

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No.264 of 2022

&

W.P.(C) No. 10268 of 2021

In the matter of the applications under Articles 226 and 227 of the Constitution of India.

W.P.(C) No.264 of 2022

Pinkey Kumari

...

Petitioner

- Versus -

State of Odisha and Others

...

Opposite parties

For Petitioner

M/s. Budhadev Routray,
S.P Nath, S. Routray,
S. Sekhar, J. Biswal
& M. Panda.

For Opposite Parties

Mr. B.P. Tripathy, AGA
(For O.P. No.1)
Mr. Sanjib Swain, Advocate
(For O.P. No.2 & 3)

W.P.(C) No. 10268 of 2021

Dipali Majhi

...

Petitioner

- Versus -

State of Odisha and Others

...

Opposite parties

For Petitioner

... M/s. U.C. Mishra,
A. Mishra, J.K. Mohapara &
S.K. Nayak.

For Opposite Parties ...

Additional Government Advocate
(O.P. Nos.1 & 5)
Mr. S.N. Patnaik, Adv.
(For O.P. No.2)
Mr. G.C. Rout, Advocate
(For O.P. No.4)

PRESENT:

THE HONOURABLE SHRI JUSTICE A.K. MOHAPATRA

Date of hearing : 07.12.2022

Date of judgment : 21.12.2022

A.K. Mohapatra, J. Since above noted two writ petitions involve identical issues and facts, both were heard together and is being disposed of by this common order.

W.P.(C) No.264 of 2022

2. Heard Mr. Budhadev Routray, learned Senior Counsel for the Petitioner; Mr. Sanjib Swain, learned counsel appearing for the Opposite Parties No.2 and 3-OSSC; and Mr. B.P. Tripathy, learned Additional Government Advocate appearing for the State-Opposite Party No.1.

3. This writ petition has been filed by the Petitioner seeking a direction to the Opposite Parties No.2 and 3 to accept examination fees already paid under Annexure-3 and for further direction to publish the

result of the viva voce test conducted on 30.12.2021 in respect of Unreserved (Women) Category for the post of Assistant Fodder Development Officer pursuant to the advertisement dated 29.08.2015 under Annexure-1 and in the event the candidature of the Petitioner is held to be legal and valid and the Petitioner is eligible to be appointed on merit, then necessary appointment order be issued in her favour.

4. The factual matrix of the case, in a narrow compass, is that an advertisement was published way back in the year 2015 by the Odisha Staff Selection Commission for selection of candidates to the post of Assistant Fodder Development Officer. Three posts of Assistant Fodder Development Officer were advertised to be filled up. One in the category of UR(W), One SEBC and one ST(W).

5. The advertisement under Annexure-1 prescribes the minimum eligibility criteria and other details. The post of Assistant Fodder Development Officers are Group-B posts and carry a consolidated salary of Rs.9300/- with Grade Pay of Rs.4200/-. The Petitioner having required eligibility, submitted her application pursuant to the advertisement in respect of UR(W) Category within the prescribed time line.

6. In view of clause-8 of the advertisement under Annexure-1, otherwise eligible candidates were required to deposit the examination fee of Rs.100/- which was to be deposited either online or by offline mode using the treasury portal in case of e-payment. Therefore, the applicants who have opted for online payment were required to login to www.odishatreasury.gov.in or access the website through the link provided in the OSSC portal. The Petitioner had logged into the aforesaid website and deposited the examination fee of Rs.100/-, but later on, i.e., on 31.12.2021, it was detected that the fee has been deposited in the account of OSSSC instead of OSSC. However, accepting the challan in different I.D., the Opposite Parties allowed the Petitioner to sit in the written examination held on 18.10.2021 on the basis of the Admit Card issued by the OSSC.

7. On 15.12.2021, the result of the written examination was published and the result sheet reveals that the Petitioner has successfully cleared the written examination. Accordingly, the Petitioner was shortlisted for the post of Assistant Fodder Development Officer.

