

ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 12756 OF 2016

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

AFR

State of Odisha and another Petitioners

-Versus-

Sadasiba Mohapatra and others Opp. Parties

For Petitioners : Mr. A.K. Mishra,
Addl. Govt. Advocate

For Opp. Parties : Mr. B.S. Tripathy-1 and,
A. Tripathy. Advocates
[O.P. No. 1]

M/s P.K. Mohanty, Sr. Adv.
along with Mr.D.N. Mohapatra,
J. Mohanty, P.K. Nayak,
S.N. Dash, P. Mohanty and
P.K. Pasayat, Advocates.
[O.P. No.2]

Mr. K.C. Kanungo,
Advocate
[O.P. No.3]

P R E S E N T:

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

Date of hearing: 15.11.2022:: Date of judgment: 24.11.2022

DR. B.R. SARANGI, J. By means of this writ petition, the State of Odisha and its functionaries have assailed the order dated 25.02.2016 passed in O.A. No. 1935 of 2013 under Annexure-2, by which the State Administrative Tribunal, Bhubaneswar directed the State-petitioners to give promotion to opposite party no.1 to the post of Professor in Psychology from the date opposite party no.3 was promoted to the post of Professor in Psychology by allowing him all service and financial benefits till the date of his superannuation, i.e., 31.01.2010. The Tribunal further directed to fix the pensionary benefits of opposite party no.1 accordingly and pay the arrear dues within a period of four months, and that in case of any delay beyond four months the arrear dues will carry interest at the rate of 9% per annum and, as such, the Government may recover such interest amount from the officers for whose laches the delay has been caused.

2. The factual matrix of the case, in a nutshell, is that Orissa Public Service Commission (OPSC), pursuant

to the requisition of the Higher Education Department, issued an advertisement inviting applications from the intending candidates for appointment to the post of Professor Psychology by way of selection, as per the Odisha Education Service (Professor Grade) Recruitment Rules, 1990, as amended up to 2006. The interview was conducted by the OPSC on 24.09.2008, in which opposite party no.1 though attended but could not come out successful. Consequentially, on the recommendation made by the OPSC, opposite party no.3-Dr. Nibedita Jena was selected and appointed as Professor Psychology. But opposite party no.1 challenged such selection before the tribunal inter alia on the ground that Government in Higher Education Department did not submit his CCRs to the OPSC, as a result of which he was not selected for the post of Professor in Psychology and very junior to him, i.e., opposite party no.3 was selected ignoring the case of opposite party no.1.

2.1 The selection to the post of Professor in different subjects, including the subject Psychology, was

conducted as per Rule-5(i) of the Odisha Education Service (Professor's Grade) Recruitment Rules, 1990 (for short "Rules, 1990"), as amended in the year 2006. Rule-5(i) of the aforesaid Rules, 1990 prescribes that the post of Professor shall be filled up by selection through the OPSC from among the eligible Readers in Govt. Colleges of Odisha on 'merit-cum-suitability with due regard to seniority'. The sole criterion for selection to the post of Professor being merit, the OPSC, by adjudging the merit from amongst the eligible candidates, selected opposite party no.3 as Professor in Psychology. As such, the selection was made taking into consideration the academic career, Research Degree, Teaching experience, Research Publication (as evaluated by a team of subjects experts) and CC Rolls. Thereby, merit plays an important and deciding factor for selection to the post of Professor than seniority. As per Rule-2(i) of the Rules, 1990, as amended in 2006, the post of Professor in the service shall be filled up by selection through the Commission from among the eligible Readers in Government Colleges

