

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 19032 OF 2016

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

AFR Basant Kumar Sahoo Petitioner

-Versus-

Odisha Administrative Tribunal, Cuttack Bench,
Cuttack & Ors Opp. Parties

For Petitioner : M/s. P.K. Ray, P.K. Panda, A.
Pattnaik & K.C. Das, Advocates

For Opp. Parties : Mr. A.K. Mishra,
Addl. Govt. Advocate
[O.Ps.No.1-4]
M/s. G. Sinha &
[O.P. No. 5]

P R E S E N T:

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

DECIDED ON : 13.09.2022

DR. B.R. SARANGI, J. The Petitioner, by way of this writ petition,
seeks to quash the order dated 03.08.2016 passed in

O.A No.4345 (C) of 2015, by which the Odisha Administrative Tribunal, Cuttack Bench, Cuttack, has dismissed the said O.A. on merit, and further seeks to issue direction to the opposite parties to issue order of appointment in favour of the petitioner as per the select list prepared.

2. The factual matrix of the case, in brief, is that the petitioner, pursuant to the advertisement issued vide Annexure-1, for the post of Junior Assistant in different offices of the Heads of Department, submitted his application. He also appeared in the written examination, but could not know the result of the examination, as the select list was never published. The petitioner continued to be in ignorance of the result, till one Arati Choudhury filed WP(C) No. 8925/2012 before this Court challenging the order 4.5.2012 passed by the Tribunal in O.A No. 1552/1991. In the said O.A (O.A. No. 1552/1991), the State-opposite parties filed counter affidavit enclosing copy of the select list, from which he came to know that he has been selected and his position is at Sl. No.7. The State-opposite parties did not inform him about his

selection or the result of the examination. After coming to know that his position in the select list is at Sl. No.7, he sought for detailed information, but the State-opposite parties did not supply any such information, and, on the other hand, stated that the select list is not available and has been misplaced/destroyed in the super-cyclone of the year, 1999. Thereby, the petitioner was deprived of getting appointment only in order to make way for some chosen candidates and to appoint them. Aggrieved by such action of the State-authorities, the petitioner approached the Tribunal by filing O.A. No.4345(C) of 2015.

2.1. Pursuant to notice issued by the Tribunal, opposite parties no.2 and 3 filed joint counter affidavit challenging the maintainability of the O.A. being barred by limitation. It was averred that cause of action arose in the year, 1990-1991, but the petitioner approached the Tribunal seeking relief in the year, 2013. They also denied the allegation of the petitioner that the select list was never published and also averred that the merit list was prepared, it was duly approved on 22.06.1991 and

published on 28.06.1991 for general information and was also placed in the notice board of the Board of Revenue, Odisha, Cuttack. It was also stated that one Basanta Kumar Sahoo had been selected and his position in the select list was at Sl. No. 7, but he was not the applicant. The candidate, who was selected in the name of Basanta Kumar Sahoo is a person different from the petitioner. The said Basanta Kumar Sahu belonged to Jagulaipada in the district of Cuttack, whereas the petitioner belonged to Ekaberuan, P.S. Niali of district Cuttack. The selected candidate Basanta Kumar Sahu has already been appointed vide Board's Letter No.866/Exam. dated 30.7.1991. The genuineness and authenticity of the approved merit list, which was published on 22.06.1991, is the issue pending adjudication in WP(C) No. 8925 of 2012 filed by Smt. Arati Choudhury. It was further stated that one Hadibandhu Das-OAS, who was Ex-Director (Exam.) committed certain irregularities in conducting the examination, for which administrative action was taken against him. The irregularities, which were detected,

were sorted out immediately. The petitioner taking advantage of his name as Basanta Kumar Sahoo and the case filed by Arati Choudhury, approached the Tribunal, after lapse of 23 years, on a false plea that the merit list was not prepared or published. Therefore, the grievance of the petitioner is not entertainable either on merit and also being barred by limitation. Thereby, the O.A. should be dismissed.

2.2. The Tribunal, on careful examination of the rival submissions of the parties and the pleadings available on record, dismissed the O.A. filed by the petitioner. Hence, this writ petition.

3. Mr. K.C. Das, learned counsel appearing for the petitioner contended that the select list was never published on 28.06.1991 and petitioner is the same person, whose name appears at Sl. No.7 of the select list. Therefore, the petitioner claims that the appointment letter should have been issued in his favour and he should have been allowed to join in service. It is further contended that Arati Choudhury never appeared in the

written examination, but was given appointment, who joined as Junior Assistant. When the fraud was detected, she was removed from service, for which she filed O.A. No.1552 of 1991, wherein the Tribunal held that she was never selected but obtained fraudulent order sponsoring her name by the Board of examiners. It is therefore contended that even though the irregularities as detected were sorted out, but his case was not considered for giving him appointment. The same having been denied, he approached the Tribunal by filing O.A. No. 4345(C) of 2015, which was dismissed vide order dated 03.08.2016. Therefore, the petitioner has approached this Court by filing this writ petition.

4. Mr. A.K. Mishra, learned Additional Government Advocate appearing for the State-opposite parties contended that the O.A. filed by the petitioner was grossly barred by limitation because the cause of action arose in 1990-91 and the petitioner approached the Tribunal after 23 years of publication of the result. It is also contended that one Basanta Kumar Sahoo was selected and his position in the select list was at Sl. No.