8. After successfully completing the written examination, the Petitioner was asked by the OSSC to appear in the viva voce test on

24.12.2021 and the test was scheduled to take place on 30.12.2021. Accordingly, the Petitioner appeared in the viva voce test held on 30.12.2021. It is pertinent to mention here that the Petitioner was the only candidate who appeared in the viva voce test for the post of Assistant Fodder Development Officer UR(W) Category. Unfortunately, the name of the Petitioner did not appear in the final Notification dated 31.12.2021. The final select list displayed only one name of Sri Bibhu Bhusan Jena, a candidate belonging to SEBC Category.

9. When the Petitioner enquired as to why her name is not there in the final select list, on verification the authorities informed the Petitioner that during document verification, which was done on the date of viva voce test, it was detected that the Petitioner had deposited examination fee in the account of OSSSC instead of OSSC.

10. Mr. Budhadeb Routray, learned Senior Counsel appearing for the Petitioner argued that the Petitioner had in fact deposited the examination fee online. However, due to an inadvertent error, the amount of examination fee has been credited to the account of OSSSC instead of OSSC. It was also contended that both OSSSC and OSSC are two wings of the State Government which are conducting recruitment

examination to different posts in the State of Odisha. Therefore, Mr. Routray submitted that it is not a case that where the Petitioner has not deposited the examination fee, rather the same has been deposited and credited to a wrong account of the State Government. In either case of deposit of money to the accounts of OSSSC or OSSC, the money would go to Government of Odisha. Therefore, the conduct of the Opposite Parties in not publishing the final result of the Petitioner is illegal and arbitrary.

11. It is also contended by Mr. Routray, learned Senior Counsel appearing for the Petitioner that in the event the money was deposited under a wrong head of account, then the Petitioner should have been informed at the threshold by giving her an opportunity to rectify the unintentional mistake. He further contends that for such a silly mistake, the authorities have held the carrier of a poor girl for ransom. Had the Petitioner not deposited the amount, despite opportunity being given by the authorities, the action of the authorities in rejecting her candidature at the threshold would have been held to be reasonable and justified. Unfortunately, the same is not the case here. It is further submitted that the authorities having accepted the challan and allowed the Petitioner to participate both in written as well as viva voce test, are stopped to

withhold the final result of the Petitioner at a later stage. It is also contended that having allowed the candidate, after accepting the examination fee challan, to participate in both the tests and after she became successful, it would be deemed that the authorities have waived the discrepancy/defect, if any, in the application form at all. Therefore, it is submitted that the impugned action of the State Government in withholding the result of the Petitioner is hit by principle of estoppel.

12. Mr. Routray, learned Senior Counsel appearing for the Petitioner submits that the Petitioner being the only candidate in UR(W) Category for appointment to the post of Assistant Fodder Development Officer, she had a legitimate expectation that she will be definitely selected and appointed to the post that was advertised under Annexure-1. Merely because the money was deposited under a wrong account head, even though the money has gone to the State Government, on that basis rejection of the candidature of the Petitioner is highly unreasonable, irrational and unsustainable in law.

13. Per contra, a counter affidavit has been filed on behalf of the Odisha Staff Selection Commission (OSSC). In the counter affidavit, it has been stated that the Director of Animal Husbandry and Veterinary Services vide his letter dated 22.05.2015 submitted a requisition and

requested the OSSC to conduct the recruitment test to fill up three posts of Assistant Fodder Development Officer on contractual basis. Accordingly, the advertisement dated 29.8.2015 was issued inviting online application. The Petitioner had also applied for the said post as UR(W) candidate. The OSSC in its counter affidavit has almost admitted most of the facts pleaded by the Petitioner in the writ petition. However, OSSC has taken a stand in the counter affidavit to the effect that the final select list was published on 31.12.2021 and the candidature of the Petitioner was rejected as she had not deposited her examination fee in proper head of account of OSSC as provided in the advertisement. It has also been stated that such defect was detected at the time of verification.

