

"ITEM NO.108

COURT NO.5

SECTION XIA

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2151-2154 OF 2002

STATE OF ORISSA & ANR.

Appellant (s)

VERSUS

ABHAYA KUMAR DAS & ORS.

Respondent(s)

(With office report )

WITH

Civil Appeal NO. 2148 -2150 of 2002

Date: 20/02/2008 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s) Mr. Radha Shyam Jena, Adv.

For Respondent(s) Mr. Jaideep Gupta, Sr. Adv.

Mr. K.K. lahiri, Adv.

Mr. Ejaz Maqbool, Adv.

Mr. Abhijeet Sinha, adv.

Mr. J.S. Attri, Adv.

Mrs. K. Sarada Devi, Adv.

UPON hearing counsel the Court made the following  
ORDER

The appeals are allowed.

No costs.

(S. Thapar)

PS to Registrar

(P.S. Tyagi)

Court Master

The signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.2151-2154 OF 2002

STATE OF ORISSA & ANR.

...APPELLANT (S)

VERSUS

ABHAYA KUMAR DAS & ORS.

...RESPONDENT(S)

WITH

ORDER

Aggrieved by the order of the Division Bench of the High Court of Orissa, these appeals have been preferred.

Heard learned counsel for the parties.

The brief facts are as followed:

Pursuant to advertisement for selection of junior grade typists, altogether 871 candidates were empanelled for appointment. The list was published on 3.12.1987. Amongst the 871 selected candidates, 845 belong to general category and 27 candidates belong to scheduled caste category. Out of 845 of general category candidates, 184 were duly appointed. All the 27 candidates of schedule castes were also appointed.

The remaining general category candidates who were not appointed, though selected, approached the tribunal. The tribunal directed the State to give them appointment by Order dated 1.3.1993. It is stated that the order of the tribunal has not been challenged. However, since there was no compliance with the order of the tribunal, a writ petition was preferred before the Division Bench of the High Court. The Division Bench by its impugned order directed that the respondents should be given appointment. Aggrieved thereby, these Special Leave Petitions have been filed by way of Special Leave.

The first difficulty that we face in these cases is that the selection list was published on 3.12.1987. Today we are in 2008. The second difficulty is that by now it is a well settled principle of law that a selectee does not have an indefeasible right for appointment, and, therefore, by virtue of being selected no enforceable right has accrued to the selected candidates. This has been held by a catena of judgments of this Court. Also we are dismayed to note that the High Court directed the respondent (appellant herein) to implement the order of the tribunal, as if the High Court is sitting as an Executing Court in exercise of the power under Article 226 of the Constitution. The High Court's power under Article 226 of the Constitution is available only in the case of miscarriage of justice and where there is error of law apparent on the face of the record. A High Court exercising its power under Article 226 cannot act as an Executing Court.

In our view, therefore, the order of the High Court and the tribunal are

not sustainable in law. Therefore, they are accordingly set aside.

The appeals are allowed. No costs.

.....J.  
( H.K. SEMA )

New Delhi,  
February 20, 2008

.....J  
( MARKANDEY KATJU )