

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.3829 of 2015

Manmohan Biswal and others .. Petitioners

-versus-

State of Odisha & others .. Opp. Parties

For Petitioners

Mr. S.D. Routray, S. Jena,
S.K. Samal and Ms. P.Nath

For Opposite Parties :

Mr. S. Jena,
Standing Counsel for School
and Mass Education
Department

WPC(OAC) No.3830 of 2015

Pritikanta Rout and others .. Petitioners

-versus-

State of Odisha & others .. Opp. Parties

For Petitioners

Mr. S.D. Routray, S. Jena,
S.K. Samal and Ms. P.Nath

For Opposite Parties :

Mr. S. Jena,
Standing Counsel for School
and Mass Education
Department

CORAM:

JUSTICE A.K. MOHAPATRA

Date of hearing : 10.12.2021 | Date of Judgment:27.01.2022

A.K. Mohapatra, J. :

1. Initially, the present Petitioners as applicants filed O.A. No.3829 of 2015 before Odisha Administrative Tribunal, Cuttack Bench, Cuttack with a prayer to declare that the action of the

Respondents-Opposite Parties in giving appointment to the applicants against Group D posts i.e. against posts of Night Watchmen-cum-Sweeper and further insisting that the applicants-Petitioners should sign agreement / undertaking for such Group D post is invalid in the eye of law and further prayed that the decision taken by the High Power Committee in its meeting dated 24.06.2016 under Annexure-8 be declared invalid and consequently the respondents-Opposite Parties be directed to revise and modify the appointment of the applicants by giving them appointment against vacant Group C posts befitting to their qualification and as has been done by them in case of 5th Phase Master List applicants.

2. After abolition of the Odisha Administrative Tribunal, the aforesaid Original Application has been transferred to this Court and has been registered as WPC (OAC) No.3829 of 2015.

3. Heard Mr. S.D. Routray, learned counsel appearing for the Petitioners and Mr. S. Jena, learned Standing Counsel appearing for School and Mass Education Department -Opposite Parties.

4. The factual matrix of the case as culled out from the writ petition, in brief, is that the fathers of the present Petitioners, who were working as teachers in the district of Bhadrak since 1980 while working as such, the father of the Petitioner No.1, namely, Akshaya Kumar Biswal passed away on 27.02.2010 and father of the Petitioner No.2, namely, Himansu Kumar Deb passed away on 04.11.2010 and father of the Petitioner No.3, namely, Kartik Chandra Khandai died on 02.08.2011. The present Petitioners,

who are surviving family members and looking after the family after the death of aforesaid three persons applied for job on compassionate ground under the Odisha Civil Service (Rehabilitation Assistance), Rule, 1990 (in short 'OCS (RA) Rules, 1990') which came into force by a Notification No.25585/GEN/ dated 13.09.1990 of General Administrative Department, Government of Odisha. Thereafter, the same has been renamed as Odisha Civil Service (Rehabilitation Assistance) Rule, 1990. Rehabilitation Assistance Scheme has been prepared to help the families and provide assistance to the families of the Government employees on compassionate ground, who have either died or likely to die while in harness. Such a scheme was prepared by the Government of Odisha to save the families of the Government servant from distress, immediately after the death of the employee in harness. The very idea is to provide assistant to a family of a Government servant and to mitigate their worries arising out of the sudden death of Government employee so that the family would not be forced to face starvation.

5. The Petitioners, immediately after the death of their fathers in the year 2010-2011 respectively, applied under the OCS (R.A.) Rules, 1990 for getting appointment against any vacant Government post befitting to their qualification and as is permissible under the law. The Petitioners have requisite qualifications. The Petitioner No.2 has completed B. Tech in Electronic and Telecom Engineering along with requisite certificates and testimonial. Similarly other petitioners have requisite qualification to be appointed against any Group C post. The Petitioners submitted their respective applications before the

concerned authorities, admittedly within the time stipulated under the Rules, 1990.

6. On 04.02.2012, the Inspector of Schools, Bhadrak Circle addressed a letter to the Director, Secondary Education, Odisha, Bhubaneswar submitting distress certificate and other relevant documents of the Petitioners with a further request to consider the candidature of the Petitioners for appointment under the Rehabilitation Assistance Scheme. The applications submitted by the Petitioners along with certificates and testimonials were duly scrutinized by the Opposite Parties and a master list, 2013 was drawn up by the Opp. Parties indicating total number of candidates including the present petitioners, who are eligible to be appointed under Rehabilitation Assistance Scheme. The applicants had applied for Class-III posts as would be evident from the Master list 2013 filed as Annexure-4 to the writ petition. Their names appear against Sl. No.292, 350 and 418 of the said list.

