

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

**WPC(OAC) No.1597 of 2008**

In the matter of an application under Section 19 of the  
Administrative Tribunal Act, 1985.

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**Srikanta Sahu**

....

**Petitioner**

*-versus-*

**State of Odisha & Others**

....

**Opposite Parties**

**For Petitioner :** M/s.A.K. Mohanty (A),  
R.K.Behera, R.C.Pradhan &  
D.Ray.

**For Opp. Parties :** Standing Counsel  
Mr. N.Prusty.

**PRESENT:**

**THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY**

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Date of Hearing:24.08.2022 and Date of Judgment:06.09.2022  
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***Biraja Prasanna Satapathy, J.***

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. A.K.Mohanty, learned counsel for the Petitioner and Mr. N.Prusty, learned Standing Counsel for the State-Opposite Parties.
3. The Petitioner has filed the Present Writ Petition with the following prayer:-

*“Under this facts and circumstances it is humbly prayed that this Hon’ble Tribunal may graciously be pleased to admit this original application, call for the records, issue notice to respondents to why the original application shall not be allowed and direction shall not be issued to the respondents to give appointment to the applicant for the post of T.G.T. (CBZ) in any Govt. High School under the jurisdiction under Inspector of Schools, Ganjam Circle, Berhampur (Respondent No.4) with all consequential financial benefit within a reasonable time when other candidates selected along with him as T.G.T (CBZ) pursuant to advertisement and in the year 2006”.*

**4.** Mr. Mohanty, learned counsel for the Petitioner submitted that pursuant to the advertisement issued by the Opposite Party No.2 on 10.09.2006, the petitioner with having requisite qualification made his application for the post of T.G.T(CBZ) in respect of Ganjam District.

**5.** It is submitted that in the select list published under Annexure-2, the Petitioner was not only found selected but also his name was placed at 19. But it is submitted that vide letter dated 07.10.2006 issued by the Opposite Party No.3 under Annexure-3 though the Petitioner was requested to attend the Office on 14.10.2006 for verification of his original certificate/document for the said post, but the Petitioner since never received the same, he could not appear on the date fixed and accordingly lost the opportunity to get the documents verified and consequential appointment as a T.G.T (CBZ).

**6.** It is further submitted that the letter issued on 07.10.2006 under Annexure-3 when was ultimately received by the Petitioner on 24.01.2008 as reflected in Annexure-3/A, the Petitioner immediately moved the Opposite Party No.4 on 25.01.2008 and subsequently

moved the Opposite Party No.3 on 16.02.2008 under Annexure-4 with a prayer to extend the benefit of appointment.

**7.** It is submitted that the said grievance petition of the Petitioner under Annexure-4 when was forwarded by the Sub-Collector, Bhanjanagar for taking necessary action, the Opposite Party No.4 vide his letter dated 14.03.2008 intimated that since the Petitioner could not appear on 14.10.2006 and in the meantime 15 months have already passed, the Petitioner may be asked to apply afresh for the said post in terms of the advertisement issued on 28.02.2008 under Annexure-5. Being aggrieved by the said action of the Opposite Party No.4, the Petitioner approached the learned Tribunal in O.A. No.1597(C)/2008 and learned Tribunal while issuing notice of the matter vide order dated 27.08.2008 though found a prima-facie case is made out, but did not pass any interim order to keep one post of T.G.T(CBZ) vacant pursuant to the advertisement issued under Annexure-5 in the year 2008.

**8.** Mr. Mohanty, learned counsel for the Petitioner submitted that since because of the admitted laches on the part of the Opposite Party No.4 in issuing the letter under Annexure-3 through Under Certificate of Posting, the Petitioner since did not receive the same, he lost the opportunity and accordingly was deprived from being appointed as against the post of T.G.T (CBZ).

**9.** Mr. Mohanty submitted that since the matter relates to appointment of the Petitioner, the letter under Annexure-3 should have been issued by other mode instead of sending the same by Under Certificate of Posting.

