

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.21039 of 2022

An application under Articles 226 and 227 of the Constitution of India.

Susil Kumar Bag

Petitioner

Mr. Debashisha Hota, Advocate

-versus-

Union of India and others

Opp. Parties

*Mr. P.K. Parhi, DSGI along with
Mr. J. Naik, CGC for O.P. Nos.1, 4,
5, 6, & 7.*

*Mr. R.C. Pattanaik, Standing
Counsel for the School and Mass
Education Department for O.P.
Nos.2, 3 and 8.*

W.P.(C) No.21040 of 2022

Rabindranath Nayak

Petitioner

Mr. Debashisha Hota, Advocate

-versus-

Union of India and others

Opp. Parties

*Mr. P.K. Parhi, DSGI along with
Ms. Babia Sahu, CGC for O.P.
Nos.1, 4, 5, 6, & 7.*

*Mr. R.C. Pattanaik, Standing
Counsel for the School and Mass
Education Department for O.P.
Nos.2, 3 and 8.*

W.P.(C) No.21042 of 2022

Srabana Kumar Malabishoyi

Petitioner

Mr. Debashisha Hota, Advocate

-versus-

Union of India and others

Opp. Parties

*Mr. P.K. Parhi, DSGI along with
Mr. D. Gochhayat, CGC for O.P.*

Nos.1, 4, 5, 6, & 7.

Mr. R.C. Pattanaik, Standing
Counsel for the School and Mass
Education Department for O.P.
Nos.2, 3 and 8.

W.P.(C) No.21044 of 2022

Akshaya Duduka

Petitioner

Mr. Debashisha Hota, Advocate
-versus-

Union of India and others

Opp. Parties

Mr. P.K. Parhi, DSGI along with
Mr. B.S. Rayguru, CGC for O.P.
Nos.1, 4, 5, 6, & 7.

Mr. R.C. Pattanaik, Standing
Counsel for the School and Mass
Education Department for O.P.
Nos.2, 3 and 8.

W.P.(C) No.21046 of 2022

Krupasindhu Bariha

Petitioner

Mr. Debashisha Hota, Advocate
-versus-

Union of India and others

Opp. Parties

Mr. P.K. Parhi, DSGI along with
Mr. M.K. Pradhan, CGC for O.P.
Nos.1, 4, 5, 6, & 7.

Mr. R.C. Pattanaik, Standing
Counsel for the School and Mass
Education Department for O.P.
Nos.2, 3 and 8.

W.P.(C) No.22321 of 2022

Bidyadhar Bariha

Petitioner

Mr. Debashisha Hota, Advocate
-versus-

Union of India and others

Opp. Parties

*Mr. P.K. Parhi, DSGI along with
Mr. A Pradhan, CGC for O.P. Nos.1,
4, 5, 6, & 7.*

*Mr. R.C. Pattanaik, Standing
Counsel for the School and Mass
Education Department for O.P.
Nos.2, 3 and 8.*

W.P.(C) No.23533 of 2022

Kunal Nayak

Petitioner

*Mr. Debashisha Hota, Advocate
-versus-*

Union of India and others

Opp. Parties

*Mr. P.K. Parhi, DSGI along with
Mr. D.K. Sahu, CGC for O.P. Nos.1,
4, 5, 6, & 7.*

*Mr. R.C. Pattanaik, Standing
Counsel for the School and Mass
Education Department for O.P.
Nos.2, 3 and 8.*

W.P.(C) No.23535 of 2022

Deba Sisa

Petitioner

*Mr. Debashisha Hota, Advocate
-versus-*

Union of India and others

Opp. Parties

*Mr. P.K. Parhi, DSGI along with
Mr. D. Rath, CGC for O.P. Nos.1, 4,
5, 6, & 7.*

*Mr. R.C. Pattanaik, Standing
Counsel for the School and Mass
Education Department for O.P.
Nos.2, 3 and 8.*

W.P.(C) No.23537 of 2022

Swetaram Bariha

Petitioner

Mr. Debashisha Hota, Advocate

-versus-

Union of India and others .. **Opp. Parties**

Mr. P.K. Parhi, DSGI along with
Ms. J.Sahoo, CGC for O.P. Nos.1, 4,
5, 6, & 7.