14. In the counter affidavit, it has also been pleaded that Odisha Staff Selection Commission Rules, 1993 (in short “the OSSC Rules, 1993”) has been framed in exercise of power conferred by proviso to Article 309 of the Constitution of India to conduct the recruitment for all Class-III Civil Posts and Services of the State Government employees which forms the State Cadre. Rule-10(1) of the OSSC Rules, 1993 specifically provides that no application for admission to any examination shall be considered unless it is accompanied by the treasury challan showing

payment in the Government Treasury, the examination fees as specified in the advertisement. Correspondingly, Clause-8 of the advertisement also provides regarding payment of examination fee by stating that all S.E.B.C. and U.R. candidates other than S.C./S.T. have to pay the examination fee of Rs.100/-. Such fee can be deposited either through online using the treasury portal or by offline mode by depositing in the treasury physically. No application for admission to examination shall be considered if examination fee is not deposited through treasury challan showing payment to the Government Treasury.

Additionally, it has also been indicated that the challan will be deposited under “0051-PSC-104-UPSC/SCC-Examination Fees-0047-Fees collected for conducting examinations-02041-Examination Fees.” Since the Petitioner had not followed the aforesaid specific instruction in the advertisement thereby she has violated Rule-10(1) of the OSSC Rules, 1993 and, as such, her candidature was rejected. While saying so, the Opposite Parties No.2 and 3 in their counter affidavit have admitted that the Petitioner has deposited her examination fee under a wrong Head of Account, i.e., “0051-00-104-0047-02213-000” vide Cyber Treasury e-Challan dated 21.09.2015 which is not the proper Head of Account as indicated in the advertisement.

15. In Para-11 of the counter affidavit, it has been specifically stated that no candidate under UR(W) category could be selected due to non-availability of UR(W) category candidates in the merit list and the list of other meritorious candidates have already been recommended to the requisitioning authority.

16. Mr. Sanjib Swain, learned counsel appearing for the OSSC submitted that the candidature of the Petitioner has been rejected and thereby her name was not recommended for appointment as the Petitioner has not deposited the examination fee as is required under Rule-10(1) of the OSSC Rules, 1993 as well as Clause-8 of the advertisement under Annexure-1. Since the failure is a violation of Rule-10(1) of the OSSC Rules, 1993, under no circumstances the OSSC could recommend the case of the Petitioner. He further submits that the post of UR(W) Category is still lying vacant and no fresh advertisement has been issued to fill up the said vacancy. Accordingly, it is submitted by Mr. Swain, learned counsel appearing for the OSSC that the authorities have rightly rejected the candidature of the Petitioner and, as such, her name has not been recommended to the requisitioning authority for appointment.

17. Mr. Routray, learned counsel appearing for the Petitioner relying upon a judgment of the Rajasthan High Court in the case of ***Union of India and Another v. Harendra Gawaria*** (D.B. Civil Writ Petition No.1587/2022 decided on 04.02.2022), submitted that the facts of the said case are almost identical to the facts of the present case and the question involved in the said writ petition is also similar to the question involved in the case at hand. In the above referred judgment of Rajasthan High Court, the candidate participated in the written examination, physical eligibility test and medical test and was finally qualified. But, subsequently his candidature was rejected vide order dated 29.07.2013 issued by the Department of North Western Railway for the reason that the Postal Order submitted by him was not within limitation.

18. The Rajasthan High Court in *Harendra Gawaria's case (supra)* held that there are two kinds of mistakes. First kind of mistake would be where nobody is affected by a mistake and the second type of mistake is where a third party is affected by a mistake. The difference between two mistakes is that in case of first category of mistake where nobody would be affected, no prejudice is likely to be caused to anybody. Therefore, such mistakes are curable. In the second category

of mistakes where third party are likely to be affected. Therefore, in the event, the mistakes are allowed to be cured, then prejudice is likely to be caused to the third party. Further, in the very same judgment, referring to another judgment of Rajasthan High Court in the case of ***Kavita Chaudhary Vs. Registrar (Examination)*** (D.B. Civil Special Appeal (Writ) No.1700/2017 decided on 01.11.2017) wherein it has been held that a bona fide mistake which does not affect a third party right, should be allowed to be cured if the rectification of the said mistake would cause no prejudice to anyone.

19. Finally, the Rajasthan High Court has held that the case involved was not a case where fraud has been committed by the candidate rather the error/mistake committed is a genuine and bona fide mistake and finally it was held that the department cannot be permitted to reject the candidature of the respondent merely on hyper-technical ground and, accordingly, the order passed by the Central Administrative Tribunal directing to give appointment to the Petitioner to Group-D post with all consequential benefits, if he is otherwise found suitable for the said post be given within a stipulated period of time.