7. It is further stated in the writ petition that on 16.01.2014, the Director, Secondary Education Odisha addressed a letter to the Opposite Party No.1 submitting Master List, 2013 of the applicants for appointment under Rehabilitation Assistance Scheme. In the said letter, the concerned D.E.O. has shown the vacancy position of posts under Class-III and Class-IV groups as on 31.12.2013. A list of such posts lying vacant had been appended to the letter for consideration by the competent authority and for granting approval in order to fill up the said posts lying vacant in different Government High Schools. On 17.07.2014, the Additional Secretary to Government wrote a letter

to the Director, Secondary Education Department, Odisha, Bhubaneswar to provide D.E.O. wise vacancy position so that steps could be taken for approval. Accordingly, the D.E.O. of different district including the Bhadrak district submitted vacancy position in respect of Class-III and Class-IV posts. So far as Bhadrak district is concerned, the D.E.O. has indicated eighteen number of Class-III posts, i.e. post of Junior Clerk are lying vacant. The Petitioners have enclosed a copy of the said letter to the writ petition.

8. The General Administration Department, Government of Odisha, issued notification dated 31.12.2014, to all departments of the Government communicating the decision of the Govt. of Odisha with regard to the applicability of Group-C and Group-D Rules, 2013 in case of appointments are to be made under the Odisha Civil Services (Rehabilitation Assistance) Rule, 1990. In the said letter, it has been mentioned that all vacancies available on the date of commencement of Odisha Group-C and Group-D (Contractual) appointment Rule, 2013 as well as against future vacancies, shall be deemed to have been converted to contractual posts.

9. On 18.06.2016 a meeting was held in the office of the Opposite Party No.1 in connection with appointment under the Rehabilitation Assistant Scheme. In the said meeting, the committed in an illegal and arbitrary manner decided that all the appointments of candidates shall be made against the Group-D posts and a separate recruitment policy is to be prepared for appointment to Group-C posts.

10. Again on 03.08.2015, a letter was issued to the Opposite Party No.2 enclosing a copy of the minutes of the meeting, as has been stated in the previous paragraph, mentioning that the Government has been pleased to approve the appointment of the Petitioners enlisted in the Master List of 2013 and the appointment of 6th Phase will be strictly in accordance with the decision taken in the meeting held on 08.06.2015. It has also been specifically mentioned in the said letter that the appointment of the candidates including the Petitioners will be strictly in conformity with the OCS and RA Rule, 1990. On 24.08.2015, the Opposite Party No.2 issued another set of instructions to all D.E.Os. indicating the time line and procedure to be followed while appointing persons under RA Scheme. On 27.08.2015, the DEO, Bhadrak issued notice containing the names of the candidates including the Petitioners, who have been selected to be appointed under the R.A. Scheme in the 6th Phase. The candidates were asked to appear on 30.07.2015 for verification of their certificates.

11. The Petitioners were under the impression that they will be given appointment against Group-C posts as per their applications, which is befitting to their educational qualifications. However, when the Petitioners were called upon to execute the undertaking/agreement, they were utterly surprised to see that their names have been recommended for appointment against Group C post like the post of Night Watchman-cum-Sweeper.

12. It has been further stated in the writ petition that although the Petitioners had submitted their applications in the year 2011 under the Rehabilitation Assistant Scheme, their cases were kept

pending deliberately. Whereas candidates, who had applied in the year 2012 under the Rehabilitation Assistant Scheme have been given appointment against the vacant post of Group-C and Group-D befitting to their qualification.

13. The learned counsel for the Petitioner contended that upon a bare scrutiny of Rehabilitation Assistance Rules, 1990 as well as 2013 Rules, it would be seen that there is no prohibition in law for giving appointment to the deserving candidates having requisite qualification against any Group C post. This is more so, when a large number of posts are lying vacant in Group C post category. In the context of the present case, it is submitted that there are 18 numbers of vacant Group C Posts available under the Bhadrak Education Circle. The petitioner has further stated that the decision of the High Power Committee dated 24.06.2015 is de hors the statutory rules and contrary to the law laid down by the Hon'ble Supreme Court of India. Therefore, the action of the Opposite parties in the present case is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

14. It is further stated by the learned counsel for the petitioners that the Odisha Civil Service (Rehabilitation Assistance) Rule, 1990 is a statutory rule framed under Article 309 of the Constitution of India. Further, 2013 rules have also been framed under Article 309 of the Constitution of India. Both the aforesaid rules do not contain any prohibition or restriction with regard to giving appointment to the deserving candidates who have applied under the Rehabilitation Assistance Scheme against the vacancy in Group C posts. It is further stated that mere executive instructions/circulars/guidelines cannot over-ride the

provisions contained in the aforesaid two statutory rules framed under Article 309 of the Constitution of India.

