parties

For Petitioner : Mr. S.B.Jena, Advocate

For Opposite Parties : Mr. S.N. Patnaik, A.G.A.

In W.P.(C) No.30969/2023

Jayaram Sahu & Ors ... Petitioners



-versus-

State of Odisha & others ... Opposite Parties

For Petitioners : Mr. B.Satapathy, Advocate

For Opposite Parties : Mr. S.N. Patnaik, A.G.A.

In W.P.(C) No.30974/2023

Bhaskar Chandra Sahoo & Ors ... Petitioners

-versus-

State of Odisha & others ... Opposite Parties

For Petitioners :Mr. B.Satapathy, Advocate

For Opposite Parties : Mr. S.N. Patnaik, A.G.A.

In W.P.(C) No.30977/2023

Sashikanta Jena & Ors ... Petitioners

-versus-

State of Odisha & others ... Opposite Parties

For Petitioners : Mr. B.Satapathy, Advocate

For Opposite Parties : Mr. S.N. Patnaik, A.G.A.

In W.P.(C) No.31468/2023

Bijaya Kumar Choudhury & Ors ... Petitioners



In W.P.(C) No.32199/2023

Debendranath Pradhan & Ors ... Petitioners

-versus-

State of Odisha & others ... Opposite Parties

For Petitioners : Mr. B.Satapathy, Advocate

For Opposite Parties : Mr. S.N. Patnaik, A.G.A.

In W.P.(C) No.32201/2023

Purna Chandra Dash & Ors ... Petitioners

-versus-

State of Odisha & others ... Opposite Parties

For Petitioners : Mr. B.Satapathy, Advocate

For Opposite Parties : Mr. S.N. Patnaik, A.G.A.

In W.P.(C) No.32205/2023

Managobinda Dash & Ors ... Petitioners

-versus-

State of Odisha & others ... Opposite Parties

For Petitioners : Mr. B.Satapathy, Advocate



For Opposite Parties : Mr. S.N. Patnaik, A.G.A.

In W.P.(C) No.33078/2023

Jnanendra Kumar Das & Ors ... Petitioners

-versus-

State of Odisha & others ... Opposite Parties

For Petitioners : Mr. B.Dash, Advocate

For Opposite Parties : Mr. S.N. Patnaik, A.G.A.

In W.P.(C) No.25894/2024

Prashant Kumar Sahoo & Ors ... Petitioners

-versus-

State of Odisha & others ... Opposite Parties

For Petitioners : Mr. B.Satapathy, Advocate

For Opposite Parties : Mr. S.N. Patnaik, A.G.A.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

19.12.2025



Sashikanta Mishra, J. All these Writ Petitions involve common questions of fact and law and being heard together, are disposed of by this common judgment.

2. For convenience and brevity, WP (C) no.- 32208/2023 is treated as the lead case for consideration and discussion of the facts involved.

3. The petitioners have approached this Court seeking the following relief:

“In the facts and circumstances of the case, the humble petitioners fervently pray this Hon'ble Court to be graciously pleased to issue notice to the opp. parties, call for relevant records and after hearing the counsel of parties, issue a writ in the nature of Mandamus or any other appropriate writ quashing the impugned order No. 19613/SME dtd. 11.08.2023 under Annexure-1 and the Hon'ble Court be pleased to quash the Resolution bearing No. 25605 dtd. 26.12.2016 vide Annexure-4 to the writ application and the advertisement bearing No. 12511 dtd. 26.12.2016 vide Annexure-10 issued by the Opp.party No.3, basing on such Resolution prescribing the upper age limit as 32 years in the place of 42 years and to extend the benefit of upper age limit to 42 years as one time measures to the petitioners and to issue engagement order in favour of the petitioners as Sikhya Sahayaks against the existing vacancies of Mayurbhanj district within a stipulated period.

And/ or pass such other order/ orders or direction/directions as deems fit and proper in the interest of justice;

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



4. The facts of the case, briefly stated, are that the petitioners are all trained graduates and have passed OTET. Pursuant to the resolution dated 26.12.2016 of the Government of Odisha in the School and Mass Education Department for selection/engagement of Sikhya Sahayaks, an advertisement dated 26.12.2016 inviting applications was issued. The number of vacancies so notified was 14087. The petitioners having possessed the required qualifications submitted their applications and after the selection process they were placed in the select list. However, subsequently the names of the petitioners found place in the district-wise reject list on the ground of they being over-aged. The petitioners approached this Court against the rejection of their candidatures in W.P.(C). No. 40373 of 2021 inter alia, seeking a direction to the Opposite Party authorities to consider their candidature in line with the judgment passed by a Division Bench of this Court in W.A. No. 701 of 2019 and batch. This Court, by order dated 12.01.2022 directed the Commissioner-cum-Secretary in the Department of School & Mass



Education to consider the case of the petitioners and to pass a reasoned and speaking order within ten days. By order dated 11.08.2023, the case of the petitioners was rejected by the Commissioner-cum-Secretary.