of Odisha on 'merit cum suitability with due regard to the seniority'. Rule-6-A provides that certain documents are required to be forwarded by the Government to the Commission for preparation of the select list, such as, records of all eligible officers as per UGC eligibility norms and qualification; gradation list of officers; CCRs of the officers for consideration by the Commission; indication about the pending representation against adverse remarks in CCRs, if any, and status of disciplinary proceedings and vigilance proceedings, if any, and any other documents as deemed proper to the purpose, like (i) attested statement indicating the performance of eligible readers at various levels like Matriculation, Intermediate, Degree, Honours, Distinction, as provided in schedule 'A' to the University 1st Statutes, 1990 and copies of the publication in National/International journals only. Rule-6-B of the Amendment Rules, 2006 provides that the Commission shall consider the case of all eligible officers coming under the UGC eligibility norms and qualifications and prepare a list of such officers in order of merit as

found by them suitable for appointment. In compliance of the provisions contained in the Rules, the records including the CC Rolls of opposite party no.1 along with 16 others were forwarded to the Commission. The same was duly examined and consequentially the Commission has conducted the interview on 24.09.2008 where opposite party no.3-Dr. Nibedita Jena, having come out successful, was recommended for appointment as Professor in Psychology against one vacancy in the following order of merit- (1) Dr. (Smt) Nibedita Jena and (2) Dr. Namita Mohanty.

2.2 Needless to mention here that the selection was made on the basis of the academic career, research degree, teaching experience, research publications and assessment of available CC Rolls within the relevant period of five years and the Commission shortlisted nine candidates, including the opposite party no.1, for interview for the post of Professor in Psychology keeping in view the provisions of OCS (Zone of Consideration for Promotion) Rules, 1988. The Commission conducted the

interview with the assistance of two experts in the relevant subject who recommended two names in order of merit for appointment as Professor in Psychology in Odisha. Thereby, the selection was done in fair means and as per the provisions of law.

2.3 As has been already indicated, opposite party no.1, having not been selected, approached the tribunal challenging the action of the authority by filing O.A. No. 1935 of 2013 and after due adjudication, the tribunal, vide order dated 25.02.2016, observed that the Government in Higher Education Department did not submit the CCRs of opposite party no.1 to the Commission, as a result of which opposite party no.1 was not selected for the post of Professor in Psychology in the interview conducted on 24.09.2008 and only for want of CC Rolls the junior to the opposite party no.1, namely, Dr. Nibedita Jena-opposite party no.3 was selected for the post of Professor in Psychology. Aggrieved by such direction/observation of the tribunal, this writ petition has been filed.

3. Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-Petitioners vehemently contended that as per the Rules if selection was conducted on the basis of merit cum suitability and for the purpose of ascertaining the merits, the academic career, research degree, teaching experience, research publication and assessment of available CC Rolls were taken into consideration and on that basis the opposite party no.3 was selected, it cannot be construed that the case of opposite party no.1 was not considered for such selection. It is further contended that along with other names, the name of opposite party no.1 was also recommended and basing upon which he was called upon to appear in the interview, but he could not come out successful. However, subsequently the opposite party no.1 turned around and challenged the selection process. Thereby, at his behest, the original application filed by opposite party no.1 should not have been entertained by the tribunal. It is further contended that the allegation made that the CC Rolls of opposite party no.1 were not

produced before the Commission and, thereby, there was no proper evaluation and the person junior to him was appointed as Professor in Psychology, is absolutely not correct. As a matter of fact, the CC Rolls of opposite party no.1 for the period from 2001-02 to 2005-06 were sent to the Commission by the Department of Higher Education, vide letter dated 30.08.2008, and on that basis the interview was conducted on 24.09.2008. Consequentially, the name of opposite party no.3 was recommended by the Commission to the post of Professor in Psychology. Thereby, no illegality or irregularity has been committed by the authority. As such, the order so passed by the tribunal cannot sustain in the eye of law.

4. Mr. B.S. Tripathy-1, learned counsel appearing for opposite party no.1 vehemently contended that the order passed by the tribunal is in due application of mind. It is contended that when the CCRs of the opposite party no.1 were not made available before the Commission, the interview conducted on 24.09.2008 on the basis of other materials, the same cannot sustain in the eye of law.

