



**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.C(OAC) Nos.3895 of 2014 and 794 of 2017**

*(Applications under Articles 226 and 227 of the Constitution of India)*

**In both cases**

**Suresh Charan Mishra      ...      Petitioner**

*-versus-*

**State of Odisha & others ...      Opposite Parties**

**Advocates appeared in the case through hybrid mode:**

**For Petitioner**      : Mr.Kousik Swain,  
Advocate.

*-versus-*

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

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**CORAM:**  
**JUSTICE SASHIKANTA MISHRA**

**JUDGMENT**  
**22.8.2025.**

**Sashikanta Mishra,J.** Both these Writ Petitions involve common facts and being heard together, are being disposed of by this common judgment.



**2.** Bereft of unnecessary details, the facts of the case are that on 12.3.1996, the Government in Department of School and Mass Education issued a resolution for appointment of Primary School Teachers with the stipulation that the select list shall be prepared on education-district wise basis. Accordingly, an advertisement was issued on the same day for selection of Primary School Teachers in respect of Ganjam District. In so far as Bhanjanagar Education District is concerned, 302 posts were advertised. The petitioner belongs to Bhanjanagar Education District with his name being sponsored by the Employment Exchange. On 04.6.1996, the erstwhile District Inspector of Schools, Bhanjanagar directed the Petitioner to submit his application, which the Petitioner submitted. While the selection process was underway, the Government issued another resolution on 28.9.1996 stating that the selection shall be made circle-wise. Being aggrieved, some candidates approached the erstwhile Odisha Administrative Tribunal in its Cuttack and Bhubaneswar benches by



filing O.A. No.3753(C) of 1996 and batch. On 21.1.2003, the Petitioner was permitted to intervene in O.A.No.3388/1996 filed by one Someswari Devi. The Tribunal on that very day directed that the selection process having already commenced, the authorities shall complete the selection process district-wise. A re-select list was prepared by the District Selection Committee on 9.6.2008 wherein the name of the Petitioner found place at Sl. No.33 in the District-wise selection list and 64 in the circle-wise select list. Despite publication of such list, no appointment order was issued for which the Petitioner filed contempt application being C.P.No.127(C)/2004 before the Tribunal. The Tribunal having directed personal appearance of the Opp. Party contemnors, the District Inspector of Schools, Bhanjanagar vide order dtd.18.1.2014 issued appointment order in favour of the Petitioner and posted him as trained Primary School Teacher (Level-V) at Balarampalli Primary School of Jagannathprasad Block. Prior to that, the Petitioner having been engaged as Sikshya Sahayak



since 2005 had been regularized as regular Primary School Teacher in 2011 and was posted in the same School. The B.D.O., Jagannathprasad, by letter dtd.27.1.2014 intimated the Petitioner that since he is continuing as Zilla Parishad Teacher, he cannot join in another similar post and therefore, asked him to get himself relieved by order of appropriate authority before joining the new assignment. Accordingly, the Petitioner was relieved from the post of Zilla Parishad Teacher on 10.3.2014 and on 11.3.2014, joined as regular Primary School Teacher in Level-V in the same School. After joining as such, the Petitioner submitted a representation on 3.6.2014 to the Director of Elementary Education claiming service and financial benefits as admissible to a regular Primary School Teacher as made available to similarly situated candidates recruited and joined in the year 1996. The matter remained pending till 20.3.2017 when the Addl. Secretary to Government directed the Director of Elementary Education to cancel the appointment order issued in favour of the Petitioner as there was no



vacancy to work out the reselect list. Being aggrieved, the Petitioner filed O.A. No.794(C)/2017 before the erstwhile Odisha Administrative Tribunal which has since been transferred to this Court and registered as W.P.C(OAC) No.794/2017.

**3.** In so far as the other Writ Petition is concerned, the Petitioner claims that he was entitled to be appointed as a regular Primary School Teacher w.e.f. 1996 but was given appointment only in the year 2014. The vacancy against which the Petitioner was appointed relates to the year 1996, but the authorities appointed him in 2014 without antedating his appointment against such vacancy. Challenging the same the Petitioner approached the Tribunal originally in O.A. No.3895/2015 (C) which has since been transferred to this Court and registered as W.P.C. (OAC) No.3895/2014.