W.P.(C) No.10268 of 2021

20. Heard Mr. Ashutosh Mishra, learned counsel appearing for the Petitioner, Mr. S.N. Patnaik, learned counsel appearing for the Opposite Party No.2-OSSC and learned Additional Government Advocate for the State-Opposite Party No.1.

21. The present writ petition has been filed seeking a direction to the Opposite Parties to give appointment to the Petitioner in the post of Sub-Inspector of Police on contractual basis pursuant to Odisha Staff Selection Commission Advertisement dated 24.12.2016 published for Combined Police Service Examination – 2016 w.e.f. from the date other candidates were given appointment with all consequential service benefit.

22. The case of the Petitioner, in gist, is that the Petitioner is a graduate and fulfills all other eligibility criteria for appointment as a Sub-Inspector of Police pursuant to advertisement dated 24.12.2016 under Annexure-1. As per the advertisement, the Petitioner applied for the advertised post through online mode. Accordingly, the Petitioner was allotted a roll number and was intimated to appear in the preliminary examination. After qualifying in the preliminary

examination, the Petitioner was called for physical measurement and physical test and got qualified as well. Thereafter, the Petitioner was asked to appear in the main written examination. The Petitioner successfully cleared the main examination wherefrom she was called to appear in the viva voce and psychological test. The same was also cleared by the Petitioner.

23. On 24.11.2020, the Opposite Party No.2 declared the final result in their official website, i.e., www.osscc.gov.in. After verifying the published result, the Petitioner was shocked to learn that her name does not find place in the final merit list of the candidates.

24. It is further submitted that although the Petitioner has cleared all phases of the recruitment test, however, most shockingly her name was not included in the final merit list. Thereafter, the Petitioner enquired from the office of Opposite Party No.2 as to why her name has not been included in the final select list although she has cleared all the tests conducted by Opposite Party No.2. However, the Petitioner did not get any satisfactory reply which compelled her to apply through RTI to know the reason as to why her name has not been included in the final select list. In reply to her R.T.I. query, Opposite Party No.2 informed

the Petitioner that she had deposited the examination fee in the Head of Account “0051-00-105-0047-02041-100” instead of “0051-PSC-104-UPSC/SCC-Examination Fees-0047-Fees collected for conducting examination-0214-Examination Fees”. On further query, the Petitioner came to learn that both account heads belonging to OSSC.

25. It is further submitted by Mr. Ashutosh Mishra, learned counsel for the Petitioner that the above noted both account heads belonged to the Opposite Party No.2 though for two different examinations. He further submits that due to such inadvertent and unintentional mistake, the Petitioner, who is otherwise qualified to be appointed and her name finds place in the final select list should not be made to suffer. Therefore, the authorities should have condoned such a silly defect in the interest of justice. He further conducted that there are numerous judgments of the Hon’ble Apex Court where the Hon’ble Apex Court holding that due to inadvertent mistake and whereby no unfair advantage has been taken by the candidate and that the candidate had no intention to mislead the facts and circumstances, in such case, the candidates can be allowed to participate and continue in the selection process.

26. Mr. Mishra, learned counsel for the Petitioner further contended that had the mistake been detected at the threshold, the authorities would have given an opportunity to rectify the mistake or the Petitioner could have prayed for such opportunity to rectify the aforesaid unintentional mistake. However, the mistake was pointed out after the entire selection process was over. Moreover, as a result of such mistake, no undue advantage has accrued in favour of the Petitioner as a candidate. He further contended that despite the existence of such a mistake right from the beginning, the Petitioner was allowed to appear at the successive stages and the recruitment process. Therefore, it would be presumed that the authorities have waived such minor defect. Moreover, the authorities having allowed the Petitioner, despite such mistake, they are estopped to debar the Petitioner from getting the appointment by not including her name in the final select list and not recommending her name to the appointing authority. Furthermore, Clause 5(4) of paragraph-5 of the advertisement prescribes that none indication of correct and valid treasury challan no., date, and name of the Treasury in the application form relating to examination fees deposited through off-line mode would entail rejection of the entire application. However, the Petitioner had deposited the money through

online mode vide e-challan. In such view of the matter, it is further contended by the learned counsel for the Petitioner that withholding Petitioner's result is arbitrary, illegal and the same amount to miscarriage of justice.