Mr. R.C. Pattanaik, Standing
Counsel for the School and Mass
Education Department for O.P.
Nos.2, 3 and 8.

W.P.(C) No.23539 of 2022

Tulasi Nayak

Petitioner

Mr. Debashisha Hota, Advoca

-versus-

Union of India and others .. **Opp. Parties**

Mr. P.K. Parhi, DSGI along with
Ms. S. Patro, CGC for O.P. Nos.1, 4,
5, 6, & 7.

Mr. R.C. Pattanaik, Standing
Counsel for the School and Mass
Education Department for O.P.
Nos.2, 3 and 8.

W.P.(C) No.23541 of 2022

Suman Muduli

Petitioner

Mr. Debashisha Hota, Advocate

-versus-

Union of India and others .. **Opp. Parties**

Mr. P.K. Parhi, DSGI along with
Ms. B.L. Tripathy, CGC for O.P.
Nos.1, 4, 5, 6, & 7.

Mr. R.C. Pattanaik, Standing
Counsel for the School and Mass
Education Department for O.P.
Nos.2, 3 and 8.

W.P.(C) No.23543 of 2022

Rama Badanayak

Petitioner

Mr. Debashisha Hota, Advocate

-versus-

Union of India and others

Opp. Parties

*Mr. P.K. Parhi, DSGI along with
Mr. P.P. Behera, CGC for O.P.
Nos.1, 4, 5, 6, & 7.*

*Mr. R.C. Pattanaik, Standing
Counsel for the School and Mass
Education Department for O.P.
Nos.2, 3 and 8.*

W.P.(C) No.23544 of 2022

Raghunath Pujari

Petitioner

Mr. Debashisha Hota, Advocate

-versus-

Union of India and others

Opp. Parties

*Mr. P.K. Parhi, DSGI along with
Mr. J. Naik, CGC for O.P. Nos.1, 4,
5, 6, & 7.*

*Mr. R.C. Pattanaik, Standing
Counsel for the School and Mass
Education Department for O.P.
Nos.2, 3 and 8.*

W.P.(C) No.26079 of 2022

Aparajita Majhi

Petitioner

Mr. Debashisha Hota, Advocate

-versus-

Union of India and others

Opp. Parties

*Mr. P.K. Parhi, DSGI along with
Ms. S. Patro, CGC for O.P. Nos.1, 4,
5, 6, & 7.*

*Mr. R.C. Pattanaik, Standing
Counsel for the School and Mass
Education Department for O.P.*

Nos.2, 3 and 8.

W.P.(C) No.26081 of 2022

Anusaya Bhatra

Petitioner

Mr. Debashisha Hota, Advocate

-versus-

Union of India and others

Opp. Parties

Mr. P.K. Parhi, DSGI along with

Ms. Babia Sahu, CGC for O.P.

Nos.1, 4, 5, 6, & 7.

Mr. R.C. Pattanaik, Standing

Counsel for the School and Mass

Education Department for O.P.

Nos.2, 3 and 8.

W.P.(C) No.26082 of 2022

Sunamsen Majhi

Petitioner

Mr. Debashisha Hota, Advocate

-versus-

Union of India and others

Opp. Parties

Mr. P.K. Parhi, DSGI along with

Ms. B.L. Tripathy, CGC for O.P.

Nos.1, 4, 5, 6, & 7.

Mr. R.C. Pattanaik, Standing

Counsel for the School and Mass

Education Department for O.P.

Nos.2, 3 and 8.

W.P.(C) No.26085 of 2022

Hari Majhi

Petitioner

Mr. Debashisha Hota, Advocate

-versus-

Union of India and others

Opp. Parties

Mr. P.K. Parhi, DSGI along with

Mr. B. Moharana, CGC for O.P.

Nos.1, 4, 5, 6, & 7.

Mr. R.C. Pattanaik, Standing
Counsel for the School and Mass
Education Department for O.P.
Nos.2, 3 and 8.

W.P.(C) No.27050 of 2022

Susila Limkiya

Petitioner

Mr. Debashisha Hota, Advocate

-versus-

Union of India and others

Opp. Parties

Mr. P.K. Parhi, DSGI along with
Mr. D.R. Bhokta, CGC for O.P.
Nos.1, 4, 5, 6, & 7.