**4.** The case of the Opp. Party-authorities in a nutshell, is that as per direction of the Tribunal and instruction of Director of Elementary Education,



appointment orders were to be issued in favour of eligible candidates from the reselect list prepared strictly in consonance with the judgment dtd.21.1.2003 against the notified vacancies pursuant to the resolution dtd.12.3.1996. However, the District Inspector of Schools, Bhanjanagar, instead of implementing the judgment in its letter and spirit, issued appointment order illegally only in favour of the Petitioner and posted him as trained Primary School Teacher (Level-V) at Balarampalli Primary School of Jagannathprasad Block against a non-existing post. Such order was issued without knowledge of the District Education Officer, who is the Chairman of the District Level Selection Committee and whose approval is mandatory for appointment of Level-V teachers. After receipt of the order of appointment, the Petitioner submitted his joining report on 24.1.2014, which was not accepted by the BDO as he was continuing as Zilla Parishad Teacher in the same School w.e.f. 01.5.2011.



Since the Petitioner is continuing as Zilla Parishad Teacher, he cannot join in another similar post. The B.D.O. therefore, asked him to be relieved by order of appropriate authority before joining in his new assignment. The Headmaster-in-charge of the School, in his letter dtd.21.8.2014 to the BEO, informed that the Petitioner had compelled him to sign on the so-called relieve and joining letter dtd.11.3.2014 and he had signed on the said letters anticipating non-cooperation of the Petitioner in the management of day-to-day school work. The said letter does not contain any official letter number of the school. On the other hand, the petitioner has been putting his signature as Zilla Parishad Teacher and also receiving salary as such. There is neither any entry in the service book regarding joining on 11.3.2014 nor any mention in the teachers' attendance register of the school for the months of 2014. In fact, the petitioner is still continuing as Zilla Parishad Teacher, as his joining report was not accepted by the B.D.O. Since the so-called appointment order was issued without



prior knowledge of the D.E.O., the matter was brought to the notice of the Director, Elementary Education as well as the Government. The Government had not issued any direction to issue appointment order in favour of any individual, for which, the same is illegal and void and the D.E.O. was therefore, directed to cancel the appointment order by letter dtd.20.3.2017.

**5.** Heard Mr. Kousik Swain, learned counsel for the Petitioner and Mr. S.N.Patnaik, learned Addl. Government Advocate for the State.

**6.** Mr. Swain would argue that the concerned authorities committed gross illegality in preparing the select list circle-wise even through the original resolution dtd.12.3.1996 mentioned that the same was to be done district-wise. The matter being challenged before the Tribunal and this Court, it was specifically directed that wherever selection process had begun, the same was to be done district-wise. In so far as the Bhanjanagar Education District is concerned, selection process had already begun. As such, the Petitioner was



placed at Sl. No.33 of the district-wise select list and 64 in the circle-wise select it. Either way, he was entitled to be appointed as regular trained Primary School Teacher. The authorities however sat over the matter and only after coercive orders were passed by the Tribunal in the contempt application filed by the Petitioner that they took action by issuing order of appointment in favour of the petitioner on 18.1.2014. Referring to the appointment order enclosed as Annexure-10 to the rejoinder affidavit in W.P.C.(OAC) No.794/2017, Mr. Swain would submit that the Petitioner was posted as trained regular Primary School Teacher in Balarampalli Primary School, where he was already posted as regular Primary School Teacher under the Zilla Parishad since 2011. Thus, for no fault of the Petitioner, he was kept out of employment from 1996 till 2014. His services as trained regular Primary School Teacher, therefore, ought to be antedated to the year 1996 as the same was against the vacancies notified in that year. Instead of doing so, the authorities illegally cancelled his



appointment by order dated 20.3.2017. Mr. Swain further argues that the plea taken by the authorities that he is still working as Zilla Parishad Teacher is completely baseless.

**7.** Per contra, Mr. Patnaik, learned Addl. Government Advocate, would argue that the question as to whether the select list is to be prepared district-wise or circle wise was the subject matter of several litigations before the erstwhile Odisha Administrative Tribunal as well as this Court. Ultimately, this Court directed that wherever the selection process had begun, the select list shall be prepared district-wise. While the matter was being examined with reference to the available vacancies, the Petitioner approached the Tribunal in a contempt application. In view of the order passed in the contempt application, the erstwhile District Inspector of Schools, without obtaining approval of the competent authority unilaterally issued the order of appointment only in favour of the Petitioner even though there was no such direction by



the Tribunal in its judgment. Moreover, it was found that the Petitioner was already working against a regular post being regular Primary School Teacher since 2011. The BDO therefore did not accept his joining report. The Petitioner made a false claim of joining but his joining report having never been accepted, he cannot be said to have been relieved from the post against which he was working. In fact, the petitioner is still working as a Zilla Parishad Teacher on regular basis. The order of appointment having been passed without reference to the select list and without any vacancies, was rightly cancelled. Under such circumstances, the Petitioner having never been actually appointed, cannot in any manner be said to be affected by the order of cancellation of the appointment. On the same analogy, having never been appointed as trained Primary School Teacher, the question of antedating his service to 1996 does not arise.