Thereby, the tribunal is well justified in passing the order impugned, which does not require any interference of this Court. Rather, in compliance of the order passed by the tribunal, opposite party no.1 should be extended with all the benefits. Consequentially, he seeks for dismissal of the writ petition.

5. Mr. K.C. Kanungo, learned counsel appearing for opposite party no.3 contended that by efflux of time, the writ petition has become infructuous and, as such, the same should be dismissed in limine. It is contended that during pendency of the writ petition, both opposite party no.1 and opposite party no.3, on attaining the age of superannuation, have retired from service. It is contended that the allegation made that the CCRs of opposite party no.1 were not made available before the Commission is absolutely misconceived one and, as such, the same cannot be sustained in the eye of law. It is further contended that the Commission after perusing all the relevant documents, including the CCRs, conducted the selection process and recommended the name of opposite

party no.3 for appointment as Professor in Psychology. It is further contended that the entire records of opposite party no.1 were placed before the Commission and after verification and on being satisfied, on the basis of CCRs the selection process was conducted as per the Rules. It is further contended that the order passed by the tribunal has to be quashed in view of the fact that even though opposite party no.3 was made party before the tribunal as opposite party no.4, but due to incomplete address mentioned in the cause title, notice could not be made sufficient against her, nor due care was taken to serve notice on opposite party no.3. Thereby, without hearing opposite party no.3, the order impugned having been passed by the tribunal, the same cannot be sustained in the eye of law. It is further contended that at different points of time, opposite party no.1 is beating around the bush and making all endeavour by taking different stands to justify the order of the tribunal, which cannot sustain in the eye of law. Consequentially, it is contended that the order passed by the tribunal should be quashed.

6. This Court heard Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-Petitioners; Mr. B.S. Tripathy-1, learned counsel appearing for opposite party no.1; and Mr. K.C. Kanungo, learned counsel for opposite party no.3 by hybrid mode and perused the records. With the consent of learned counsel for the parties, this writ petition is being disposed of finally at the stage of admission.

7. The analysis of facts, as made above, emerged that opposite party no.1 participated in the selection process for the post of Professor in Psychology and having not come out successful approached the tribunal by filing original application challenging the selection of opposite party no.3, who was made party before the tribunal as opposite party no.4. On perusal of cause title of the original application, it appears that the description of opposite party no.4 (opposite party no.3 herein) in column no.2 with the heading of particulars of respondent was mentioned to the following effect:-

“xxx

4. Nibedita Jena,
W/o
Presently working as
Professor in Psychology”

In absence of detailed address in the cause title, the notice could not be made sufficient against opposite party no.3. Though learned counsel for opposite party no.1 argued vehemently that both opposite party no.1 and 3 were working in the same institution, but that *ipso facto* cannot suffice that notice must have served on opposite party no.3 and made sufficient as against her, in view of insufficient address given by opposite party no.1. More so, due to non-supply of details of opposite party no.3, opposite party no.1 has not approached the tribunal with clean hands. As such, opposite party no.1 was fully aware that in the event a successful party, namely, opposite party no.3, who was selected by following due procedure, will not be noticed and against her notice would not be made sufficient, the matter would be decided *ex parte* which would be beneficial to him and, in fact, by not taking notice to opposite party no.3, opposite party no.1

has taken advantage in succeeding before the tribunal. Therefore, the order so passed by the tribunal cannot sustain in the eye of law, as opposite party no.1 had not approached the tribunal with clean hands.

8. As regards expressing distorted facts before the Court and not approaching with clean hands, in **R. v. Kensington, Income Tax Commissioner**, (1917) 1 KB 486 at page 506, it has been held as follows:

“The prerogative writ is not a matter of course; the applicant must come in the manner prescribed and must be perfectly frank and open with the Court.”

9. In **State of Haryana v. Karnal Distillery**, AIR 1977 SC 781, the apex Court refused to grant relief on the ground that the applicant has misled the Court.