Mr. R.C. Pattanaik, Standing
Counsel for the School and Mass
Education Department for O.P.
Nos.2, 3 and 8.

W.P.(C) No.29783 of 2022

Pravat Kumar Nayak

Petitioner

Mr. Debashisha Hota, Advocate

-versus-

Union of India and others

Opp. Parties

Mr. P.K. Parhi, DSGI along with
Ms. J.Sahoo, CGC for O.P. Nos.1, 4,
5, 6, & 7.

Mr. R.C. Pattanaik, Standing
Counsel for the School and Mass
Education Department for O.P.
Nos.2, 3 and 8.

W.P.(C) No.31316 of 2022

Liludhar Bhoi

Petitioner

Mr. Debashisha Hota, Advocate

-versus-

Union of India and others .. ***Opp. Parties***

*Mr. P.K. Parhi, DSGI along with
Mr. D.R. Bhokta, CGC for O.P.
Nos.1, 4, 5, 6, & 7.*

*Mr. R.C. Pattanaik, Standing
Counsel for the School and Mass
Education Department for O.P.
Nos.2, 3 and 8.*

W.P.(C) No.31317 of 2022

Binod Suna

Petitioner

*Mr. Debashisha Hota, Advocate
-versus-*

Union of India and others ..

Opp. Parties

*Mr. P.K. Parhi, DSGI along with
Mr. D. Gochhayat, CGC for O.P.
Nos.1, 4, 5, 6, & 7.*

*Mr. R.C. Pattanaik, Standing
Counsel for the School and Mass
Education Department for O.P.
Nos.2, 3 and 8.*

CORAM:

JUSTICE A.K. MOHAPATRA

Date of hearing : 14.12.2022 | Date of Judgment: 23.12.2022

A.K. Mohapatra, J. :

On consent of the parties, these matters are taken up together for disposal by the following common judgment as the above noted batch of writ petitions involve a common issue and based on identical factual background.

1. Heard Mr. D. Hota, learned counsel for the petitioners, Mr. Mr. R.C. Pattanaik, Standing Counsel for the School and Mass Education Department for O.P. Nos.2, 3 and 8 and Mr. P.K. Parhi, DSGI along with Mr. J. Naik, CGC, Ms. Babia Sahu, CGC, Mr. D. Gochhayat, CGC, Mr. B.S. Rayguru, CGC, Mr. M.K. Pradhan, CGC, Mr. A Pradhan, CGC, Mr. D.K. Sahu, CGC, Mr. D. Rath, CGC, Mr. D. Rath, CGC, Ms. J.Sahoo, CGC, Ms. S. Patro, CGC, Ms. B.L. Tripathy, CGC, Mr. P.P. Behera, CGC, Mr. J. Nayak, CGC, Mr. B.L. Tripathy, CGC, Mr. B. Moharana, CGC, Mr. D.R. Bhokta, CGC for O.P. Nos.1, 4, 5, 6 and 7. Perused the writ petitions as well as documents annexed to the writ petitions.

2. The present writ petition has been filed by the petitioner with a prayer for a direction to the Opposite Party Nos.1, 4, 5, 6 and 7 to issue National Institute of Open Schooling (in short the 'NIOS') D.El. Ed. Certificate to the petitioners and further for a direction to the Opposite Party Nos.2, 3 and 8 not to take any action against the petitioners till the results are published by the Opposite Party Nos.1, 4, 5, 6, 7 and 9.

3. The factual background of the case, in brief, is that the petitioners are in service candidates and they were appointed as Sikhya Sahayak pursuant to resolution dated 06.08.2013. In August, 2017, the petitioners joined D.El. Ed. Programme at Opposite Party No.9 Institute. The training programme as well as the examination were conducted under the supervision guidance of Opposite Party Nos. 1 to 7.