15. It has also been stated in the writ petition that the conduct of the Opposite Parties are grossly illegal, arbitrary and discriminatory inasmuch as the Petitioner No.2, who is stated to be B.Tech Degree holder and has done +2 in Science stream has been offered a post of Night Watchman-cum-Sweeper.

16. In the context of the 2013 Rule, the learned counsel for the Petitioner has further submitted that although the said Rules came into force in the month of November, 2013 but the same was subsequently made applicable to the Rehabilitation Assistance Scheme w.e.f. 31.12.2014. As such, the Petitioners state that their applications for appointment under the Rehabilitation Assistance Scheme is required to be considered strictly in accordance with the provisions of 1990 Rules without being influenced or misguided by any other rule or executive instructions/ circulars which runs contrary to the said Rules, 1990. The Opposite Parties-authorities having not done so, within a reasonable time, they have failed to discharge their duties in accordance with law as prescribed in 1990 Rules, therefore, the conduct of the Opposite Parties in the present case is highly illegal and unsustainable in law. The Petitioners applications were filed much prior to the appointed date i.e. 31.12.2014. As such the cases of the Petitioners are not covered under 2013 Rules.

17. The learned counsel for the petitioner has further submitted that the conduct of the Opposite Parties are grossly arbitrary and discriminatory inasmuch as while sitting over the

application submitted by the Petitioner for appointment under Rehabilitation Assistance Scheme, similar applications filed by similarly situated other candidates at a time when the Petitioner had submitted his application, such applications submitted by similarly situated other candidates have been considered by the authorities and they have been given appointment befitting to their qualification against the vacancies in Group C posts. The names of such candidates were included in the 5th Master list whereas the names of the present Petitioners were not considered for which the authorities are solely responsible. The Petitioners have no fault.

18. It is further submitted by the Petitioners that when the petitioners offered to give an undertaking stating therein that they would accept the appointment against the Group D posts under protest, the Opposite Party-authority threatened them and did not issue the appointment letters to the petitioners.

19. The District Education Officer, Bhadrak (Opposite Party No.4) has filed a counter affidavit in the present case wherein he has stated that the Petitioners after the death of their respective fathers in harness had made applications for appointment under the Rehabilitation Assistance Rules 1990. In the counter affidavit it has been further stated that pursuant to Group C and Group D posts (Contractual) appointment Rules, 2013, the vacancies accrued against Group C and Group D posts were abolished and in their place equal number of contractual posts were created. Therefore, all vacancy Group C and Group D posts available now are in contractual posts. Accordingly, the Government of Odisha decided to appoint the Petitioners on contractual basis in terms of

Rule, 2013. It is also stated that in view of the letter dated 31st December, 2014 of the General Administrative Department, Government of Odisha the Rules 2013, have also been made applicable to OCS (RA) Rules, 1990.

20. The District Education Officer, Bhadrak (Opposite Party No.4) has also taken a stand that after receiving Government approval for 6th Phase Master list and after receiving the copy of the Government instruction dated 18.06.2015, the Petitioners were called for counseling on 04.09.2015 and they were also asked to execute a contractual agreement for issuance of appointment letters to which the Petitioners denied and accordingly no appointment orders were issued.

21. The Opposite Party No.4 in his counter affidavit has also referred to Rule-7 OCS(RA) Rule, 1990 and contended that when the family members have been appointed to a particular post, no further claim shall be entertained for appointing the same persons to higher posts. It has also been stated that the Petitioners were offered orders of appointment on 08.09.2015, which they did not accept. Therefore, they cannot claim appointment to higher posts in view of the prohibition contained in Rule 7 of the Rules, 1990.

22. The Petitioners have also filed rejoinder affidavits to the counter affidavit filed by the Opposite Party No.4. In the said rejoinder, it is stated by the Petitioners that the proposal which was placed before State Level Committee has no where stated that the said proposal is meant for only Group D post. Further referring to the letter of the Director, Secondary Education, Odisha, Bhubaneswar, it has been stated that the School and Mass

Education Department asked the concerned District Education Officers to send vacancy position of non teaching posts in Class-III and Class-IV to fill up such vacancies. It is further stated that the applications of the Petitioners are pertaining to the year 2011-12 and the Master list of candidates which was prepared in the month of 2013 i.e. much prior to 2013 Rules came into force, therefore, the Rules 2013 is not applicable to the Petitioners case. It is further stated in the rejoinder affidavit that in reply to a RTI application, the District Education Officer, Bhadrak had given information that total 18 number of Class-III post were lying vacant up to 01.12.2013.