8. The facts of the case as narrated are not disputed. In view of the judgment passed by this Court in OJC No.9384/1997 on 1.12.2000 and in view of the fact that the resolution of March, 1996 stipulates that there would be District-wise selection, it was directed that the same process should be adhered to in respect of the educational district where the selection process has already commenced in accordance with the resolution dtd.12.3.1996. This Court, therefore, finds it unnecessary to delve into the question as to if it was proper on the part of the authorities to prepare select list circle-wise for Bhanjanagar Education District. It has not been disputed that the selection process, in so far as Bhanjanagar Education District is concerned had already commenced and therefore, it would be reasonable to hold that the select list ought to have been prepared district-wise. It is also not disputed that the Petitioner was placed at Sl.No.33 of the re-select list prepared district-wise. But the same, per se, is not enough to conclusively hold that the Petitioner was eligible for appointment. In other words, there being no



clear-cut material placed before this Court as to the exact number of vacancies available for the category to which the Petitioner belongs, it would not be possible for this Court to give any finding thereon. It is borne out from the materials on record that while the selection of Primary School Teachers pursuant to the resolution dtd.12.3.1996 was locked up in litigations, the Petitioner was engaged as Sikshya Sahayak in the year 2005. Having completed six years of continuous service, he was regularized as Primary School Teacher w.e.f. 01.5.2011. The Petitioner having accepted such regularization was posted as regular Primary School Teacher in Balarampalli Primary School in Jagannathprasad Block. Nothing has been placed before this Court to show that acceptance of such regularization of his services by the Petitioner was without prejudice to his claim for engagement as Trained Primary School Teacher pursuant to the resolution dtd.12.3.1996. As such, having accepted regularization of his services w.e.f. 01.5.2011, the Petitioner must be deemed to have foregone his claim



in respect of the post of Trained Primary School Teacher pursuant to the resolution dtd.12.3.1996. Even accepting for a moment that the Petitioner could lay a valid claim on the post of trained Primary School Teacher on being offered with appointment on 18.1.2014, he was obviously required to be relieved from the post he was then holding so as to be able to join in the new post. It is to be kept in mind that both the posts are regular posts under the Government. The Petitioner claims to have been relieved by the Headmaster in-charge on 11.3.2014 and also submitted his joining report, but then, fact remains that his joining report was never accepted by the B.D.O. The Petitioner has relied upon the relieve order dtd.11.3.2014, which according to the State was obtained forcibly by the Petitioner. This Court is not willing to enter into the factual controversy in such regard. Fact remains that the Petitioner has not been able to conclusively demonstrate that he had joined in the new post. The so-called joining report dtd.11.3.2014 is unable to be accepted on the face of



evidence adduced by the State in its counter and additional affidavits showing that the Petitioner is still continuing and drawing salary as Zilla Parishad Teacher. This automatically demolishes his claim of being relieved as Zilla Parishad Teacher and joining as Primary School Teacher. In the peculiar facts and circumstances, this Court refrains from going into the question of justifiability of issuance of the order of cancellation of the Petitioner's so-called appointment on 20.3.2017. In fact, it is a redundant question now.

**9.** Having held that the Petitioner was never actually appointed as a regular Primary School Teacher w.e.f. 18.1.2014 as claimed, the question of antedating his service to the year 1996 automatically becomes redundant also. The Petitioner claims that the persons similarly placed as him were appointed on 02.12.1996, but no proof thereof has been furnished by him for consideration of this Court.

**10.** Thus, from a conspectus of the analysis of facts, contentions raised and the discussion made, this



Court finds that the Petitioner has not made out any case for interference by this Court. This Court holds that the Petitioner is not entitled to the relief claimed in the Writ Petitions.

**11.** Resultantly, the Writ Petitions being devoid of merit are therefore, dismissed. There shall be no order as to costs.

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**Sashikanta Mishra,**  
**Judge**

**Ashok Kumar Behera**

Signature Not Verified

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Signed by: ASHOK KUMAR BEHERA  
Reason: Authentication  
Location: High Court of Orissa, Cuttack  
Date: 22-Aug-2025 17:32:23