

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A No.656 of 2022

Bijay Shankar Pattnaik

.... Appellant

Mr. Gautam Pattnaik, Advocate

-versus-

State of Odisha & Others

.... Respondents

Mr. P. K. Mohanty, ASC

**CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. SAHOO**

ORDER (Oral)

17.11.2022

(Hybrid Mode)

Order No.

03. 1. This is an intra-Court appeal directed against the order dated 4th April, 2022 passed by the learned Single Judge of this Court in W.P.(C) No.8351 of 2022.

2. On the first date of hearing on 16th May, 2022, the following order was passed:

“1. This matter is taken up through virtual/physical mode.

*2. The appellant is a general category employee, who has been placed higher in the seniority list of Executive Engineers (XEN), Department of Water Resources **than** Sri Bhakta Naik, who belongs to the reserved category (S.C.). Sri Bhakta Naik (Respondent No.4 herein) although had been promoted to the rank of Executive Engineer prior in time to the appellant from the feeder cadre against a roster point reserved for the reserved category (S.C.), however, upon the subsequent promotion of the appellant as XEN was rightly placed above Sri Bhakta Naik, being*

senior in the feeder cadre, based on the “catch up rule” enunciated in **Ajit Singh and Ors. v. The State of Punjab and Ors.**, reported in **AIR 1999 SC 3471**.

3. Learned counsel for the appellant states that Sri Bhakta Naik has filed multiple writ petitions assailing the Gradation List in the rank of Executive Engineers without correctly disclosing that the seniority lists in the rank of XEN's as per the Recruitment Rules stood already finalized. As such, the directions passed by the learned Single Judge for hearing the parties on the Gradation Lists of XEN's is misplaced being based on incorrect facts supplied by Sri Bhakta Naik. It also cannot be disputed that the “catch up rule” for fixing up seniority upon the seniors in the feeder cadre being promoted to the higher cadre is still valid and operative as till now, admittedly no legally valid instructions in strict compliance of the mandate of **M. Nagaraj and Ors. v. Union of India (UOI) and Ors.**, reported in **AIR 2007 SC 71** have yet been issued protecting the accelerated seniority of the promotes from the reserved category. The Hon'ble Supreme Court in **Jarnail Singh & Ors. v. Lachhmi Narain Gupta and Ors.**, reported in **(2018) 10 SCC 396** has re-affirmed the directions passed in **M. Nagaraj's** case in respect of the ascertainment of the inadequate representations of reserved category (S.C. & S.T.) based on quantifiable data before granting the benefit of reservation in promotion and consequent protection of accelerated seniority to reserved category employees. Even the unit for collecting quantifiable data for providing reservation in promotion has been held to be cadre-wise in **Jarnail Singh & Ors. v. Lachhmi Narain Gupta and Ors., Civil Appeal No.629 of 2022 (Arising out of SLP(C) No.30621 of 2011), decided on 28.01.2022**.

4. Learned counsel for the appellant prays for time to verify the fact of finalization of the seniority list which governs both the appellant and Sri Bhakta Naik in the rank of Executive Engineer, and if need be place documents on record to establish the same.

5. List on 26.07.2022.”

3. At the time of hearing, learned counsel for the petitioner prays for permission to withdraw the present Writ Appeal in view of the grievance of the

appellant having been addressed by the Respondents/Opposite Parties.

4. In view of the above, the present Writ Appeal stands dismissed as withdrawn.

**(Jaswant Singh)
Judge**

**(M.S. Sahoo)
Judge**

Sipun

17th November, 2022,
cuttack

