

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**WPC (OAC) No. 1491 of 2018 &  
W.P.(C) No. 22702 of 2020**

Applications under Articles 226 & 227 of Constitution of India.

**AFR**

**WPC (OAC) No. 1491 of 2018**

**Sujata Mohanty**

....

**Petitioner**

*-versus-*

**State of Odisha and another**

....

**Opp. Parties**

**W.P.(C) No. 22702 of 2020**

**Sujata Mohanty**

....

**Petitioner**

*-versus-*

**State of Odisha and Others**

....

**Opp. Parties**

**Advocate(s) appeared in this case:-**

**For Petitioners** : M/s. B.S. Tripathy, A. Tripathy &  
A. Sahoo, Advocates.  
[ in both the writ petitions]

**For Opp. Parties** : Mr. B.P. Tripathy,  
Addl. Govt. Advocate  
[ in both the writ petitions]

**CORAM:**

**JUSTICE SASHIKANTA MISHRA**

**JUDGMENT**

**1<sup>st</sup> November, 2022**

**SASHIKANTA MISHRA, J.**

Both these writ petitions have been filed by the same petitioner involving similar facts and claiming more

or less similar reliefs. For convenience, both were heard together and are being disposed of by this common judgment.

2. Facts of both the cases, briefly stated, are that the petitioner has been working as a Junior Clerk in the office of BDO, Tirtol on being appointed by order dated 22.02.2014 of the Collector, Jagatsinghpur. Pursuant to an advertisement dated 23.07.2013 issued by Odisha Staff Selection Commission (for short, 'the Commission') for recruitment to the post of Junior Assistant in the Heads of Department, the petitioner applied and went through the recruitment process. She being found suitable, her name was recommended by the Commission for appointment. She was asked to appear in the office of the Controller of Accounts, Odisha (opposite party No. 2) on 23.11.2015 for verification of documents and issuance of appointment order. It is stated that such appointment was proposed to be given in terms of the Odisha Group-C and Group-D Posts (Contractual Appointment) Rules, 2013 (in short, "2013 Rules"). The petitioner immediately raised her objection regarding contractual appointment and requested

the authorities to issue appointment order on regular basis. It is also stated that the petitioner submitted the required documents for verification on the date fixed. Despite such verification of documents no regular appointment order was issued by opposite party No. 2 on the ground that the petitioner's grievance would be forwarded to the Government for redress and as such, the petitioner was not allowed to join in her post. Some of the similarly placed persons had approached the erstwhile Odisha Administrative Tribunal in O.A. No. 4119 (C) of 2015 and batch seeking appointment on regular basis. The Tribunal, by judgment dated 17.11.2016 quashed the contractual appointment orders and directed the authorities to issue appointment on regular basis. Basing on the judgment of the Tribunal, the opposite party No.1 issued an office order dated 19.7.2017 clarifying that the provisions of 2013 Rules would not be applicable to regular appointments as the advertisements were issued prior to commencement of the said Rules. The petitioner therefore filed another representation on 12.03.2018 before the opposite party No.2 reiterating her prayer of being issued

with regular appointment order on the basis of the judgment of the Tribunal, which was forwarded to opposite party No.1 but no action whatsoever was taken in the matter. The Tribunal disposed of another batch of original applications being O.A. Nos. 2091 (C) of 2016 and batch by order dated 13.04.2018 passing similar orders. Upon coming to know of the judgment the petitioner submitted another representation on 20.04.2018 before opposite party No.2 reiterating her prayer. The petitioner also met the opposite party No.1 in his Grievance Cell on 14.05.2018 during which she was informally asked to obtain similar order from the Tribunal. As such, the petitioner approached the Odisha Administrative Tribunal in O.A. No.1491 (C) of 2018 which has since been transferred to this Court and registered as the present writ application. In the counter filed by the opposite parties two documents were enclosed namely, letter dated 10.04.2018 of opposite party No. 2 to the Government and 12.09.2018 of the Government addressed to the opposite party No.2. In the first document the representation of the petitioner was forwarded to the Government for taking a decision. In the

second document the prayer of the petitioner was rejected on the ground of expiry of the validity of the select list. The petitioner therefore was permitted to amend the prayer made in the O.A. to seek quashment of the aforementioned two documents in addition to her original prayer. While the matter stood thus, the Tribunal came to be abolished and though the O.A. was transferred to this Court, there was no possibility of the same being decided at an early date because of the prevailing Covid-19 pandemic situation. The petitioner therefore filed W.P.(C) No. 22702 of 2020 claiming more or less the same relief.