The petitioners contend that the maximum age for engagement of Sikhya Sahayaks, ever since the scheme came into force in the year 2000 was 42 years for general candidates with usual relaxation for reserved category candidates till 2014. For the first time in the notification published on 11.09.2014, the maximum age was reduced to 35 years. The candidates who could not apply pursuant to said notification because of overage filed writ petitions before this Court which were allowed. However, the writ petitions were dismissed on the ground of non-joinder of parties, against which the concerned petitioners filed writ appeals being W.A. No. 701 of 2019 and batch. By judgment dated 23.12.2020, the Division Bench while setting aside the orders passed in the writ applications, held that since there were unfilled vacancies of posts of Sikhya Sahayaks available against which the



appellants could be accommodated, the authorities were directed to accommodate the appellants against the said vacant posts. Said judgment has been complied with in the meantime.

The petitioners, despite being over-aged, applied pursuant to notification dated 26.12.2016 on the strength of interim orders passed by this Court in the writ applications and were placed in the select list but their candidature was finally rejected on the ground of overage. Since the maximum age limit of 35 years as per the previous notification dated 12.09.2014 was interfered with, the petitioners had a legitimate expectation that the Government would provide relaxation in age for over-aged candidates in the subsequent years. But the impugned advertisement was published fixing the upper age as 32 years which violates Articles 14 and 16 of the Constitution of India. It is further contended that rejection of the case of the petitioners by the Commissioner-cum-Secretary is bad in law as the grounds cited therein are not tenable. The petitioners could not apply earlier because they



had not acquired OTET and could do so only after acquiring the same. It is further claimed that the case of the petitioners is almost identical to the cases decided by the Division Bench of this Court in W.A. No. 701 of 2019 and batch.

5. Counter affidavit has been filed by the Opposite Party No.1 resisting the writ application on the principle of estoppel and limitation. It is stated that the petitioners having participated in the selection process and having become unsuccessful cannot question the advertisement. Moreover, the present writ application has been filed challenging the advertisement issued on 26.12.2016. It is further contended that the judgment passed in ***Babita Satpathy v. State of Odisha, 2020 SCC OnLine Ori 921***, is a judgment *in personam* and not *in rem* and therefore, the petitioners cannot claim parity with the appellants therein. Moreover, the said case related to advertisement dated 12.09.2014 whereas the present case relates to advertisement dated 26.12.2016. It is also stated that in another case filed to challenge the advertisement dated 26.12.2016



being W.P.(C). No. 548 of 2017 (***Banita Biswal Versus State of Odisha***) and batch, this Court dismissed the writ application as being without merit. The case of the present petitioners is squarely covered by the said judgment for which the matter cannot be reagitated. It is also stated that as per the settled position of law unfilled vacancies cannot be filled up from the select list unless there is provision for a waiting list. Since the advertisement in question has already been given effect to, changing the upper age limit would amount to changing the rule of game after it has begun.

6. Rejoinder has been filed by the petitioner to the counter reiterating the basic stand taken in the writ application. It is stated that as per the judgment passed in ***Babita Satpathy (supra)***, the candidates were engaged against backlog unfilled vacancies. The case of the petitioners is identical to the situation arising in ***Babita Satpathy (supra)***. It is further stated that the maximum age was fixed to 42 years for a long time and was changed to 35 years in 2014-15.



The same has again been reduced to 32 years. Though it is a policy decision of the Government yet the same is arbitrary and in violation of the principles of equality guaranteed under Articles 14,15 and 16 of the Constitution of India. As per resolution dated 22.08.2023 for engagement as Junior Teacher (schematic) the upper age limit has been fixed to 38 years.

7. Separate counter affidavit has been filed by the DEO-District Project Coordinator (Opp. Party No.5). The stand taken by Opposite Party No.1 in his counter has more or less been reiterated including the principle of estoppel and delay. It is stated that unless there is provision for carrying forward the unfilled vacancies of a particular recruitment year to the subsequent year, the same cannot be filled up from the select list of the previous year. The scheme of Sikhya Sahayak has been abolished in the meantime with introduction of Junior Teacher (Contractual) and Junior Teacher (Schematic) for which the Government has published an



advertisement notifying 20,000 posts. It is also stated that the ratio decided in ***Babita Satpathy (supra)*** does not apply to the petitioners.