10. In **Chancellor v. Bijayananda Kar**, AIR 1994 SC 579, the apex Court held that a writ petition is liable to be dismissed on the ground that the petitioner did not approach the Court with clean hands.

11. Taking into consideration the above judgments, this Court, in **Netrananda Mishra v. State of Orissa**, 2018 (II) OLR 436, came to a conclusion in paragraph-26 of the said judgment and held as under:-

“..... For suppression of facts and having not approached this Court with a clean hand, the encroacher is not entitled to get any relief, particularly when the valuable right accrued in favour of the petitioner is being jeopardized for last 43 years for no fault of him, on which this Court takes a serious view.”

12. Therefore, applying the above ratio to the present case, this Court is of the considered view that by giving distorted facts the opposite party no.1 has tried to mislead the tribunal and, as such, he had not come to the tribunal with clean hands. Therefore, he is not entitled to get any relief.

13. When the matter was listed before this Court on 12.04.2002, learned counsel appearing for opposite party no.1 urged certain facts before this Court, which are reflected in paragraph-5 of the order dated 12.04.2022 to the following effect:

“5. Mr. B.S. Tripathy, learned counsel appearing for opposite party no.1 contended that opposite party no.1 has brilliant career and as such due to want of CCR, his case could not have been considered by the Commission, as a result of which he has been deprived of getting his promotion to the post of Professor in Psychology. The document has been relied upon, which has been annexed to the writ petition as Annexure-6, wherein as against the opposite party no.1 it has been entered as NRC (No Remark Certificate). It was contended that due to NRC the opposite party no.1 has been deprived of his promotion. The entire responsibility is with the government to provide complete CCR to the Commission for consideration of the case for promotion to the post of Professor in Psychology. Therefore, if the latch is on the part of the Government, the opposite party no.1 cannot be deprived of such benefit. As a consequence thereof, he supported the stand taken by the tribunal to extend the benefit of promotion to post of Professor in Psychology.”

14. In order to answer the above contention, Mr. A.K. Mishra, learned Addl. Government Advocate sought for time to obtain instructions and on receipt of the instructions he filed a reply affidavit on 04.05.2022, paragraphs-6 and 7 whereof read as hereunder:-

“6. That, the allegation of non transmission of the CCRs of the Opposite Party No. 1 to the OPSC for selection to the Professor in

Psychology is wrong and misleading. In this connection, it is felt apposite to draw kind attention of this Hon'ble Court to Annexure-4 of the writ petition containing copy of Letter No. 10654/PSC, dtd. 03.10.2008 of OPSC received by Government in Higher Education Department on 04.10.2008, wherein the OPSC after completing the process of selection for the post of Professor in Psychology returned the CCRs folders of 17 OES Officers including the opposite party No. 1 which had been sent to them by the Government in Higher Education Department for the process of selection. It has also been mentioned in the aforesaid letter of OPSC that out of 17 OES Officers 9 OES Officers were shortlisted by OPSC for interview held on 24.09.2008 and the Opposite party No. 1 was one of those 9 shortlisted candidates. Had OPSC not received CCRs of OP No. 1, it would not have shortlisted him for interview. The O.P No. 1 attended the interview; but failed to perform well enough to be selected. OPSC rather selected 2 other OES Officers, from amongst those who attended the interview, for the post of Professor. Therefore, the allegation of non receipt of CCR in case of the O.P. No. 1 by OPSC from Government is totally a misrepresentation of fact.

7. That, the opposite party No. 1 now alleges that the 'NRC' remarks in his CCR for the period 2001-2002. 2002-2003 and for the periods from 01.04.2003 to 03.08.2003, 01.04.2004 to 14.05.2004 and 01.01.2005 and 31.03.2005 debarred him to be considered favourably by OPSC for selection to the promotional post of Professor. This averments/ pleadings are misleading, because, NRC (No Remark Certificate) remark is not an adverse remark. NRC remark is not a bar for promotion.