3. Counter affidavit has been filed by the opposite parties. While referring to the undisputed facts of the case it is specifically stated that the petitioner was called upon to appear for verification of documents on 23.11.2015 and on the same day verification was done in respect of the candidates who were present but the petitioner did not appear. The petitioner was again requested to appear in the office of opposite party No. 2 by letter dated 24.11.2015 on or before 5.12.2015 clearly indicating that the offer of appointment shall stand cancelled if she failed to appear. It

is stated that the petitioner did not appear on the said date also. After a long lapse of time, the petitioner submitted a representation on 12.03.2018 indicating that she is serving as a Junior Clerk in the regular post under Collector, Jagatsinghpur but the present nature of appointment offered is contractual and hence, she is not willing to join in the post. However her representation was forwarded to the Government in Finance Department for consideration by letter dated 10.04.2018, enclosed as an Annexure-G. It is stated that the petitioner's claim of having submitted a representation by Annexure-8 is not correct as no such representation was ever received. The Government in Finance Department considered the representation of the petitioner in consultation with the GA and PG Department and by order dated 12.09.2018, rejected the same on the ground that the validity period of the select list had already lapsed. As regards the orders passed by the Tribunal in the batch of Original Applications filed by different candidates, it is stated that in those cases the applicants had approached the Tribunal in the year 2015 and 2016 itself without any delay, whereas despite offer of appointment on

two occasions, the petitioner never turned up for document verification and therefore she forfeited such offer. The representation at Annexure -6 was also submitted two and half years after publication of the select list dated 31.08.2015. The petitioner does not have any indefeasible right to claim any appointment rather she must be held to have forfeited the right of being considered for appointment by not having appeared for verification of documents at the relevant time.

4. The petitioner filed rejoinder to the counter. It is basically stated that the Tribunal having held that the provisions of 2013 Rules has no application as the advertisement in question was issued for regular appointment prior to commencement of the said Rules, the petitioner should have been appointed on regular basis. Since she was informally asked by the opposite party No.1 to obtain similar order from the Tribunal, she filed the O.A. in question in which an order was passed to the effect that pendency of the O.A. shall not be a bar for consideration of her grievance in terms of the judgments passed by the Tribunal in the batch of cases. It is further stated that the

petitioner only claims for appointment on regular basis with pay protection and seniority as she is already serving on regular basis under the Collector, Jagatsinghpur and thereby no prejudice would be caused to the Government. It is also stated that regular orders of appointment were passed in respect of other candidates much after the expiry of the select list and therefore, the petitioner cannot be denied the same benefit on such ground.

5. The opposite parties filed a reply to the rejoinder. It is reiterated that the Commission had sponsored the names of nine candidates including that of the petitioner at the relevant time. Since the 2013 Rules was in force with effect from 12.11.2013 the appointments were sought to be made on contractual basis and accordingly all the nine candidates including the petitioner were asked to appear on 23.11.2015 for verification of relevant documents and issuance of appointment orders in their favour. The petitioner neither turned up for verification of documents nor raised any objection regarding contractual appointment. In the meantime the Government in GA Department, by order dated 19.07.2017 relaxed the

provisions of sub-Rule (2) of Rule 5 of the 2013 Rules. Accordingly the candidates, who were present in the office of opposite party No. 2 for verification of documents and appointed on contractual basis, were regularized. Since the petitioner did not turn up for verification of documents on the first occasion she was given another chance to appear on or before 05.12.2015 clearly indicating that the offer of appointment would stand cancelled if she did not appear. The petitioner neither turned up nor communicated anything with regard to her absence and as such no formal appointment order was issued in her favour within one year from the date of publication of the select list. The claim that the petitioner was informally asked to obtain similar order from the Tribunal is specifically denied by stating that she was never asked to do so. The representation dated 23.11.2015 claimed by the petitioner to have been submitted was never received. Since despite the repeated instructions there was no response from the petitioner there was no scope on the part of the opposite parties to issue appointment order in her favour. It is

reiterated that the petitioner does not have any indefeasible right to claim appointment.