4. The petitioners had also appeared in the final examination held at NIOS Study Center, Lakhamara Junior College, Lakhamara in the district of Baragarh i.e. Opposite Party No.9 institute. The case of the petitioners within a narrow compass, is that although they have jointed on-line course and appeared in on-line examination conducted by the Opposite Party Nos.1 to 7, final results have not been published as of now and they have not issued with final pass certificates by the NIOS. It is also stated in the writ petitions that although the petitioners approached the authorities with a complaint against the inaction of the NIOS, however, no action whatsoever was taken on their complaints. On 02.08.2022 NIOS issue a notification under subject heading “Clearance of ‘Not Certified’(NC) cases of the Diploma in Elementary Education (D.El.Ed.)” conducted by NIOS in respect of the in-service teacher granting relaxation in respect of minimum eligibility for admission to D.El.Ed on the basis of decision taken in its 372nd emergent meeting held on 27th July, 2022 and the NRC decided that the condition i.e. “Any requirement of minimum eligibility for admission to D.El.Ed programme i.e. 50% marks in Class 12 to the extent that those who do not fulfill this requirement shall be allowed to take provisional admission to the programme of NIOS” as mentioned in their prospectus was relaxed by substituting the same with “The minimum eligibility for Admission to D.El.Ed. programme shall be PASS in Senior Secondary (Class 12). Further, it stated in the said notification such relaxation is only for all the candidates who have cleared the D.El.Ed. within the timelines. It will be a onetime

relaxation given only to the in-service elementary teachers for clearing the Not Certified Cases (NC Cases).

5. Despite the aforesaid notification granting relaxation in eligibility criteria, final result in respect of the petitioners was not published by the NIOS authorities. Therefore, the petitioners have approached this Court by filing the above noted writ petitions.

6. It is submitted by learned counsel for the petitioners that although the petitioners had joined in NIOS programme i.e. D.El.Ed. course and appeared in the on-line test, practical test, their results have not been published by the NIOS authorities. In support of his contention, learned counsel for the petitioners has relied on documentary evidence to the effect that they had participated in the practical test conducted by the examination centers. It is further submitted by learned counsel for the petitioners that since the results were not published, learned counsel for the petitioners approached the center head as well as State authorities like Directorate of Teacher Education and SCERT, Odisha, Bhubaneswar, however, no action was taken to publish the result. Furthermore, it is submitted by learned counsel for the petitioner that when they approached the Center Head repeatedly, they were informed that the result of the examination has already been up-loaded and sent to the authority concerned. In such context, learned counsel for the petitioners draws attention of this Court to letter dated 21.01.2022 under Annexure-3 which reveals that the Co-ordinator, NIOS D.El.Ed.Study Center, Lakhamara, Jr. College, Lakhamara has informed the Director, SCERT-cum-State

Nodal Officer, Odisha, Bhubaneswar for uploading the marks of WBA and for issuance of certificates by informing the Director that the result in respect of petitioners have been sent to the Director many times with a request to upload the same in NIOS portal. The very same letter also reflects that the Center Head had expressed his displeasure and stated that, unfortunately the result has not been uploaded yet and further request has been made in the aforesaid letter to up load the WBA completion certificates by the NIOS authorities. Learned counsel for the petitioner has also annexed the attendance sheet of the candidates in the examination under Annexure-3, which reveals that the name of the petitioners have find place in the said list and they have signed in the attendance sheet on each and every date of exam. In such view of the matter, learned counsel for the petitioners submits that the petitioners are suffering for last couples of years for non-publication of the result by the NIOS authorities. He further expressed apprehension by saying that the State Authorities are most likely to take action against the petitioners due to delay in publication of the result.

7. Learned DSGI and other Central Government Counsels appearing for the Opposite Party Nos.1, 4, 5, 6 and 7 in respective writ petitions contended that they have received instruction from the competent authority and as per the instructions received, it is submitted that the results were not up-loaded in the NIOS website by the examination center within the stipulated time. Therefore, the result of the petitioners and similarly situated many other candidates have

not been published. Learned CGCs appearing for the Opposite Parties further submitted that no fault could be found with the NIOS authority in not issuing the certificates to the petitioners. He further contends that since the result was not uploaded within the time by different examination centers, certificate could not be issued to the petitioners in absence of their appraisal performance of the by the competent authority and such certificates could be issued only after assessing the merit of the petitioners on the basis of their performance test. Therefore, it is emphatically submitted by learned CGC that NIOS has not committed any error in not publishing the result of the petitioners although it has not been disputed that the petitioners had appeared in the examination on the basis of the records available with them.