8. The petitioners have filed a rejoinder to the counter filed by Opposite Party No.5, reiterating their stand taken in the writ application and the earlier rejoinder. It is stated that the upper age limit being fixed to 42 in all advertisements issued from 2008 till 2013, the change brought about in 2014-15 and 2015-16 is nothing but whimsical, arbitrary and discriminatory. Therefore, even if it is a policy decision, this Court can interfere.

9. Heard Mr. J.K. Rath, learned Senior counsel assisted by Mr. B. Satpathy who led the arguments on behalf of the petitioners in all these cases. Also heard Mr. S.N.Pattnaik, learned AGA for the State.

10. Mr. Rath submits at the outset that if all the Government resolutions beginning from the one issued on 30.10.2000 for engagement of Sikhya Sahayaks till



the one issued on 06.08.2013 are perused, it would reveal that the upper age limit was consistently fixed at 42 years. This is obviously in line with the fact that Sikhya Sahayak is not a regular teaching post as per the Right of Children to Free and Compulsory Education Act, 2009 for which the Government in its wisdom prescribed the minimum and maximum age for general candidates for engagement as Sikhya Sahayak as 18 and 42 years respectively. In the resolution dated 06.08.2013, the upper age limit was brought down to 35 years against which representations were received from different quarters by the State Government. The matter was considered by a High Power Committee headed by the Commissioner-cum-Secretary on 21.08.2013 and it was decided to retain the upper age limit as 42 years. Surprisingly, however, the Commissioner, by letter dated 11.09.2014 (Annexure-6) without having any authority, reduced the maximum age from 42 to 35 years. This was challenged before this Court in W.P.(C). No. 18542 of 2014 and by order dated



30.01.2015; the State Government was directed to take a decision. Accordingly, in the High-Power Committee meeting held on 24.02.2015, the upper age limit was fixed as 42 years. On such basis, the aforementioned writ application was allowed. Therefore, there was no justified reason to reduce the upper age limit from 42 to 32 years again in the advertisement dated 26.12.2016. Mr. Rath further argues that even otherwise, the advertisement itself discloses that the 14,086 posts notified include the posts that were unfilled in the previous year that is 2014. Since this Court has granted the desired relief to candidates of the said advertisement in the Writ Appeal **Babita Satpathy (Supra)**, the same principle ought to be applied to the petitioners also. There are 4136 unfilled vacancies against which the petitioners could be accommodated.

Mr. Rath also argues that these aspects have not been considered in the proper perspective by the Commissioner-cum-Secretary while rejecting the case of the petitioners by the impugned order. As regards



the rejection of the claim of one Banita Biswal by a Single Judge of this Court, Mr. Rath submits that the same must be held to have been decided *per incuriam* as an earlier order passed by another Bench on 02.03.2015 had not been looked into. Mr. Rath concludes his argument by referring to the recent amendment brought by the State to the Odisha Civil Service (Fixation of Upper Age Limit) Rules, 1989 wherein the upper age limit of 32 years has been changed to 42 years for entry into Government service.

11. Mr. S.N. Pattnaik, learned AGA would argue that the selection process initiated pursuant to the advertisement dated 26.12.2016 has been completed since long and there was no provision for maintaining a waiting list. Secondly, the reliance placed by the petitioners on ***Babita Satpathy (supra)*** is unacceptable for the reason that said judgment was passed *in personam* and not *in rem* and moreover, the said case related to a different advertisement. Mr. Pattnaik further submits that a Coordinate Bench was not inclined to accept the contention raised by one of



the candidates, Banita Biswal and had dismissed the writ application filed by her in WP (C) no.- 548 of 2017 challenging the very same advertisement involved in the present cases. The order of the Single Judge is therefore, binding on the petitioners. Mr. Pattnaik further argues that relaxation of age is a policy decision and the candidates have no right to question the same. Allowing the claim of the petitioners would violate the principles of equality as per Articles 14 and 16 and would also affect other candidates who could not apply because of overage.

12. As already stated, the petitioners had approached this Court earlier in W.P.(C). No. 40373 of 2021 which was disposed of by order dated 12.01.2022 with a direction to the Commissioner-cum-Secretary of the Department to consider the representation of the petitioners dated 17.04.2021 and to pass a speaking and reasoned order, taking into consideration the materials placed before him by the petitioners. The



case of the petitioners was considered and rejected as per order passed on 11.08.2023, which is impugned.