NRC remark is recorded in the CCR for the period of service for which an employee is not required to submit his CCR. For example, if an employee's period of service under his Reporting Officer in a financial year is less than 4 months, the employee is not required to submit his CCR for such small period. In this case, NRC remark gets recorded in his CCR. Similarly, when an employee is not on duty on account of long leave such as study leave, NRC remarks gets recorded in his CCR for this period as he does not perform any duty during this period. 'Therefore, NRC remark is not treated as an adverse remark. It simply indicates that the employee was not officially required to submit his CCR for the periods concerned. Therefore, NRC remark is not held as a bar for an employee's promotion. The very fact that the O.P.No.1 was short-listed by OPSC for interview proves that his NRC remarks had not been treated adversely by OPSC.

Further in Para-23 to 27 of the instruction on procedures for maintenance of Confidential Character Rolls communicated to all Departments/ HoDs/Collectors by the General Administration (SE) Department of Government of Odisha, vide Memo No.10918 (110) - P.R.O dated 23.11.1987, dealt with what constituted to be an adverse remark, communication of adverse remarks and subsequent procedures. As per these prescribed procedures, if a remark was treated as an adverse remark, it would have been communicated to the officer concerned for filing representation against such adverse remarks. In this case, since the NRC remarks were not treated as adverse remarks, the petitioner did not communicate anything to the OP No.1 regarding the NRC remarks recorded in his

CCRs. The OP No.1 has also not claimed anywhere in his Writ Petition or subsequent pleadings that he had received any communication from the Petitioners asking him to file representation against such NRC remarks recorded in his CCRs. This clearly establishes that the NRC remarks recorded in his CCRs were not treated as adverse remark. Subsequently, vide its Letter No.1103/SE Dated 19.05.2020, the General Administration & Public Grievance (SE) Department of Government of Odisha has clarified that NRC remarks are not considered as adverse entry and hence are no bar for promotion.

The above-said letters of GA(SE) Department dated 23.11.1987 and 19.05.2020 are annexed herewith as Annexure-1/A and Annexure-1/B respectively.”

14.1 In paragraph-11 of the reply affidavit dated 04.05.2022, it has been further stated as follows:-

“11. That, from Annexure-6 to the writ petition it could be seen that though the O.P.No.1 could not get selected for Professor post; but on the basis of the same CCRs, he was selected for the post of Principal (Readers Grade) by the same OPSC just after a few months. Had his CCRs with NRC remarks been considered adversely by OPSC, he would not have been selected to the post of Principal (Reader's Grade). Therefore, from the above, it can be well ascertained that his CCRs with NRC remarks were actually not the reason for his failure to be selected for the post of Professor. Rather, better performance of other shortlisted candidates in the interview was the reason

*why the O.P.No.1 was not selected by OPSC
for the Professor post.*

On perusal of aforementioned paragraph-11 of the affidavit dated 04.05.2022, it is made clear that on the basis of same CCRs, opposite party no.1 was selected for the post of Principal (Readers Grade) by the same OPSC just after a few months of completion of the selection process to the post of Professor. Therefore, it can be well ascertained that the CCRs of opposite party no.1 with NRC remarks were actually not the reason for his failure to be selected for the post of Professor. Rather, better performance of other shortlisted candidates in the interview was the reason why opposite party no.1 was not selected by the OPSC for the post of Professor. The affidavit dated 04.05.2022 filed by the State-Petitioners has also been served on learned counsel for opposite party no.1 and in rebuttal to the same he has not stated anything, which clearly shows that opposite party no.1 has accepted the stand taken in the reply affidavit.