27. Additionally, the Petitioner submitted that the Petitioner through her RTI application came to learn that she has secured 136.25 marks whereas the cut-off mark of SEBC(W) is 129.75 and UR(W) is 136.25. Since the Petitioner's candidature is under SEBC(W), she has very sound and good reason to believe that she would have been definitely selected and, accordingly, she would have been given appointment, had the authorities not rejected her candidature on the ground of such a silly mistake which is obviously and unintentional and inadvertent mistake committed by the Petitioner.

28. Mr. Mishra, learned counsel for the Petitioner also contended that two of the candidates, namely Priyadarshini Mohapatra UR(W) and Madhusmita Sabar (ST) selected against UR(W), who were selected by the Opposite Parties for the aforesaid posts have left their job and, as such, two posts in UR(W) category are lying vacant. He further contended that since the Petitioner has secured 136.25 marks which is

also the cut-off mark for UR(W) category. Therefore, the Petitioner can easily be appointed against the aforesaid two vacant posts.

29. The Opposite Parties No.2 and 3 have filed a counter affidavit wherein it has been pleaded that OSSC had published an advertisement dated 24.12.2016 for filling up of 134 vacancies in the post of Sub-Inspector of Police-2016 basing on the requisition of A.I.G of Police (Personnel), Odisha, Cuttack. After completion of the selection process, a final select list consisting of 134 names for the post of Sub-Inspector of Police has been published by the OSSC (O.P. No.2) on 24.11.2020. Accordingly, the said list was forwarded to the State Police Headquarters, Odisha, Cuttack for issuance of appointment letters in favour of the successful candidates. In the counter affidavit, it has also been stated that the treasury challan submitted by the Petitioner was sent to the Director, Treasuries & Inspector, Odisha, Bhubaneswar to ascertain whether the Petitioner has deposited examination fees or not. The Director of Treasuries & Inspection, Odisha, Bhubaneswar vide letter dated 11.11.2020 confirmed that the Petitioner has not deposited the examination fee in OSSC Head of Account.

30. In reply to the Petitioner's assertion, the Opposite Parties No.2 and 3 in their counter affidavit have also referred to Rule-10(1) of the OSSC Rules, 1993 and Clause-5 of the advertisement. Accordingly, they have submitted that since the conduct of the Petitioner violates the Rule-10(1) of the of the OSSC Rules, 1993 and Clause-5 of the advertisement, the mistake committed by the Petitioner cannot be condoned and, as such, the claim of the Petitioner cannot be entertained by the Opposite Parties No.2 and 3.

31. Referring to the Paragraph-5 of the advertisement which provides that if at any stage of recruitment or thereafter, it is found that any information furnished by the candidate in his/her Online Application is false/incorrect or the candidate has suppressed any relevant information or the candidate otherwise does not specify the eligibility criteria for the post, his/her candidature for the post/examination will be cancelled forthwith and he/she may be debarred for appearing in any further recruitment examination conducted by OSSC either temporarily/permanently. It is further pleaded in the counter affidavit that the Petitioner provisionally allowed to appear in the examination on the basis of the information provided by the Petitioner. When the defect was noticed at the time of document verification, the candidature

of the Petitioner has been rejected. Further, in view of the Rule-10(1) of OSSC Rules, 1993, if a candidate has not deposited the examination fees in proper head of account, his/her application is liable to be rejected. Accordingly, it is submitted by the learned counsel for the Opposite Parties No.2-OSSC that the Opposite Parties No.2 and 3 have not committed any fault or illegality by rejecting the candidature as well as the application of the Petitioner.

