

**ORISSA HIGH COURT: CUTTACK**

**W.P. (C) NO. 7451 OF 2022**

In the matter of an application under Article 226 of the Constitution of India.

**AFR**

Jyotiranjana Pradhan

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Petitioner

-Versus-

Registrar (Judicial),  
Orissa High Court  
and another

.....

Opp. Parties

For Petitioner : Mr. Mohit Agarwal,  
Advocate

For Opp. Parties : Mr. S.S. Kanungo,  
Addl. Govt. Advocate

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI  
AND  
HONOURABLE MR. JUSTICE G. SATAPATHY**

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**Date of hearing and judgment: 28.09.2022**

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**DR. B.R. SARANGI, J.** By means of this writ petition, the petitioner seeks to quash the order dated 07.01.2020 passed by opposite party no.2 under Annexure-2

terminating his service, and to issue direction to the opposite parties to reinstate him in service in terms of the appointment order dated 20.12.2019 under Annexure-1, within a stipulated time.

2. The factual matrix of the case, in a nutshell, is that the petitioner was appointed on 01.12.2017 as a Contractual Computer Engineer in the High Court of Orissa through an Outsourcing Agency, namely, SISL Infotech Pvt. Ltd. The petitioner was discharging his duties with due diligence and providing service in networking, software and hardware maintenance and all other IT related works, as were being assigned to him by the administration of the High Court of Orissa. On the basis of his long standing experience and overall domain knowledge of the High Court, on 19.12.2019, he applied for the post of System Analyst in the High Court of Orissa, which was lying vacant since long. On consideration of the same, he was appointed in the post of System Analyst, vide office order dated 20.12.2019 under Annexure-1, in

which it was stipulated that the appointment was subject to verification of all the certificates along with his character and antecedents in the manner prescribed by the Government and in case his certificates, character and antecedents were not found correct/satisfactory, he would be removed from Government service immediately without any notice. In terms of such order of appointment, the petitioner was to remain in probation for a period of two years from the date of his joining the service, and that the appointment was purely temporary and terminable at any time for good and sufficient reasons to be recorded in writing during the period of probation, without prior notice, including extension of such period. Pursuant to the said appointment order dated 20.12.2019, the petitioner submitted his joining report. While he was continuing in service, on 07.01.2020, opposite party no.2 communicated a letter of termination to the petitioner under Annexure-2. Even though the petitioner submitted representation, the same was rejected vide order dated 10.02.2020. Thereafter,

though the petitioner filed representations on 04.05.2020 and 03.07.2021 before the Hon'ble the Chief Justice, but the same were not acceded to. Therefore, the petitioner has approached this Court by filing the present writ petition.

3. Mr. Mohit Agarwal, learned counsel for the petitioner contended that the order of termination in Annexure-2 dated 07.01.2020 having been passed without assigning any reason, the same has to be quashed. It is further contended that the reasons, which have been assigned subsequently by way of filing counter affidavit, cannot sustain in the eye of law. Consequentially, he seeks for quashing of the order impugned.

4. Mr. S.S. Kanungo, learned Addl. Government Advocate appearing for the opposite parties contended that since appointment of the petitioner was made irregularly, meaning thereby, no advertisement was issued for filling up of the post of System Analyst in the Court's establishment, question of applying for the post does not

arise. It is further contended that upon consideration of the representation dated 19.12.2019 filed by the petitioner, the Hon'ble the Chief Justice was pleased to appoint the petitioner provisionally against the permanent post of System Analyst of the Court on relaxation of the process of direct recruitment. Therefore, appointment order dated 20.12.2019 was issued vide Annexure-1. Consequentially, the petitioner joined in the Court's Establishment on 23.12.2019. But as per the provisions contained in Orissa High Court (Appointment of Staff and Conditions of Service) Rules, 2019, eligibility criteria for System Analyst are B.E./B.Tech. Degree in Computer Science/I.T. or M.C.A. or M.Sc. Degree in Computer Science with first class or equivalent position from a recognized University/Institution having minimum three years of experience in Programming/Software Development. The said post was to be filled up by way of direct recruitment. But the petitioner was never appointed through the process of direct recruitment. As a consequence thereof, the petitioner was terminated by the

competent authority. Therefore, no illegality or irregularity has been committed by the authority. More so, the petitioner was engaged through NICSI's empanelled vendor SISL Infotech Pvt. Ltd. and he could not show any performance with relation to software development and/or programming as System Analyst. Thereby, action was taken by terminating his services, as the appointment of the petitioner was totally illegal and irregular. Consequentially, he seeks for dismissal of the writ petition.