**10.** It is also submitted that evidential value of certificate to prove despatch of communication is of no assistance.

**11.** Mr. Mohanty in support of the aforesaid submission relied on the decision of the Hon'ble Apex Court reported in **AIR 2006 SC-825**. In Para-14 of the said judgment, the Hon'ble Apex Court has held as follows:-

*“14. A certificate of posting obtained by a sender is not comparable to a receipt for sending a communication by registered post. When a letter is sent by registered post, a receipt with serial number is issued and a record is maintained by the Post Office. But when a mere certificate of posting is sought, no record is maintained by the Post Office either about the receipt of the letter or the certificate issued. The ease with which such certificates can be procured by affixing ante-dated seal with the connivance of any employee of the Post Office is a matter of concern. The Department of Posts may have to evolve some procedure whereby a record in regard to the issuance of certificates is regularly maintained showing a serial number, date, sender's name and addressee's name to avoid misuse. In the absence of such a record, a certificate of posting may be of very little assistance, where the dispatch of such communications is disputed or denied as in this case. Be that as it may”.*

**12.** Mr. Mohanty also relied on another decision reported in Vol-67 (1989) CLT-318. This Court in Para-5 of the said judgment held as follows:-

*‘5. Paragraph 6.3 of the prospectus as well as the admission notice stipulated that the application could only be sent “by registered post only and not by any other manner”. Hence, the petitioner could not have even delivered his application in the office of the Convenor even if he wanted to. He had to post and did post in the post office located inside the campus of the College barely 100 yards away from where the office of the Convenor is located. By requiring the applicant to send his application through post, the Convenor nominated the post office as his agent. Therefore, if the application was received in the office of the Convenor on 1.6.1988, the petitioner cannot suffer. It should be deemed to have been delivered on 27.5.1988. Having regard to the distance that the letter was to travel, posting three days before cannot be considered to be unreasonable. The petitioner, therefore, should not suffer*

*for the time the letter took in its journey of 100 yards from the post office to the office of the Convenor”.*

Similarly, Mr. Mohanty also relied on another decision reported in **AIR 2003 SC-833**. The Hon’ble Apex Court in Para-6 of the decision has held as follows:-

*“6. Having heard the learned counsel for the appellant as also the learned counsel for the State and the private respondent, we are satisfied that the appeal deserves to be allowed. The ordinary rule of litigation is that the rights of the parties stand crystallized on the date of commencement of litigation and right to relief should be decided by reference to the date on which the petitioner entered the portals of the Court. A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events, i.e., the events between the commencement of litigation and the date of decision. The relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change in law. There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of judgments. Third party interests may have been created or allowing relief to the claimant may result in unjust enrichment on account of events happening in between. Else the relief may not be denied solely on account of time lost in prosecuting proceedings in judicial or quasi-judicial forum and for no fault of the petitioner. A plaintiff or petitioner having been found entitled to a right to relief, the Court would as an ordinary rule try to place the successful party in the same position in which he would have been if the wrong complained against would not have been done to him. The present one is such a case. The delay in final decision cannot, in any manner, be attributed to the appellant. No auction has taken place. No third party interest has been created. The sand mine has remained un-operated for the period for which the period of operation falls short of three years. The operation had to be stopped because of the order of the State Government intervening which order has been found unsustainable in accordance with stipulations contained in the mining lease consistently with the G.O. issued by the State of Uttar Pradesh. Merely because a little higher revenue can be earned by the State Government that cannot be a ground for not enforcing the obligation of the State Government which it has incurred in accordance with its own policy decision”.*

**13.** Mr. Mohanty submitted that in view of the decision rendered in the above noted case since the Petitioner could not avail the benefit of his appointment due to latches on the part of the Opposite Party No.4 in sending the letter under Annexure-3 by Under Certificate of Posting, the Petitioner is entitled to get the relief as prayed for in the present writ petition.