32. Additionally, the learned counsel for the Opposite Parties No.2-OSSC submitted that there is a provision in the note to paragraph-1(a) of the advertisement to the effect that if any defect is noticed in the application form submitted, the applicant can edit the application form by accessing the candidate's 'log-in' within 48 hours of clicking the 'submit button'. Editing of the application will not be possible after 48 hours or after the last date of online application whichever earlier. In such view of the matter, it is submitted by Mr. S.N. Pattnaik, learned counsel for the Opposite Party No.2-OSSC that despite a window being available to the Petitioner to rectify the mistake, the Petitioner did not make any effort to rectify the mistake committed by her. Therefore, it is no more open to the Petitioner to rectify the said mistake at this stage. Further, the allegation has been made against the Petitioner that she was

not diligent and serious for the examination. Accordingly, referring to Rule-10(1) of the OSSC Rules, 1993, learned counsel for the Opposite Party No.2-OSSC submits that no application for examination shall be considered unless it is accompanied by a treasury challan showing payment of examination fee to the Government Treasury. Learned counsel for the Opposite Party No.2-OSSC also submits that the provision contained in Rule-10(1) of the OSSC Rules, 1993 is a mandatory provision and for infringement/violation of such provision, the application of any candidate is liable to be rejected.

33. Learned counsel for the Petitioner also filed a rejoinder affidavit wherein it has been stated that the Petitioner has not challenged any rule rather she has prayed for condonation of the mistake by either providing an opportunity to the Petitioner to cure the defect or in the alternative to accept the challan submitted by the Petitioner as the examination fee deposited by the Petitioner has gone to the Government although under a different head of account and on further consideration the fact that the mistake was unintentional and that the alleged mistake does not create any prejudice to any of the candidates who have participated in the relevant test. He has also referred to the Government of Odisha in G.A. Department Notification No.N-779/Dtd.

11.04.2022 wherein the Government of Odisha has abolished examination fees for recruitment to all kind of posts/services conducted by any Recruiting Agency in the State of Odisha including the OSSC. It has also been stated that though Opposite Parties No.2 and 3 never pointed out the mistake at the initial stage and never gave an opportunity to the Petitioner to rectify such inadvertent mistake. By the time the Petitioner came to know about the mistake, the final result was published by them. Therefore, the Petitioner was deprived of an opportunity to rectify such a silly mistake which is going to affect his future and carrier prospects.

34. In the rejoinder, it has also been stated that the Petitioner is a poor girl and to get this job, she has worked hard and she had to go through a rigorous selection process. After all the hard work, she was given the shock of her life by the information that her candidature has been rejected on a silly and trivial mistake committed by her unintentionally. Such mistake is otherwise also inconsequential and no oblique motive can be read into such a silly mistake and most importantly she has not gained any unfair advantage thereby. Further, the attention of this Court was drawn to a later development in the year 2021 where the OSSC published the list of rejected candidate with the

reason for rejection, such a course should have been adopted at the initial stage, instead of waiting till the end. He also contended that genuine mistake and fraud can be treated at par and, accordingly, the magnitude of penalty shall also vary. In the rejoinder, it is also reiterated that posts are lying vacant where the Petitioner can be appointed.

35. Having heard Mr. B. Routray, learned Senior Counsel for the Petitioner; Mr. Sanjiv Swain, learned counsel appearing for the OPSC; and Mr. B.P. Tripathy, learned Additional Government Advocate appearing for the State-Opposite Party No.1 in W.P.(C) No.264 of 2022; and in W.P.(C) No.10268 of 2021, Mr. Ashutosh Mishra, learned counsel appearing for the Petitioner; Mr. S.N. Pattnaik, learned counsel appearing for the OSSC; Mr. G.C. Rout, learned counsel appearing for the Opposite Party No.4; and learned Additional Standing Counsel appearing for the State-Opposite Party No.1, this Court on careful examination of the facts of both the writ petitions, is of the view that the facts and issue involved in both the writ petitions are similar and only recruitment agencies are different. In both writ petitions examination fee was paid but in a wrong head of account of the Government.