23. In reply to the applicability of Rule-7 of 1990 Rules, the Petitioners in rejoinder affidavit have stated that they do not dispute such a provision of law and further contended that the issue that is required to be decided in this case is whether the Opposite Parties have resorted to discriminatory and arbitrary conduct and acted according to their whims. The only question the authorities were supposed to examine is whether the Petitioners have the eligibility, suitability and educational qualification for appointment against the vacancies in Class-III posts. The same having not been done in the present case, it can safely be concluded that the authorities have acted in an illegal, arbitrary and discriminatory manner.

24. In the rejoinder affidavit, the Petitioners have given the example of one Rajiv Kumar Panda, who was appointed on 05.01.2015 under the Rehabilitation Assistance Scheme as a Peon on regular basis. Such appointment, admittedly, is after 31.12.2014. Further on 25.05.2016 one Bijaylaxmi Mohapatra,

was appointed as Junior Clerk in DPI, ASE on regular basis. The said appointment is also after 31.12.2014.

Further, in the case of one Ramakrushna Singha and others, who had approached the Odisha Administrative Tribunal (OAT) challenging the action of the Opposite Parties in not issuing appointment orders against the Group C posts although they had the requisite qualification for such appointment. In that case, it was pleaded although their names were listed in the 4th Master list, their cases were not considered for appointment against Group C posts. The OAT after hearing the parties, directed as follows:

“So far as present applicants are concerned, since while issuing notice vide order dated 09.12.2011, as an interim measure, the Respondent No.2 who is Inspector of Schools, Balasore Circle was directed to keep one Class-III (Group C) post in base level under his control vacant for appointment of the applicant in each case, the Respondent authorities more particularly Respondent No.3 is directed to issue appointment order in favour of the applicant as against Group C post in modifying the earlier order of the applicant as against Group D post. The entire exercise be completed within a period of one month from the date of communication of this order.”

25. Referring to the aforesaid order, it has been submitted that 18 posts Group C posts were lying vacant in the Bhadrak Educational district and therefore, the Petitioners should have been easily accommodated in such posts keeping in view the educational qualification of the Petitioners.

26. The present writ petition has been reregistered after transfer of O.A. No.3830(C) of 2015 to this Court from Odisha Administrative Tribunal after abolition of the Tribunal.

27. An identical issue is involved in both these writ petitions and the factual background in both the cases are similar pertaining to Bhadrak Education District and the prayer involved are also identical. Therefore, both these writ petitions are taken together for hearing. However, for the sake of convenience, the facts involve in the WPC(OAC) No.3829 of 2015 has been discussed elaborately.

28. The original application out of which the present writ petition arises i.e. O.A. (C) No.2930 of 2015 while issuing notice to the respondents, the Odisha Administrative Tribunal, Cuttack Bench, Cuttack and vide order dated 09.10.2015 while issuing notice to the Respondents, Odisha Administrative Tribunal as an interim measure, had directed the Opposite Parties as follows:-

“So far as the interim relief is concerned, requisite number of Group C posts be kept vacant till disposal of the Original Application.”

29. Having heard the learned counsels for the parties, this court summarizes the issues involved in these cases in the following manner:-

- I. Whether the applications made by the Petitioners under OCS (RA) Rules, 1990 in the year 2012 should be considered under the provisions of 1990 Rules without being influenced by the subsequent changes brought in through 2013 Rules?

- II. Whether claims of the Petitioners for appointment against Class III (now Group C) posts is legally justified and tenable?
- III. Whether the authorities have treated the Petitioner in an arbitrary and discriminatory manner?
- IV. Whether the Petitioners are entitled to get the similar benefits as has been given to similarly placed other cases?

30. Before taking up the issues crystallize herein above which arises out of facts of the present cases for adjudication by this Court, it is pertinent to refer to the relevant Rules under which the Petitioners are claiming appointment under the Rehabilitation Assistant Scheme. Rule 5 of the OCS (RA) Rules, 1990 provides as follows:-

“5. Appointment to be made in deserving cases— In deserving cases, a member of the family of the Government servant who dies while in service may be appointed to any Group C or Group D posts only by the appointing authority of that Deceased Government servant provided he/she possesses requisite qualification prescribed for the post in the relevant recruitment rules or instructions of the Government without following the procedure prescribed for the recruitment to the post either by statutory rules or otherwise irrespective of the fact that recruitment is made by notification of vacancies to the Employment Exchange or through recruitment examination under relevant recruitment rules. At the time of notifying such vacancies to the Employment Exchange or the examining authority, the employer shall clearly mention that the vacancy is proposed to be filled up under rehabilitation assistance scheme and so, sponsoring of candidates by Employment Exchange or the examining authority.”