**14.** Making all such submissions, Mr. Mohanty learned counsel for the Petitioner submitted that since due to the admitted latches on the part of the Opposite Party No.4 in issuing the letter under Annexure-3 by under certificate of posting, the Petitioner could not appear on the date fixed and accordingly was deprived from being appointed, this Court is required to allow the prayer as made in the Writ Petition.

**15.** Mr. Prusty, learned Standing Counsel for the State on the other hand made his submission basing on the stand taken in the counter affidavit. It is submitted that all the selected candidates were issued with similar letter on 07.10.2006 by under certificate of posting and all of them save and except the present petitioner appeared on the date fixed for verification of documents and consequential appointment as against the post.

**16.** It is also submitted that since the select list was valid for one year and the Petitioner made approach only in the year 2008, by which time another advertisement was already issued, the Petitioner is not entitled to get the benefit as prayed for in the writ petition.

**17.** It is also submitted that even though a prayer was made by the Petitioner to keep on post vacant from out of

the posts advertised in the advertisement issued under Annexure-5, but learned Tribunal while issuing notice of the matter on 27.08.2008 did not pass any interim order. Therefore, it is submitted that since in the meantime more than 16 years have passed, the claim of the Petitioner is not to be entertained by this Court.

**18.** Heard learned counsel for the Parties.

**19.** Perused the materials available on record. This Court after going through the same finds that the letter issued under Annexure-3 is admittedly received by the Petitioner on 24.01.2008 under Annexure-3/A. Therefore, the stand taken by the Opposite Parties that save and except the Petitioner all other selected candidates appeared basing on similar letter issued on 07.10.2006 by under certificate of posting, cannot be accepted by this Court as a valid reason. Since in the present case, the Petitioner when received the letter under Annexure-3 on 24.01.2018 vide Annexure-3/A immediately moved the Opposite Party No.4 on 25.01.2008 and subsequently approached the Opposite Party No.3 on 16.02.2008 under Annexure-4, the grievance of the Petitioner should have been addressed immediately in its proper perspective by the said Opposite Parties. But the Opposite Party No.4 vide Annexure-5 when intimated that since in the meantime more than 15 months have passed and the Petitioner cannot be provided with the appointment in terms of the select list published under Annexure-2, as it was valid for one (1) year, this Court finds such action of the Opposite Party No.4 is not justified. Though, learned Tribunal while issuing notice of the matter on 27.01.2008 did not pass any interim order directing to keep one post vacant, but learned Tribunal while issuing notice of the

matter find out a prima-facie case having been made out by the Petitioner. This Court further find in the counter filed by the Opposite Parties, though various stand has been taken, but no document has been submitted showing receipt of the letter issued under Annexure-3 by the Petitioner prior to 14.10.2006. The Opposite Parties in the counter have also not disputed the receipt of the said letter by the Petitioner on 24.01.2008 under Annexure-3/A and the immediate approach made by the Petitioner to consider his grievance.

**20.** Therefore, in view of the peculiar facts and circumstances of the present case and the decision relied on by Mr. Mohanty, learned counsel for the Petitioner, this Court is of the view that due to the admitted laches of the Opposite Party No.4, the Petitioner even though was selected, but he could not get the benefit of appointment.

**21.** Therefore, this Court while disposing the Writ Petition directs the Opposite Parties to verify the documents of the petitioner and if the documents are in order, provide appointment to the Petitioner as a Trained Graduate Teacher (CBZ) in the district of Ganjam or in any district of State where vacancies are available. This Court further directs the Opposite Parties to provide such appointment to the Petitioner within a period of two months from the date of receipt of this order.

**22.** With the aforesaid observations and directions, the WPC(OAC) stands disposed of. There shall be no order as to costs.

**(Biraja Prasanna Satapathy)**  
**Judge**

Orissa High Court, Cuttack  
Dated the 6<sup>th</sup> of September, 2022/Subrat