5. This Court heard Mr. Mohit Agarwal, learned counsel appearing for the petitioner and Mr. S.S. Kanungo, learned Addl. Government Advocate appearing for the State-opposite parties by virtual mode and perused the records. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

6. Admittedly, the petitioner was appointed through an Outsourcing Agency, viz., SISL Infotech Pvt. Ltd., which is an empanelled agency of NICSIs. As such, without following due procedure, pursuant to the representation filed by him on 19.12.2019, he was appointed on 20.12.2019. The appointment order is very clear, which reads as thus:-

*He shall remain in probation for a period of 2(two) years from the date of his joining the service. His service is subject to the following terms and conditions.*

*The appointment is purely temporary and terminable at any time for good and sufficient reasons to be recorded in writing during the period of probation without prior notice including extension of such period.*

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*The appointment is subject to verification of all the certificates along with his character and antecedents in the manner prescribed by the Government. In case his certificates, character and antecedents are not found correct/satisfactory, he will be removed from Government service immediately without any notice.*

7. In view of the aforesaid conditions stipulated in the order of appointment, the petitioner was to remain in

probation for a period of two years from the date of his joining in the service and his appointment was purely temporary and terminable at any time for good and sufficient reasons to be recorded in writing during the period of probation without prior notice including extension of such period. Thereby, the terms and conditions of the appointment are very clear that if the opposite parties intend to terminate the service of the petitioner, they can do so for good and sufficient reasons to be recorded in writing during the period of probation. Further, his appointment was subject to verification of all the certificates along with his character and antecedents in the manner prescribed by the Government and in case his certificates, character and antecedents were not found correct/satisfactory, he was to be removed from government service immediately without any notice. The above being the terms and conditions of appointment of the petitioner set out in the order of appointment dated 20.12.2019, if any action is taken for termination of his service, even during the period of his probation which was

for two years, as per requirements of Clause-1 of the order of appointment, good and sufficient reasons are to be recorded in writing. But while issuing the impugned order of termination dated 07.01.2020, ex facie no reasons have been assigned and it is only stated that provisional appointment of the petitioner temporarily officiating as System Analyst is terminated with immediate effect. Thereby, the impugned order of termination so passed by the authority without assigning any reason, is not in accordance with Clause-1 of the order of appointment dated 20.12.2019.

8. It is of relevance to note that time and again the apex Court as well as this Court in catena of decisions have held that reasons being a necessary concomitant to passing an order, the authority can thus discharge his duty in a meaningful manner either by furnishing the same expressly or by necessary reference.

9. It is at this juncture worthwhile to note, “***Nihil quod est contra rationem est licitum***” means as follows:

*“nothing is permitted which is contrary to reason. It is the life of the law. Law is nothing but experience developed by reason and applied continually to further experience. What is inconsistent with and contrary to reason is not permitted in law and reason alone can make the laws obligatory and lasting.”*

Therefore, recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is pertinent to note that a decision is apt to be better if the reasons for it are set out in writing because the reasons are then more likely to have been properly thought out. It is vital for the purpose of showing a person that he is receiving justice.

In *Re: Racal Communications Ltd. (1980)2 All ER 634 (HL)*, it has been held that the giving of reasons facilitates the detection of errors of law by the court.

In ***Padfield v. Minister of Agriculture, Fisheries and Food*** (1968) 1 All E.R. 694, it has been held that a failure to give reasons may permit the Court to infer that the decision was reached by the reasons of an error in law.

10. In ***Travancore Rayons Ltd. V. The Union of India***, AIR 1971 SC 862, the apex Court observed that the necessity to give sufficient reasons, which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached in cases where a non-judicial authority exercises judicial functions is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions, the Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency. The Court insists upon disclosure of reasons in support of the order on two grounds; one that the party aggrieved in a

proceeding before the Court has the opportunity to demonstrate that the reasons which persuaded the Authority to reject his case were erroneous; and the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the Executive Authority invested with the judicial power.

11. In ***S.N. Mukherjee v. Union of India*** (1990) 4 SCC 594, the apex Court held that keeping in view the expanding horizon of principles of natural justice, the requirement to record reasons can be regarded as one of the principles of natural justice, which governs exercise of power by administrative authorities. Except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority is required to record reasons for its decision.

12. In ***Menaka Gandhi v. Union of India***, AIR 1978 SC 597, the apex Court observed that the reasons, if disclosed, being open to judicial scrutiny for ascertaining their nexus with the order, the refusal to disclose the

reasons would equally be open to the scrutiny of the Court; or else, the wholesome power of a dispassionate judicial examination of executive orders could with impunity be set at naught by an obdurate determination to suppress the reasons.

13. In ***Union of India v. Mohan Lal Capoor***, AIR 1974 SC 87, it has been held that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial and reveal a rational nexus between the facts considered and conclusions reached. The reasons assure an inbuilt support to the conclusion and decision reached. Recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is vital for the purpose of showing a person that he is receiving justice.

Similar view has also been taken by the apex Court in ***Uma Charan v. State of Madhya Pradesh***, AIR 1981 SC 1915.

This Court has also taken similar view in ***Patitapaban Pala v. Orissa Forest Development Corporation Ltd. & another***, 2017 (I) OLR 5 and in ***Banambar Parida v. Orissa Forest Development Corporation Limited***, 2017 (I) OLR 625.