15. Time and again, opposite party no.1 has been changing his stand without any application of mind. When the matter was listed on 28.07.2022, opposite party no.1 took a stand, as recorded in paragraph-3 of the order dated 28.07.2022, to the following effect:-

“3. Mr. B. S. Tripathy-1, learned Counsel appearing for Opposite Party No.1 contended that now the State has taken a different stand, as stated in the additional Affidavit, which is contrary to the statement made in Paragraph-5 of the Counter Affidavit filed by Opposite Party No.2-OPSC before the Tribunal, that the CCR folders of Opposite Party No.1 of the relevant period of five years i.e. from 2001-2002 to 2005-2006 were not received from the Government in Higher Education Department for consideration in spite of issuance of repeated reminders by the Commission. But the same has been refuted in the Additional Affidavit. Therefore, there is dispute with regard to supply of CCRs of Opposite Party No.1 by the OPSC.”

16. As a consequence thereof, Mr. A.K. Mishra, learned Addl. Government Advocate sought time to obtain instructions in the matter and on receipt of the instructions, an affidavit was filed on 17.10.2022, paragraphs-4 to 6, whereof read as under:-

“4. That, in due compliance to the kind orders of this Hon'ble Court above, it is most humbly submitted that the fact of non transmission of the CCRs of the Opposite Party No. 1 to the OPSC for selection to the Professor in Psychology is wrong and misleading. It is a fact that the petitioner State herein had transmitted the CCRs of OES officers of different disciplines for recruitment of Professors in Orissa Education Service (Professor Grade) vide Letter No.21494/HE, dtd. 15.05.2007 and in the said letter it is reflected at point No. 2 (xii) that for the subject Psychology, CCRs in respect of 17 numbers of OES Officers were sent to the OPSC for consideration, wherein the name of the Opp.Party No.1 was reflected. Xerox copy of Letter No.21494/HE, dtd. 15.05.2007 containing such list and receipt of the Letter by OPSC is filed herewith as **Annexure-1/D.**

5. That, in the meantime, the OPSC vide Letter No. 5439/PSC, dtd. 27.03.2008 requested the Govt. Department for submission of wanting CCRs in respect of 14 numbers of Reader as per list enclosed to the said Letter and in the said Letter the name of Sadasiv Mohapatra (O.P. No. 1) for recruitment of professor in Psychology subject is reflected at point No. 1 where in the remarks column, it was written that his CCRs were sent vide Letter No. 2909/ dtd. 07.07.2008 of General Administration (S.E.) Department to the OPSC. The aforesaid Letter No. 2909/SE, dtd. 07.07.2008 contents the CCR of Sri Sadasiv Mohapatra, Reader in Psychology from the session 2001-02 to 2005-06. Xerox copies of Letter No.5439/PSC, dtd. 27.03.2008 and Letter No. 2909/SE, dtd. 07.07.2008 of Govt. are

filed herewith as Annexure-1/E Series. The CCRs of the Officers including the Opp.Party No.1 has been sent to the OPSC vide Annexure-6 to the writ petition.

*6. That, confirmation in this regard can be assessed from the copy of the letter No. 10654/PSC, dtd. 03.10.2008 received by Government in Higher Education Department on 04.10.2008 wherein it is reflected that OPSC after completing the process of selection for the post of Professor in Psychology, returned the CCRs folders of 17 OES Officers including the opposite party No. 1 which were sent to them by the Government in Higher Education Department for the process of selection. It could further be seen from the said Letter that OPSC has clearly stated that out of 17 OES Officers for which such CCRs were sent for the purpose of selection to the post of Professor, 9 shortlisted candidates were called for interview held on 24.09.2008 and in the said interview two names 1. Dr. Smt. Nivedita Jena, 2. Dr. Namita Mohanty were recommended to Government in order of merit for their posting as Professor in Psychology. Xerox copy of Letter No. 10654/PSC, dtd. 03.10.2008 of OPSC is filed herewith as **Annexure 1/F.**"*