8. On the basis of the instruction dated 13.12.2022, a copy of which was also filed before this Court, learned CGC submitted that the programme i.e. D.El.Ed. is time bound programme and the duration of the course was from 3rd of October, 2017 to 31st of March, 2019. As per MoE and NCTE guidelines all the activities pertaining to D.El.Ed. have been completed by 31.03.2019 including the final examination. Further, it was informed that the process for submission of SBA/WBA/TMA/PT was online and was to be submitted by the concerned study centre before the completion of D.El.Ed programme i.e. 31.03.2019. Therefore, the request of the petitioners cannot be entertained by the NIOS, in view of the fact that the last date has already been expired.

9. Mr. R.C. Pattanaik, learned Standing Counsel for the School and Mass Education Department appearing for the Opposite Party Nos.2, 3 and 8 submits that State Government has not taken any coercive action against the petitioners till date. However, he further submits that in the event this Court directs the Opposite Party Nos.2, 3 and 8 they will ensure that the results are uploaded forthwith and further prayed before this for necessary direction be issued to the concerned parties for doing the needful in issuing certificates to the petitioners, who have appeared in the test of D.El.Ed conducted by the NIOS.

10. Having heard learned counsel for the respective parties, considering the rival contentions and upon careful examination of the documents placed on record, this Court is of the considered view that the petitioners and similarly placed other persons, who is in-service candidates joined in the programme privately and they have undergone training and appeared in the practical test, despite their appearance in the practical test conducted online, the results have not been uploaded either by the Center Head or State Coordinator, who is responsible for such uploading. Further NIOS is the authority responsible for conducting such course and it has not taken any action to ensure the result of the petitioners are uploaded within the stipulated period. Learned Central Government Counsel in course of the argument emphatically submitted that last date for such uploading is 31.03.2019 and as such the results have not been published within the last date. The NIOS has no obligation to publish the result of the petitioners and similarly

situated other persons. Such submission made by learned Central Government Counsel appears to be unsustainable of law, in view of the fact that NIOS being a central body and vested with the responsibility of conducting and supervising the examination and publishing the final result cannot be permitted to shift its responsibility simply saying that the result has not been uploaded by the center heads. Further no explanation whatsoever is coming forth as to what action has been taken NIOS authorities to ensure that the Center Heads upload the result of the in-service candidates within a stipulated period of time. Similarly, the Director, SCERT has not approached the Coordinator to ensure that the results are uploaded within the time. On a careful analysis of the fact of this case, this Court is of the considered view that the petitioner and similarly situated other persons have been deprived of getting certificates by the NIOS due to composite negligence of NIOS and the State authorities, who were supposed to coordinate and upload the result. Therefore, this Court also feels that the blame game i.e. by shifting of responsibility to one authority to the other is not in the interest of such in-service candidates including the petitioners. Therefore, this Court feels that the Opposite Parties should have taken some tangible action to ensure that the results are published within the time. Further the Opposite Parties cannot blame the petitioners and as such the petitioners cannot be held responsible for the failure to publish the result on the part of the authorities to upload the result in time. It is the legitimate expectation of every candidate to know the final result after they have appeared in the examination, therefore,

they cannot be made to suffer for something which was not in their control.

11. In such view of the matter, this Court thinks it proper to dispose of the writ petition by directing the Center Heads to upload the result within a period of four weeks from today and the Opposite Party Nos.2, 3 and 8 are directed to supervise such uploading and ensure that the results are published in NIOS official website by coordinating with Opposite Parties No.1, 4, 5, 6 and 7 and upon such uploading, the Opposite Party Nos.1, 4, 5, 6 and 7 are directed to take effective steps and publish the result within a period of four weeks from today as has been directed hereinabove. Further, it is directed that all the parties should coordinate each other and ensure that the direction given hereinabove is complied with within the time and the students, who had appeared in the examination / joined programme does not suffer for the negligence and latches on the part of the Opposite Parties.

12. With the aforesaid observation/direction, the writ petitions stands disposed of.

(A.K. Mohapatra)
Judge