14. May it be noted that to regulate the service conditions of the employees of the Orissa High Court, the High Court of Orissa (Appointment of Staff and Conditions of Service) Rules, 2019 have been framed. As such, eligibility criteria for System Analyst are B.E./B.Tech. Degree in Computer Science/I.T. or M.C.A. or M.Sc. Degree in Computer Science with first class or equivalent position from a recognized University/Institution having minimum three years of experience in Programming/ Software Development. The said post shall be filled up by way of direct recruitment

and for that purpose advertisement has to be issued inviting applications from the eligible candidates. In the present case, no such advertisement was issued and, as such, only on consideration of representation dated 19.12.2019, the petitioner was issued with order of appointment dated 20.12.2019. Thereby, the order of appointment so issued in favour of the petitioner was contrary to the rules applicable for filling up of the post of System Analyst and on that basis the petitioner cannot claim that he has a right to continue in the post itself.

15. True it is, the impugned order of termination does not contain any reason, much less the good and sufficient reasons, as required under Clause-1 of the order of the appointment under Annexure-1. But the reasons for terminating the service of the petitioner have been indicated in the counter affidavit filed on behalf of the opposite parties at paragraphs-4 and 5, which are extracted hereunder:-

*“4. That, in reply to the averments made in Paragraphs-1 to 6 of the Writ petition, it is*

submitted that no advertisement was issued for filling up one post of System Analyst in the Court's Establishment. Since no advertisement was ever issued for filling up one Post of System Analyst, question of applying for the Post Pursuant to Advertisement does not arise. The Petitioner had not applied for the same. However, upon consideration of the representation dtd. 19.12.2019 filed by the petitioner (Annexure- A), Hon'ble the then Chief Justice was pleased to appoint the petitioner – Shri Jyoti Ranjan Pradhan provisionally in the permanent post of System Analyst of the Court on relaxation of the process of direct recruitment. Accordingly, the Appointment Order / Office Order dtd. 20.12.2019 was issued vide Annexure-1 to the Writ Petition. The Petitioner joined as System Analyst on 23.12.2019 in the Court's Establishment. It is reiterated that neither any advertisement was issued for filling up the Post of System Analyst nor the Petitioner applied pursuant to any advertisement nor any selection process was conducted for filling up the one Post of System Analyst.

5. That, in reply to the averments made in Paragraphs – 7 to 17 of the Writ Petition, it is submitted that as per the High Court of Orissa (Appointment of Staff and Conditions of Service) Rules, 2019, the eligibility criteria for System Analyst is B.E./B.TECH . Degree in Computer Science / I.T. or M.C.A. or M. Sc Degree in Computer Science with first class or equivalent position from a recognized University/Institution having minimum three (3) years of experience in Programming / Software Development . The said post shall be filled up by way of direct recruitment. But in the present case, the petitioner was never appointed through the process of direct recruitment. So his appointment from the very beginning was not in

*accordance with law, more particularly in tune with the requirements of Articles 14 & 16 of the Constitution of India.”*

16. The reasons assigned in the counter affidavit filed by the opposite parties cannot be taken into consideration, as the order of termination dated 07.01.2020 does not indicate any such reasons. Law is well settled that while passing the order the statutory authority should discharge its duty in a meaningful manner by assigning reasons.

17. We may here draw attention to the observations of Bose J. in **Gordhandas Bhanji**, AIR 1952 SC 16 (at page. 18):

*“Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”*

18. The Constitution Bench of the apex Court in **Mohinder Singh Gill v. The Chief Election**

**Commissioner, New Delhi,** AIR 1978 SC 851, the apex

Court held :

*“ ..... when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.*

*Orders are not like old wine becoming better as they grow old.”*

Since there is non-compliance of provisions as laid down by the apex Court as well as this Court by not assigning reasons, there is non-compliance of principles of natural justice. Thereby, the order dated 07.01.2020 passed by the authority under Annexure-2 cannot be sustained in the eye of law.

19. By assigning reasons in the counter affidavit, when the same are not embedded in the impugned order of termination, no purpose has been served in the eye of law. Therefore, this Court is of the considered view that the order of termination dated 07.01.2020 passed by the

authority in Annexure-2 cannot sustain in the eye of law and the same is liable to be quashed and is hereby quashed. The matter is remitted back to the opposite party-authority to pass a reasoned and speaking order in accordance with law by affording opportunity of hearing to the petitioner, as expeditiously as possible, preferably within a period of four months from the date of production of certified copy of this judgment. In connection with the above, the petitioner is directed to cooperate with the opposite parties.

20. With the above observation and direction, the writ petition stands disposed of. However, there shall be no order as to costs.

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**DR. B.R. SARANGI,**  
**JUDGE**

**G. SATAPATHY, J.** I agree.

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**G. SATAPATHY,**  
**JUDGE**

**Orissa High Court, Cuttack**  
**The 28<sup>th</sup> September, 2022, Ashok/GDS**