



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 35939 OF 2023

In the matter of an application under Articles 226 & 227 of the Constitution of India.

Ajit Kumar Nayak & others **Petitioners**

-Versus-

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

Advocates appeared in this case:

For Petitioners : M/s. Diptiranjana Mohapatra,
Mr. S. Pradhan & B. Pasayat, Advocates

For Opp. Parties : Mr. D. Lenka,
Addl. Government Advocate

CORAM:

THE HON'BLE MR. JUSTICE DIXIT KRISHNA SHRIPAD

J U D G M E N T

Date of Hearing and Judgment : 18.08.2025

PER DIXIT KRISHNA SHRIPAD, J.

The petitioners have scripted their prayer as under:-

“It is, therefore, most humbly prayed that this Hon'ble Court may be graciously pleased to admit this writ petition, issue rule NISI calling upon the Opp. Parties,



more particularly Opp. Party No. 1 to show cause at why the order No.22806/SME dated 26.09.2023 under Annexure-2 by which grievance of the petitioners was rejected and also rejected the claim of the petitioners shall not be quashed by holding that the appointment of the petitioners to be modified from contractual appointment to regular appointment.

If the opp. Parties fail to show cause or shown insufficient cause make the rule absolute by issuing a writ of mandamus or any other writs thereby quashing the order No.22806/SME dated 26.09.2023 under Annexure-2 and commanding the Opp. Parties to modify the appointment of the petitioners from contractual appointment to regular appointment and to grant all consequential service and financial benefits attached to regular appointment as due and admissible from their initial date of joining in the post and treat the petitioners as regular appointee and grant all consequential service and financial benefits attached to regular appointment as due and admissible from their initial date of joining in the post.....”

2. Regardless of the text of the prayer, their essential grievance appears to be the metamorphosing of regular recruitment into one of contractual and learned counsel appearing for the petitioners finds fault with that on the ground that the recruitment process is normative, inasmuch as it has been undertaken under the extant



rules; once the recruitment process begins with the issuance of the call notification, till is accomplished by selection followed by appointment, its nature cannot be changed in the absence of contra enablement by law.

3. Learned AGA, for filing counter affidavit again sought for time. However, request is rejected, inasmuch as the opportunities given earlier by Co-ordinate Benches have not been utilized. A citizen knocking at the doors of Court cannot be asked to wait till his opponents see blue moon for filing of objections. Be that as it may.

4. Having heard learned counsel for the parties and having perused the petition papers, this Court is inclined grant indulge in the matter for the following reasons:-

4.1. The recruitment process began for appointment of Junior Clerks vide Advertisement No.574 dated 28.02.2011, a copy whereof avails at Annexrue-2; the total number of vacancies in the posts were 289, initially. The petitioners applied pursuant to the said advertisement. They wrote the examination, and they faced the interview. Having been selected, they have been issued appointment



orders. However, it is made contractual in character, which they are not happy with, justifiably.

4.2. Learned AGA appearing for the opposite parties vehemently contends that the authority, who had issued recruitment notification, had himself issued addendum dated 23.03.2011 adding some more vacancies and providing for the conversion of nature of recruitment process from the regular to contractual. When asked as to which rule from the statute book gives that power; learned AGA is not in a position to lay his hands on any such rule or ruling. Conversely, learned counsel for the petitioners presses into service the decision of Apex Court in *Government of A.P. V. Syed Yousuddin Ahmed*, (1997) 7 SCC 24, which adumbrates his submission in support of petitioners.

4.3. Learned counsel for the petitioners draws attention of the Court to the earlier round of legal battle in W.P.(C) No.26847 of 2021, which came to be disposed of by a Co-ordinate Bench of this Court vide order 13.09.2021 with a direction to consider the petitioner's grievance as aired in the subject representation in the light of another Co-ordinate Bench decision in *Sarojakanta*



Mohapatra V. State of Odisha, 2019 (I) OLR 1006. This representation having been considered, came to be wrongly negatived vide order dated 26.09.2023, which is impugned in this petition. Obviously, the consideration lacks legal approach and it does not address the matter on merits in the light of decisions cited and therefore, the same cannot be sustained.

In the above circumstances, this petition succeeds. A Writ of Certiorari issues quashing the impugned order dated 26.09.2023 coupled with a Writ of Mandamus to the Opposite Party No.3 to treat the petitioners as having been regular recruitees *ab inceptio*, and to grant all consequential benefits flowing therefrom within a period of eight (8) weeks.

Default/delay shall be viewed very seriously at the next level of litigation, if petitioners are driven to.

Now, no costs.

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

(Dixit Krishna Shripad)
Judge

Orissa High Court, Cuttack
The 18th day of August, 2025/Basu

Signature Not Verified

Digitally Signed
Signed by: BASUDEV NAYAK
Designation: AR-CUM.SR. SECRETARY
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 19-Aug-2025 12:30:36