7, but he is not the petitioner. The candidate, who was selected in the name of Basanta Kumar Sahu is a person different from the petitioner. On verification of his address, it came to light that the said Basanta Kumar Sahu belonged to Jagulaipada in the district of Cuttack, whereas the petitioner belonged to Ekaberuan, P.S. Niali of district Cuttack. The selected candidate Basanta Kumar Sahu has already been appointed vide Board's Letter No.866/Exam. dated 30.7.1991. He further contended that the petitioner is a fence sitter and had approached the Tribunal only to take the advantage of the writ petition filed by one Arati Choudhury. Therefore, the Tribunal has rightly dismissed O.A. No. 4345(C) of 2015 on the above three grounds.. Thereby, the writ petition cannot sustain in the eye of law and the same should be dismissed.

5. Mr. G. Sinha, learned counsel appearing for opposite party no.5 contended that opposite party no.5 is the person, who was duly selected in the process of selection and as such, he was issued with appointment letter, pursuant to which he joined in service and has

been continuing in the post. In the meantime, 23 years have passed and therefore, the writ petition has to be dismissed.

6. This Court heard Mr. K.C. Das, learned counsel appearing for the petitioner; Mr. A.K. Mishra, learned Additional Government Advocate appearing for the State-opposite parties and Mr. G. Sinha, learned counsel appearing for opposite party no.5 in hybrid mode. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is being disposed of at the stage of admission.

7. On careful appraisal of the materials available on record, including the judgment impugned herein, this Court finds that pursuant to an advertisement issued in 1988 for the recruitment to the post of Junior Assistant, the petitioner and opposite party no.5 applied for the same and, as such, their applications having been found in order, they were called upon to appear in the written examination conducted by the Board of Examiners, by

issuing admit cards. The admit card issued in favour of the petitioner contained Roll No.1101629 and Index No.41085, whereas opposite party no.5 was issued with admit card containing Roll No.1101630 and Index No.51405, which have been verified from the Index Register. The select list was prepared on 22.06.1991 and published on 28.06.1991 in the Notice Board of Board of Revenue, Odisha, Cuttack. But, the petitioner was not selected. To appreciate the distinction between the petitioner and the selected candidate, having the same name, their detailed descriptions, as verified from index register and list of roll numbers, are given below.

Address of the Petitioner	Address of the Selected candidates
<i>Name – Basanta Kumar Sahoo</i> <i>S/o- Bhaskar Ch. Sahoo,</i> <i>At- Ekberuan,</i> <i>Po-Nati, Dist.- Cuttack</i> <i>DOB – 10.04.1967</i> <i>Sl No. – 38459</i> <i>Index No.41085</i> <i>Roll No. 1101629</i>	<i>Name – Basant Kumar Sahoo</i> <i>S/o- Madhusudan Sahoo,</i> <i>At/Po- Jagulaipara,</i> <i>Dist.-Cuttack,</i> <i>Pin- 754289</i> <i>DOB -07.10.1963</i> <i>Sl No. 48133</i> <i>Index No.-51405</i> <i>Roll No. 1101630</i>

In such view of the matter, the contention raised by learned counsel for the petitioner that the petitioner was selected and was not given appointment, cannot sustain

in the eye of law. Accordingly, the claim to that extent is rejected.

8. So far as second ground of dismissal of the O.A. is concerned, the cause of action arose for the petitioner in the year 1990-91, but he approached the Tribunal by filing O.A. No.4345 (C) of 2015 after long lapse of 23 years. Therefore, the O.A. suffers from inordinate delay and laches, for which the Tribunal has rightly held that the O.A. was barred by limitation, with which this Court does not find any reason to interfere.

9. So far as third ground of dismissal of the O.A. is concerned, the petitioner had taken a stand that only after he came to know his result from the merit list annexed to the O.A. No.1552 of 1991 filed by Arati Choudhury, he sought detailed information on 15.07.2013 under the RTI Act, but such information was not furnished to him stating that all available information was destroyed in 1999 super-cyclone and that he did not seek information within a period of 20 years, as per Rule-9(i) of the RTI Act, 2005. The State

authorities are justified in denying the information to the petitioner. Otherwise also, if the petitioner approached the Tribunal only after he came to know the result of the case filed by Arati Choudhury, he can simply be termed and treated as a fence sitter. On that count also, the Tribunal held that the O.A. is not maintainable.

10. The petitioner has relied upon the “Admit card”, placed at Annexure-D/2 to the counter affidavit filed by the State, which is different from the model “Admit Card” placed at Annexure-E/2 to the counter affidavit filed by the State. Therefore, the petitioner cannot claim benefit on that score. In such view of the matter, by filing a fake admit card, the petitioner cannot get the benefit in view of judgment of the apex Court in ***Chief Executive Officer, Bhilai Steel Plant v. Mahesh Kumar Gunnade***, 2022 LiveLaw (SC) 572.

11. Considering the facts and circumstances of the case from all angles, this Court comes to a conclusion that the Tribunal has not committed any error in denying the benefit to the petitioner, vide order

dated 03.08.2016 passed in O.A No.4345 (C) of 2015,
which is hereby upheld.

12. Accordingly, the writ petition merits no
consideration and the same is hereby dismissed. There
shall be no order as to costs.

(DR. B.R. SARANGI)
JUDGE

G. SATAPATHY, J.

I agree.

(G. SATAPATHY)
JUDGE

Orissa High Court, Cuttack
The 13th September, 2022, Alok