36. Mr. B. Routrary, learned Senior Counsel appearing for the Petitioner in W.P.(C) No.264 of 2022, relying upon a judgment of Rajasthan High Court in case of *Harendra Gawaria* (supra) submitted that a Division Bench of Rajasthan High Court has taken a view that such mistake which does not cause any prejudice on rectification can very well be ignored or be allowed to be cured, if the same is rectifiable as the same does not affect any 3rd party right. He further contended that the candidate had no ill intention while filling up the form and depositing the examination fee, rather the deposit of fee in wrong head of account is a bona fide mistake and an inadvertent error committed by the Petitioner. Further, such mistake was not pointed out at the threshold and the candidate was allowed to participate in all the stages of the recruitment process/test. This Court upon a careful consideration of the facts is also of the view that the mistake committed by the Petitioner in W.P.(C) No.264 of 2022 is a genuine mistake and as a result of such a mistake no prejudice whatsoever has been caused to any 3rd party or any of the aspiring candidates.

37. In W.P.(C) No.10268 of 2021, Mr. Ashutosh Mishra, learned counsel for the Petitioner in support of his contention, has relied upon a judgment of the Hon'ble Supreme Court in the case of *Commissioner*

of Police, Delhi and another v. Dhaval Singh, reported in AIR 1999 SC 2326. In the aforesaid reported case, the aspiring candidate committed a mistake of not disclosing the pending criminal case against him in the application form. However, later on he had intimated the authority about such inadvertent mistake. Such information was not taken note of by the competent authority. Therefore, the Supreme Court held that the cancellation of candidature of the Petitioner in that case is without application of mind. Accordingly, the appeal filed by the Commissioner of Police, Delhi was dismissed by the Hon'ble Supreme Court and the judgment delivered by the High Court was accordingly confirmed.

38. Mr. Ashutosh Mishra, learned counsel for the Petitioner has also relied upon a judgment of the Hon'ble Supreme Court in the case of *Sanatan Gauda v. Berhampur University and Ors., reported in AIR 1990 SC 1075* wherein the Hon'ble Supreme Court has held that it is important to appreciate that the appellant cannot be accused of making any false statement or suppressing any relevant fact before anybody. He had produced his mark-list before the College authority with his application for admission and cannot be accused of any fraud or misrepresentation. Further, it was held that interpretation of rule on the

basis of which the University asserts that the applicant was not eligible for admission is challenged by the applicant and is not accepted by the College and in such a situation even assuming the construction of the rule as attempted by the University as correct, the Principal cannot be condemned for recommending the candidature of the appellant for the examination in question and it was the bounden duty of the University to have scrutinized the matter thoroughly before permitting the appellant to appear at the examination and not having done so it cannot refuse to publish his results and while parting with the said judgment, the Hon'ble Supreme Court had advised the University to frame the rules in such clear terms so that same will not create any confusion leading to putting the carrier of the students in jeopardy. Finally, the appeal of the candidate/student was allowed by the Supreme Court by setting aside the judgment dated 30.07.1987 passed by this Court in O.J.C. No.1621 of 1987.

39. Mr. Mishra, learned counsel appearing for the Petitioner has also relied upon another decision of Delhi High Court in the case of **Ajay Kumar Mishra v. Union of India & Ors.** (W.P.(C) No.11642 of 2016 decided on 23.12.2016). In the above referred judgment, the Delhi High Court has concluded that it is not the case of the respondent that the

Petitioner derived any advantage by entering the wrong date of birth in his online application and that there is a difference between a mere inadvertent error and misrepresentation or suppression and further there could be no intentional misrepresentation as the school certificate was submitted and finally it went to held that the penalization of cancellation of the candidature on the ground of a typographical error is arbitrary, unreasonable harsh and disproportionate to its gravity of the lapse and, accordingly, the writ petition was allowed.

40. Now coming back to the facts of the present case, this Court on careful analysis of the facts of both the cases is of the considered view that the mistakes were silly and trivial in nature and have been committed unconsciously and inadvertently without any intention to derive any undue benefit and the same can by no stretch of imagination be construed as the misrepresentation or suppression of fact which would eventually cause any prejudice to any third party or take away their legitimate right. Moreover, it is an admitted fact that the money has gone to the Government Treasury but under a wrong head of account.