In view of the above affidavit filed on behalf of the State-petitioners, it is made clear that the CCRs of opposite party no.1 along with 14 numbers of Readers were sent to the OPSC by the General Administration (S.E.) Department on 07.07.2008, where the CCRs of the

opposite party no.1 were made available for the period from 2001-02 to 2005-06. After the selection process was over, OPSC returned the CCRs folders of 17 OES officers, including opposite party no.1, which were sent to them by the Government in Higher Education Department for the purpose of selection. Thereby, the contention raised that the CCRs were not sent, is not correct and, as such, the tribunal has committed gross error to the extent that the CCRs of opposite party no.1 were not placed before the Commission and that the direction given that the case of opposite party no.1 for promotion should be considered from the date the opposite party no.3 was promoted, is itself an outcome of complete non-application of mind.

17. It is of relevance to note that even though affidavits were filed on 04.05.2022 and 17.10.2022, but opposite party no.1 never filed any reply to the same. Rather, when the matter was taken up on 15.11.2022, learned counsel for opposite party no.1 took a new plea stating that even though the CCRs of the opposite party no.1 were produced, but no recording was made in the

CCRs itself. Thereby, this Court called upon opposite party no.1 to satisfy as to whether such a plea was advanced before the tribunal or not. In reply, learned counsel for opposite party no.1 brought our attention to paragraph-6.11 of the original application under Annexure-1 to the writ petition, which reads as under:-

“6.11. It would be worthwhile to indicate here that the applicant prior to the impugned selection to the post of Professor in Psychology had submitted a detailed representation to the respondent No.2 on 25.01.2008 requesting him to ask the Principal/Head of the respective institutions where he had served to give their views or suitable remarks so that his CCRs for last 5 years would be complete in order to prevent any uncalled for discrimination in promotion to the next higher grade. In the said application the applicant has clearly indicted that his CCRs for along period are not available in the G.A. Department of the Government in spite of his regular self appraisal and submission and at least CCRs of 5 years would be required in the event of any selection to the higher post. The applicant has annexed a list of defaulting period along with names of Reporting Officers/Institutions along with his representation dated 25.01.2008. But unfortunately there has been no response from the respondent no.2 and consequentially because of want of CCRs, the applicant who was only eligible to be selected as Professor in Psychology on

merit and performance and career wise was debarred for being selected and appointed as Professor in Psychology.”

The aforesaid pleadings in any way do not justify the claim of opposite party no.1 that he had ever raised before the tribunal that even though CCRs were produced before the OPSC, but no recordings were made in the same. Rather, it speaks otherwise, as would be evident from the above quoted paragraph. Therefore, as the petitioner has not approached this Court with clean hands, he is not otherwise entitled to get any relief, as claimed in the writ petition.

18. The opposite party no.1 having participated in the process of selection of Professor in Psychology conducted by the OPSC and not coming out successful cannot turn around and file a case alleging irregularity in the process of selection.

19. In **Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors.**, AIR 1986 SC 1043, it has been clearly laid down by a Bench of three learned Judges of this

Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”

20. In **Madan Lal v. State of Jammu and Kashmir**, AIR 1995 SC 1088, the apex Court held as follows:

“.....If a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted.”

21. In **Vijendra Kumar Verma v. Public Service Commission, Uttarakhand and others**, (2011) 1 SCC 150, the apex Court in paragraph-27 ruled as follows:

“In Union of India v. S. Vinodh Kumar, (2007) 8 SCC 100 in para 18, it was held that:

“18..... It is also well settled that those candidates who had taken part in

the selection process knowing fully well the procedure laid down therein were not entitled to question the same.”