A careful reading of the impugned order reveals that the claim of the petitioners was rejected on the following four grounds:

- (1) The case of **Babita Satpathy (supra)** is not applicable to the case of the petitioners as the former was in relation to advertisement dated 12.09.2014 while the latter relates to the advertisement dated 27.12.2016.
- (2) The order passed by this Court in the case of **Hemanta Kumar Bhuyan v. State of Odisha** (W.P. (C). No. 18542 of 2014) clearly mentions that the same shall not be treated as a precedent for future cases.
- (3) An identical case filed by one **Banita Biswal** (supra) (W.P. (C). No. 548 of 2017) challenging the very same advertisement as in the present case was dismissed on merits by this Court.
- (4) Fixation of cut-off, prescribing maximum or minimum age requirements for a post is the discretion of the authority.



Since the last ground goes to the root of the matter, the same is taken up for consideration first.

13. In this regard, it is argued by learned State counsel that as per the settled position of law, matters relating to creation and abolition of posts, prescription of qualification, minimum and maximum age, etc. are within the exclusive domain of the employer. The same being a policy decision of the Government may not be interfered with by the Courts. The judgment of the Supreme Court passed in ***Union of India v. Pushpa Rani***, (2008) 9 SCC 242 has been cited in support of such argument.

14. On the other hand, it is argued on behalf of the petitioners that while interference by the Court in policy matters is ordinarily not permissible yet, where such decision is found to be arbitrary, unreasonable or in contravention of the statutory provisions or violates the right of individuals or is hit by Articles 14 and 16 of the Constitution, the writ Court can certainly interfere. A judgment passed by learned single Judge



of this Court in the case of **Girish Chandra Tripathy** **Vrs. State Of Odisha** (W.P.(C). No. 7103 of 2018) is cited in support of such argument.

15. This Court has given its anxious consideration to the arguments advanced as above as also the cases cited at the bar. This Court is of the considered view that policy decisions are ordinarily not amenable to judicial review but then if the same is subversive of the doctrine of equality or suffers from the vice of arbitrariness or violates the principles of equality guaranteed under the Constitution, judicial review would be permissible. The above principle was laid down by the Supreme Court in the case of **Kailash Chand Sharma v. State of Rajasthan**, (2002) 6 SCC 562 and **Ugar Sugar Works Ltd. v. Delhi Admn.**, (2001) 3 SCC 635. Therefore, to contend that a policy decision of the Government cannot be touched at all would not be correct. The correct view would be that in appropriate cases judicial review would be permissible. The policy decision of the Government cannot be insulated in a manner so tight as to not be amenable



to any kind of review. To the above extent, therefore, the ground cited by the Commissioner-cum-Secretary to reject the claim of the petitioners cannot be countenanced in law.

16. The petitioners have heavily relied upon the judgment of the Division Bench of this Court passed in ***Babita Satpathy (supra)***. Undisputedly, the petitioners/ appellants of the said cases were candidates pursuant to the notification dated 11.09.2014. The ground of challenge was however, the fixation of upper age limit as 35 years instead of 42 years due to which the candidates had become overaged. The learned Single Judge had rejected the claim of the petitioners on the ground of non-joinder of necessary parties. However, the Division Bench in its judgment dated 23.12.2020 directed as follows;

“On perusal of the materials available on record and considering the submissions of learned counsels for both sides, we set aside the orders dated 29.11.2019 passed by the learned Single Judge in W.P.(C) Nos.16711 of 2016, 22369 of 2015, 18904 of 2015 and 18768 of 2015. However, it is made clear that since there are unfulfilled vacancies of posts of Sikhya Sahayaks available against which the appellants could be accommodated, we, therefore, direct the respondents to accommodate these appellants against the said vacant posts as they are eligible for the said posts.”



It is not disputed that the aforesaid judgment has since attained finality in view of the dismissal of the SLP filed by the State against it as also the review application also filed by the State. It is stated at the bar that the petitioners of the said cases have been engaged against the unfilled vacancies of the previous year.