6. Heard Mr. B.S. Tripathy, learned counsel for the petitioner and Mr. B.P.Tripathy, learned Additional Government Advocate.

7. It is argued by Mr. B.S. Tripathy that the petitioner having been duly selected and placed in the select list acquires at least the right of being considered for appointment. Since she was already holding a regular post under the Collector, Jagatsinghpur and the appointment offered was on contractual basis, she rightly submitted representation to the authorities to consider her case for regular appointment. Such representation was never considered. The Tribunal having laid down the law that the advertisement in question being issued prior to commencement of the 2013 Rules no appointment can be made on contractual basis, it is to be held that the same applies to every person equally and not just to the persons who had approached the Tribunal. Nevertheless being informally asked by the opposite parties, the petitioner did approach the Tribunal in which an order was passed to the

effect that pendency of the said case would not be a bar for the authorities to consider her case for regular appointment. It is further argued that since persons were appointed on regular basis even after expiry of the period of the select list it is no longer open to the authorities to deny appointment to the petitioner on the ground that the select list had lapsed.

8. Opposing the contentions advanced by the petitioner, Mr. B.P. Tripathy, learned State counsel argues that being included in the select list does not confer any indefeasible right on a person for appointment. It is settled law that such a person only acquires a right to be considered for appointment. The opposite party authorities called upon all the nine candidates sponsored by the Commission to appear for verification of documents but the petitioner did not appear though all the other candidates had appeared. The petitioner was given another chance but still she did not appear. All the candidates who appeared were given contractual appointments as per the prevalent rules. That such appointments were subsequently made regular basing on the judgment of the Tribunal cannot be

of any help to the petitioner in view of the fact that they had accepted the contractual appointment and at the same time approached the Tribunal. The petitioner neither accepted the offer of appointment nor approached the Tribunal at the relevant time but did so only after favourable orders had been passed in respect of the other candidates but by such time the validity of the select list had expired. The petitioner is therefore nothing but a fence sitter and therefore not entitled to any relief.

9. The basic facts of the case are not disputed inasmuch as the petitioner while working as junior clerk in the office of the B.D.O., Tirtol was also selected for appointment to the post of Junior Assistant in the Heads of the Department being successful in the recruitment process undertaken pursuant to advertisement dated 23.07.2013 by the Commission. It is also not disputed that basing on the performance of the candidates, nine names including that the petitioner were recommended by the Commission to the Government for their appointment. Accordingly, the candidates were called upon to appear before the opposite party No.2 on or before 23.11.2015 for

verification of documents. The said letter is enclosed as Annexure-3 to the writ application, which mentions that failure to attend the office as per scheduled date without valid reason shall entail forfeiture of appointment. Notwithstanding the above, the petitioner was again called upon by letter dated 24.11.2015 (enclosed as Annexure-F to the counter) to appear on before 05.12.2015 along with required certificates for verification clearly stating that failing such appearance it shall be implied that she has no intention to join in service and the offer of appointment shall stand cancelled. It is strongly asserted by the opposite parties that the petitioner never turned up for document verification which amounts to forfeiture of her appointment due to non-acceptance of the offer. On the other hand, the petitioner claims to have immediately submitted an objection on 23.11.2015, copy enclosed as Annexure-4, stating that she is submitting all required documents for verification with a prayer that she should be appointed on regular basis instead of contractual. The opposite parties have denied receipt of such letter. The petitioner has not adduced even a semblance of proof to show service of the

letter of opposite party No.2. It is also not stated as to by which mode the said letter was sent. On the contrary, in her representation dated 12.03.2018, enclosed as Annexure-G to the counter, the petitioner has clearly stated as under;

