

HIGH COURT OF ORISSA AT CUTTACK

W.A No.746 of 2021

(Arising out of WPC (OAC) No.2161 of 2017 passed by the
Learned Single Judge on 01.09.2021)

Prabhat Ranjan Biswal

.... ***Appellant***

Mr. Sidheswar Mallik, Advocate

-versus-

State of Odisha and Others

.... ***Respondents***

Mr. S.N. Mohapatra, Standing Counsel
for School and Mass Education

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER
07.07.2022

Order No.

02. 1. This matter is taken up through hybrid arrangement
(virtual/physical mode). *संयुक्तिक व्यवस्था*

2. The present intra court appeal has been preferred by
the appellant aggrieved by the order dated 01.09.2021
passed by Hon'ble Single Judge in Writ Petition No. WPC
(OAC) No.2161 of 2017 whereby the writ petition filed by
him has been dismissed. The order dated 01.09.2021 reads
as under:

*"3. Learned counsel appearing for the OPSC
submits that they have already destroyed
the documents since 09.06.2016 and the
original is not available. Petitioner is unable
to produce the document received through*

R.T.I. to at least bring a prima facie case on his own.

4. Since petitioner claims manipulation in answer script, in absence of original, it becomes responsibility of the petitioner to establish his case on its own. Even though a claim is based on information through R.T.I. supply, yet no original is surfacing here. In the circumstance, this Court finds no scope for entering into such disputed question. Consequently, the WPC (OAC) stands dismissed.”

3. The brief facts of the case are that an advertisement was notified by Respondent No.2 i.e. Odisha Public Service Commission (hereinafter “OPSC”) in 2014-15 for recruitment to the post of Education Service-II (School Branch), Group-B with 90 vacancies. Further, fifteen posts (ten for male and five for women in the same category) were reserved for Socially and Educationally Backward Class (SEBC). The appellant i.e. Prabhat Ranjan Biswal (Roll No.5442) and Opposite Party No.3 i.e. Alok Kumar Bandha (Roll No.5016) both belonging to the SEBC category participated in the above recruitment against the ten notified vacant SEBC (Male) post. Both the appellant and the respondent no.3 qualified in the written test and were called for viva-voce test (VV Test). Further, vide notification

dated 09.06.2016, ninety candidates were selected for appointment to the post which didn't include the present appellant and the respondent no.3. However, out of the ninety selected, six didn't join creating six vacancies which included two vacancies for SEBC (Male). Consequently, the respondent no.2/OPSC based upon secured merit position recommended six additional candidates vide notification no.4958 dated 01.08.2017 to join the vacant post which included the respondent no.3 i.e. Alok Kumar Bandha but not the appellant.

4. Being aggrieved by such notification dated 01.08.2017, the present appellant preferred an application under the RTI Act seeking the disclosure of the marks secured by him and the Respondent No.3 i.e. Alok Kumar Bandha. The R.T.I reply revealed that the Respondent No.3 secured 305 marks (written mark of 205 and VV test mark of 100) while the appellant also secured 305 marks (written mark 200 and VV test mark of 105).

5. The appellant instituted W.P.(C) No.2161 of 2017 with two grounds of challenge. Firstly, that his marks in

Question No.4 of the General English Paper were manipulatively reduced by 1.5 marks resulting in total reduction of 2 marks (47 to 45) in the General English Paper and as a result he couldn't qualify for the vacancy in his category. Secondly, the appellant relied on Rule-14 of Orissa Civil Services (Combined Competitive Recruitment Examination) Rules, 1991 (hereinafter, "OCS 1991") on the plea that no specific rule exists in Odisha Education Service, Group-B (Recruitment to the School Branch) Rules, 1971 (hereinafter, "OES 1971") to determine the present dispute i.e. when two candidates secure equal marks, who is to be selected between the two. Further, Rule 14 of the OCS 1991 provided that when candidates secure equal marks in Personality Test, General Studies and Optional Papers, the candidate with a higher age will be declared successful. Hence, the appellant should be selected as he is nine years older than the Respondent No.3.