17. According to the State authorities, the judgment of ***Babita Satpathy (supra)*** can have no application since the same was rendered in respect of the notification dated 11.09.2014 whereas the present case relates to the advertisement dated 26.12.2016. This contention can be considered only to be rejected. It is not so much a question whether the judgment of ***Babita Satpathy (supra)*** was rendered *in personam* or *in rem* as the principle decided therein. It is trite law that where, despite variance in facts between two cases, the issue and the principle involved and decided is the same, it can be made applicable to the other case as per the general law of the precedents. In



Director of Settlements v. M.R. Apparao, (2002) 4

SCC 638, the Supreme Court observed that:

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The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has “declared law” it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered.

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[Emphasis Added]

Notwithstanding the fact that the notifications involved in both the cases are different yet the issue involved in both is one and the same, that is, justifiability of reducing the upper age limit from 42 years. Though in **Babita Satpathy (Supra)** it was reduced to 35 years, in the present case it has been reduced further to 32 years.

A stand has been taken that the petitioners cannot be granted the desired relief as in the absence



of a provision for maintaining a waiting list, the unfilled vacancies of the recruitment year 2015-16 no longer exists, having been taken forward to the subsequent recruitment years. However, it is borne out from the materials on record that the notification dated 26.12.2016 was in respect of 14,086 vacancies. The Petitioners have emphatically argued that the same include the unfilled vacancies of the year 2014 which the state has not specifically denied. It is not disputed that 4,136 posts out of the above posts advertised have not been filled up. So, even if the petitioners are unable to be considered against the vacancies of 2016 for being overaged, there is no reason as to why they cannot be considered against vacancies of 2014, in respect of which a division Bench of this Court **Babita Satpathy** (supra) held that the maximum age for such vacancies shall be treated as 42 years. Obviously, a different age cannot be taken for the very same vacancies subsequently.

This Court, therefore, holds that the ground cited by the Commissioner regarding inapplicability of the



judgment of the ***Babita Satpathy (supra)*** to the facts of the present case is untenable.

18. The second ground cited in the impugned order is that the order passed in ***Hemant Kumar Bhuyan (supra)*** categorically mentions that the same shall not be treated as precedent. Perusal of the order passed in the said case reveals that it was actually held so. But then the petitioners are not relying only on the said decision but also on other cases and contentions, which, if accepted, can grant them the desired relief.

19. The third ground cited is that an identical case filed by a candidate challenging the very same advertisement having been dismissed on merits by this Court, said judgment operates as res judicata. What is significant to note is that the judgment in ***Babita Satpathy (supra)*** attained finality with dismissal of the SLP filed by the State as also the Review Application filed against it. Even then, it is significant to note that a coordinate Bench of this Court in W.P.(C) No. 40373 of 2021 taking note of the grievance of the



petitioners vis-à-vis the judgment passed in **Babita Satpathy (supra)** directed the Commissioner-cum-Secretary to consider the representation of the petitioners from which the impugned order has emanated. It cannot be said that the coordinate Bench was not conscious of the judgment passed in **Banita Biswal (supra)** while passing such order. However, said order was passed on the consent of the counsel for School and Mass Education Department without raising the fact of dismissal of the case of **Banita Biswal (Supra)**. The order of the coordinate Bench was never challenged but was complied with by disposing of the representation. There was no challenge to said order even after the Writ Appeal filed in Banita Biswal had been dismissed. Therefore, notwithstanding the decision in **Banita Biswal (supra)**, the matter was given a fresh look in view of the judgment passed in **Babita Satpathy (supra)** as directed by the coordinate Bench and, therefore, it was not open to the Commissioner to raise the ground of dismissal of Banita Biswal's case.



20. From the foregoing discussion, it is evident that none of the grounds cited by the Commissioner-cum-Secretary to reject the claim of the petitioners can be treated as valid.

21. Thus, from a conspectus of the analysis of facts law involved, contentions raised and the discussion made, this Court is of the considered view that the impugned order cannot be sustained in eye of law. However, the resolution dated 26.12.2016 coupled with the advertisement issued on the same date having already been acted upon since long, this Court would not interfere with it by granting the relief of quashment of the same, but is inclined to direct the concerned authorities to consider the case of the petitioners against the unfilled vacancies of 2014, akin to the manner in which the division Bench of this Court directed in the case of **Babita Satpathy (supra)**. The impugned order dated 11.08.2023 passed by the Commissioner-cum-secretary is however quashed.



The Opposite Parties are directed to issue necessary orders for engagement of the petitioners as Sikhya Sahayak or in any other euivalent posts by treating their engagements as against the unfilled vacancies of 2014. The whole exercise shall be completed within three months from today.

22. All these writ applications are disposed of accordingly.

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Sashikanta Mishra,
Judge

Deepak