22. In ***Marripati Nagaraja v. Government of***

A.P., (2007) 11 SCC 522, the apex Court observed as follows:-

“The other contention of Mr. Rao that the candidates had given only seven days’ time for making preparation to appear in the second screening test, cannot, in our considered view, give rise to a ground for setting aside the entire selection process. The Tribunal did not make any discrimination. One screening test had already been held. The number of candidates appeared in the first screening test was 510. The Commission obtained the permission of the Tribunal for holding the second screening test. It issued a notification on 12.12.2000 stating that such a test would be conducted on 7.1.2001. All the candidates were given the same time for preparation. Only because the appellants herein were employees at the relevant time, the same by itself could not confer on them any special privilege to ask for an extended time. They had no legal right in relation thereto. Appellants had appeared at the examination without any demur. They did not question the validity of the said question of fixing of the said date before the appropriate authority. They are, therefore, estopped and precluded from questioning the selection process.”

Similar view has also been taken by this Court in **Sevati Patra** (supra); **Pradeep Kumar Jena v. State of Odisha**, 2017 (II) OLR 274; **Pravati Nayak v. State of Odisha**, 2018 (Supp-II) OLR 946; and also judgment dated 02.04.2019 rendered in W.P.(C) No. 14047 of 2012 (**Keshari Sahoo v. State of Odisha**).

23. Considering the matter from other angle, it appears that both opposite parties no.1 and 3 have already retired from service on attaining the age of superannuation. As such, opposite party no.3 has already held the post of Professor in Psychology and availed the benefit. So far as opposite party no.1 is concerned, taking into consideration the CCRs, he was allowed to continue as Principal by the very same OPSC. Therefore, had the CCR entries not been made available, then in that case opposite party no.1 would not have been given any promotion, subsequent to the selection of Professor in Psychology, to the post of Principal. Thereby, the entire contention raised by learned counsel for opposite party no.1 cannot sustain in the eye of law.

24. May it be noted that aggrieved by the result of the OPSC, opposite party no.1 applied for certain information under the Right to Information Act, 2005 to the PIO of OPSC on 22.12.2008 for supply of marks secured in different components of all the nine candidates appearing in the interview for the post of Professor in Psychology held on 24.09.2008 and also his marks in different components in Principal's interview held on 30.09.2008. But the PIO expressed his inability to supply the marks awarded to him in different components. Aggrieved by such order of the PIO, opposite party no.1 preferred appeal bearing Appeal No.29 of 2009, which was considered by the appellate authority to the following effect:-

"So far as the marks secured by the appellant in the interview for the post of Principal (Readers' Grade) in OES(SAG) he has got 25 (twenty five) marks out of the total marks of 50 (fifty) and is placed at Sl.No.24 (twenty four) in the merit list. He has been recommended by the Commission for appointment to the post of Principal (Readers' Grade).

Regarding the information asked by the appellant with respect to marks secured by

other candidate, I am totally agree with the PIO, who have expressed his inability to supply the marks as these are personal information the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of privacy of the individual covered u/s 8(1)(i) of the RTI Act, 2005.

Decision:-

Hence, the appeal petition is disposed of on the basis of above observation and prayer of the Appellant is partly allowed.”

After knowing the factum, opposite party no.1 moved the tribunal and in turn the tribunal passed the order impugned extending the benefit to him, which clearly indicates that the tribunal having not applied its mind passed the order impugned, which cannot be sustained in the eye of law. As such, the conduct of opposite party no.1 is not clean, as he has not approached the tribunal with clean hands.

25. In the above view of the matter, this Court is of the considered opinion that the order dated 25.02.2016 in O.A. No. 1935 of 2013 under Annexure-2, having been passed by the State Administrative Tribunal,

Bhubaneswar erroneously extending the benefit to opposite party no.1, cannot be sustained in the eye of law and is liable to be quashed and is hereby quashed. More so, in the meantime, both opposite parties no.1 and 3 having been retired from service on attaining the age of superannuation, nothing remains to be adjudicated in this writ petition at this stage.

26. In the result, the writ petition filed at the instance of the State succeeds and is thus allowed. However, there shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

B.P. SATAPATHY, J. I agree.

.....
B.P. SATAPATHY,
JUDGE

Orissa High Court, Cuttack
The 24th November, 2022, Ashok/GDS