It was also the case of the appellant that the selection process to the notified posts was based on the notification dated 24.07.2017 issued by Respondent No.2/OPSC which provided that in case of posts other than

lecturer in different departments of Government, when two or more candidates secure equal marks in aggregate, the one with a higher mark in written examination will be declared successful, would NOT govern the present selection process as the Respondent No.2/OPSC did not have the jurisdiction to lay down such rules and also that the said rules cannot be retrospectively applied as the advertisement was published in the year 2014 whereas the Rule came into effect on 24.07.2017.

6. The Respondent No.2/OPSC replied to the above arguments pleaded by the appellant vide various counter affidavits. Vide counter dated 17.01.2018, the Respondent No.2/OPSC replied that the recruitment to the notified vacancies of OES Class-II (School Branch) Group-B for appointment to the service as defined under Rule 3(e) is regulated under the provisions of the OES 1971. Further the provisions relevant to this case are reproduced below:-

Rule 3(e)

“Service” means the Odisha Education Service (School Branch) [Group-B] which includes the posts of Gazetted Headmasters and Headmistresses of High Schools and Secondary Training Schools and

Assistant Director of Secondary or Elementary Education and such other posts specified by Government may, by general or special order specify from to time to time to belong to the Service.”

Rule 9(2)

“If two or more candidates obtain equal marks, the order of merit shall be determined in accordance with the highest marks in aggregate secured by such candidates in the written examination and should also the marks secured by them in the written examination be equal, the order of merit shall be determined in accordance with the highest marks secured in any Master’s Degree Examination.”

Also, notification dated 24.07.2017 will not be applicable as a specific provision exists under Rule 9(2) of OES 1971 to determine the dispute if two candidates secure equal marks, who is to be selected between the two.

Further, vide affidavit dated 17.08.2021, it is submitted that correct procedure has been followed by the Chief Examiner and due to defacement, the signature of the Chief Examiner was absent in the body of the answer sheet. Moreover, the original answer scripts of candidates are stored for one year unless under litigation and since present litigation was initiated much after the expiry of one year, the answer sheets of the candidates including the appellant are destroyed. Further a xerox copy of the

answers sheet was also supplied to the petitioner vide Letter No.5347/PSC dated 30.08.2016.

7. The Hon'ble Single Judge vide order dated 01.09.2021 rejected the Writ Petition which has been assailed in this Writ Appeal on the ground that the Chief Examiner while rechecking the answer script failed to put his full signature as specified by the job chart, details of which were provided by the Respondent No.2/OPSC in its affidavit dated 17.08.2021. The relevant portion is reproduced below:

"The examiner will award the marks on the answer of each question on the left side margin of the script and encircle the mark awarded. The examiner will put his full signature in the space provided for in the answer script.

The Chief Examiner Job Chart specifies-

1. He shall verify the correctness of totaling of marks on the first page of the script and check the same with mark foils before signing mark foil.

2. Every correction in the answer script rechecked by the examiner shall be attested by him/her with full signature."

Emphasis Supplied

8. We perused the Question No.4 and found that the Chief Examiner had affixed his signatures (though not in full) upon re-examining the answer sheet. However, vide counter affidavit dated 17.08.2021 the Respondent No.2/OPSC has pleaded that due to defacement the full signature is not visible.

It is not the case of the appellant that full signature as mentioned in the Job Chart has been affixed by the Chief Examiner in other answer scripts and conspicuously absent in his answer scripts. Also, we were not provided with answer scripts of other candidates to examine the presence or absence of full signature of the Chief Examiner.

9. In the present case, a disputed question of fact arises as to whether the Chief Examiner had put his full signature after making any correction or not? All the prayers of the appellant are based upon such disputed question of fact. It is a trite law that this Court cannot enter into a disputed question of fact, in its jurisdiction under Article 226 of the Constitution. Further, the Chief examiner has also not been impleaded in this Writ to answer the above question.

We thus find that there are substantial compliance by the Chief Examiner of the procedure for rechecking the answer scripts giving no basis for holding any *mala fide* intention on his part.

10. In view of the above, we find no error perversity in the orders passed by the learned Single Judge. Hence, the Writ Appeal is dismissed.



**(Jaswant Singh)
Judge**

**(M. S. Raman)
Judge**

Sipun

7th July, 2022
Cuttack