41. At this juncture, the whole issue needs to be viewed and examined from another angle. So far interpretation of Rules are concerned, in the Recruitment Rules certain rules are mandatory in nature and some are directory in nature. Mandatory rules are those Rules which are essential and goes to the root of the issue like the eligibility criteria fixed. The sole and all important purpose of having a set up recruitment rules is to assess the inter se merit of the candidates on a common platform by following a fair and transparent procedure. Rules which deal with eligibility criteria are mandatory and as such the same cannot be altered under no circumstances unless the Rule or Act confer authority. However, certain Rules deal with procedural aspect of the recruitment test. Those are directory in nature. For any infringement of such Rules, the candidature need not be canceled/rejected automatically. In case of non-compliance of such Rules, the concerned candidate must be provided an opportunity to comply the same or rectify any error in compliance before rejecting his/her candidature. Such an approach assumes more importance in today's scenario as more and more recruitment tests were being conducted by adopting online mode. In future it is expected that almost all recruitment tests are going to be conducted through online and digital mode. Therefore, the

procedural rules assumes more important now than previously when traditional and offline modes were the only mode.

42. In the present case, the authorities although provided an window for editing, however, such editing is meaningless unless the candidate is aware of the mistake she or he has committed. Over the years, the law has evolved and the procedural laws have been made directory and the substantive laws/rules are always mandatory in nature and non-compliance of such rules shall make the application invalid and candidature is liable to be rejected. However, in the present case, we are only dealing with a provision of the Rules which is procedural and as such directory in nature. Therefore, before rejecting the candidature for non-compliance, the authorities should have provided an opportunity to rectify such mistake. Moreover, by providing such opportunity, no prejudice would have been caused to any of the participating candidates. Additionally, the rule in question provides that in the event of failure to deposit the examination fee, no application shall be considered. It does not say that the same will be declared invalid or rejected. Therefore, the penalty in the instant case is not only harsh, but the same has not be provided for in the rule.

43. Considering the nature of the mistake, this Court is of the considered view that the magnitude of penalization in rejecting the candidature would cause injustice to the candidates as the penalty would be shockingly disproportionate, harsh and unreasonable.

44. So far W.P.(C) No.264 of 2022 is concerned, no prejudice is caused at all to any of the third party in view of the fact that the Petitioner was the only candidate in respect of only post in her category that was advertised and further the said advertised post has not been filled up yet. Therefore, in the larger interest of justice, the authorities should have shown some flexibility and allowed the candidate to rectify a genuine and inadvertent mistake committed by the candidate.

45. So far W.P.(C) No.10268 of 2021 is concerned, this Court observes that two posts in UR(W) Category are still lying vacant. Further, considering the nature of mistake which is identical to the mistake committed in W.P.(C) No.264 of 2022 , the Opposite Parties No.2 and 3 should have provided an opportunity to the candidate to rectify the mistake and subject to her eligibility and performance in the selection test, they should have recommended the name of the Petitioner for appointment to any of the vacant post by including the

name of the Petitioner in the select list as she has secured the minimum cut-off mark to be included in the final select list.

46. In view of the aforesaid analysis of facts as well as the legal position, this Court is of the considered view that the rejection of candidature of the Petitioner in both the cases are extremely harsh, shockingly, disproportionate, arbitrary and as such, the same are unsustainable in the eye of law. Accordingly, this Court in the larger interest of justice and further taking into consideration the future carrier prospects of two aspiring successful candidates and without any hesitation, is of the view that the impugned rejection orders are liable to be quashed and the same hereby quashed. The respective selection agencies, i.e., OPSC and OSSC are directed to afford an opportunity to the Petitioner in both the cases to rectify the minor, bona fide and inadvertent mistakes which has not caused any prejudice to any third party within two weeks from the date of production of certified copy of this order. Further, in the event such difficulties are rectified with promptitude, the recruiting agency, i.e., OPSC and OSSC are directed to recommend the names of the Petitioner subject to their eligibility and performance to the requisitioning authority for their appointment against the advertised posts. The authorities are directed to act upon

within a period of six weeks from the date of production of the certified copy of this order.

47. With the aforesaid observations and directions, both the writ petitions stands allowed. However, without any cost.

(A.K. Mohapatra)
Judge



Orissa High Court, Cuttack
The 21st December, 2022/D. Aech, P.A.