*“In her application she has indicated that, she was intimated for contractual appointment as per “Odisha Group-C & Group-D post (Contractual appointment) Rules, 2013” which contravenes the Advertisement No. IIE-05/2013-1983/OSSC, Dated 23.07.2013 published by OSSC for recruitment for 118 nos. of Junior Assistant in the H.O.D. in the Pay Band-1 of Rs.5200- 20,200/- with Grade Pay of Rs.1900/- on regular basis prior to commencement of the said rules. Again as she was working as Junior Clerk under Collector, Jagatsinghpur on regular scale of pay in the PB-1 of Rs.5200/-20,000/- with G.P. 1900/- for which she could not accept the office of this office for appointment on contractual basis which was not in accordance to the OSSC Advertisement. Further she states that Govt. in GA & PG Dept. in their order No. 15592/Gen, Dated 19.07.2017 have excluded the contractual appointment rule for those advertisement which were made prior to commencement of “Odisha Group-C & Group-D post (Contractual appointment) Rules-2013” as in case of OSSC Advertisement No. 11e-05/2013-1983/OSSC, Dated 23.07.2013. She stated that due to irrational applicability of “Odisha Group-C & Group-D post (Contractual appointment) Rules-2013” for appointment of Junior Assistant in this office she could not join the post as she has offered to join the service in this office on contractual basis as against the advertise post for regular appointment.”* (Emphasis supplied)

Significantly, there is no reference in the said representation to the earlier representation purportedly

sent on 23.11.2015. Thus, the basic fact that emerges from the above discussion is, being called upon to submit the required documents for verification on two dates, the petitioner remained silent.

10. There is no dispute that the petitioner was placed in the select list but then, mere inclusion in the select list does not confer an indefeasible right of appointment. This has been the long settled legal position beginning from the decision of the Constitution Bench of the Apex Court in the case of **Shankarsan Dash v. Union of India**, reported in (1991) 3 SCC 47.

It is also true that the appointment cannot be denied arbitrarily and that a person on the select list has a right to be at least considered for appointment as was held by the Apex Court in the case of **R.S. Mittal v. Union of India**, reported in 1995 Supp (2) SCC 230.

In the instant case, no arbitrariness of action can be attributed to the authorities in any manner whatsoever in view of what has been discussed in the preceding paragraphs. It is stated at the cost of repetition

that the petitioner herself did not turn up though called upon twice to submit the required documents for verification.

11. It has been argued that the petitioner had a legitimate grievance to raise in view of the judgments passed by the Tribunal to the effect that the advertisement having been issued for regular appointment prior to coming into force of the 2013 Rules, the said Rules shall have no application due to which several other candidates were conferred with regular appointments. This is sought to be countered by the opposite parties by contending that in such event the petitioner also ought to have accepted the contractual appointment and approached the Tribunal in time and obtained similar order in her favour. In the case at hand, the Tribunal in its judgment dated 17.11.2016 passed in O.A. No. 4119(C) of 2015 and batch had held as above. Such application to the Tribunal was made in the year 2015. Similar applications were filed in the year 2016 being O.A. Nos.2091(C) of 2015 and batch, which incidentally were disposed of by judgment dated 13.04.2018. Thus, the applicants in the above mentioned

cases had approached the Tribunal well within time and in any case, during validity of the select list. The petitioner obviously is a fence sitter who, being buoyed by the favourable orders obtained by other candidates thought it proper to also throw her hat in the ring. Law is well settled that a fence sitter is not entitled to any relief.

12. Another point that has been raised is that the petitioner's belated grievance was also considered but rejected on the ground that the select list was no longer valid. Admittedly, the select list was published on 31.08.2015. In the absence of any stipulation, the select list is deemed to be valid for a period of one year i.e. till 30.08.2016. Had the petitioner moved the authorities during such period, the matter would have been different. Not having done so it is no longer open to the petitioner to challenge the rejection of her claim on the ground of non-operation of the select list. In the case of **State of Orissa v. Rajkishore Nanda**, reported in (2010) 6 SCC 777, the Apex Court held as follows:

*"16. A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required. It is the settled legal proposition that no relief can be granted to the candidate if he approaches the court after the*

*expiry of the select list. If the selection process is over, select list has expired and appointments had been made, no relief can be granted by the court at a belated stage.”*

13. There is therefore, no valid ground put forth by the petitioner to persuade this court so as to interfere with the impugned order.

14. For the foregoing reasons therefore, this court finds no merit in the writ applications, which are therefore, dismissed.

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**Sashikanta Mishra,**  
**Judge**

**Orissa High Court, Cuttack,**  
**The 1<sup>st</sup> November, 2022/ A.K. Rana, P.A.**