Further Rule 7 of the 1990 Rules is also relevant for the purpose of the present case is extracted herein below:-

“Post to which such appointment can be made:-

[Appointment under these rules shall be made once against any post either in Group C or in Group D which is a base post in the said groups and the maximum scale of pay for such posts in Group C and Group D shall not exceed Rs.6,000/- and Rs.3,200/- respectively, as revised by the Government from time to time, when a member of the family has been appointed to a particular post, no further claim shall be entertained for appointing the same person to a higher post. For any further advancement in service, he will have to take his chance in the normal course and compete with other eligible persons.]”

31. Objective of the Scheme- The Rehabilitation Assistance Scheme adopted by the Government of Odisha has been clearly laid out in Rule 4 of the Rules, 1990. The said rule provides the Rehabilitation Assistance Scheme is conceived as a compassionate measure of saving the family of a Government servant from immediate distress when the Government servant suddenly dies while in service. The concept is based on the premises that in case of sudden death, his family would not face starvation. The scheme has a direct relationship with the economic condition of the family of the Government servant. It is further made clear in the said rule that the appointment of the family member of the Government servant under Rules, 1990 shall be subject to the provision contained in Rule 9 and cannot be claimed as a matter of right. In view of the aforesaid provisions and rules and the law laid down by this Court as well as Hon’ble Supreme court of India, which is by now a settled position of law

that no family member of a deceased Government servant can claim appointment under the Rehabilitation Assistance Scheme as a matter of right.

32. A careful scrutiny of Rule-5 of the Rules, 1990 reveals that the appointments under the scheme can only be made in “*deserving cases*”, which has been defined under Rule-2(a) of the said Rules, 1990. Rule-5 further provides that in deserving cases an opportunity shall be given to the family members of the Government servant died in harness and subject to their suitability they may be appointed in Group C or Group D posts by the appointing authority of the said deceased Government servant provided he/she possesses requisite qualification prescribed for the post in the relevant recruitment rules or instruction of the Government without following the procedure prescribed for recruitment to the posts either by statutory rules or otherwise, irrespective of the fact that the recruitment is made by notification of vacancies to employment exchange or through recruitment examination under relevant recruitment rules.

33. In view of the provisions contained in Rule-5 of the Rules, 1990, appointment can be given under the Scheme in deserving cases only by the appointing authority against the Group C or Group D posts subject to the condition that the applicant possesses the requisite qualification prescribed for such Group C or Group D posts. In the present case, the Petitioners have taken a specific stand that although they possess the requisite qualification to be appointed against the Group C posts and further in their application also they have claimed appointment against Class-III (Group C) post, the authorities have

not considered such aspect and have mechanically issued an order of appointment appointing the Petitioners against the Night Watchmen-cum-Sweeper post.

34. Learned counsel for the Petitioners submits that a large number of Group C posts are lying vacant under the concerned appointing authority. However, taking into consideration the educational qualification of the Petitioners, the authorities have failed to act in accordance with the provision contained in aforesaid Rule-5 and they have not given appointment to the Petitioners against the Group C posts for which the Petitioners are otherwise eligible. Such conduct of the Opposite Parties is highly illegal and arbitrary and as such is unsustainable in law.

35. Learned counsel appearing for the Opposite Parties has taken a stand that in view of the Rule-7 once an appointment is made against the Group D post, no further claim shall be entertain to appoint the same person in a higher post. In the said context, this Court is of the considered view that the prohibition contained in Rule-7 is not applicable to the facts of the present case. The prohibition contained in Rule-7 would apply to a case where the claimant family members of a deceased Government servant has already been appointed and after accepting the initial appointment, the claimant makes a further claim for appointment against a higher post. It is only in such contingency the prohibition contained in Rule-7 shall operate. In the present case, the Petitioners having not accepted the initial appointment order, they are not affected by the prohibition contained in Rule 7 of the Rules, 1990. Therefore, the argument advanced by the learned counsel for the Opposite parties that in view of prohibition

contained in Rule 7, the Petitioners are not eligible for appointment to a Group C post although there are vacancies in such posts, such argument is not acceptable in law.

36. Further upon a careful reading of Rule-9(2), it is revealed that for appointment to a particular post, under the scheme, the applicant must have the requisite qualification as prescribed in the relevant recruitment Rules/Resolution or instructions regulating the recruitment to the said post. Moreover, Rule-9(a) provides that in exceptional cases, maximum age limit can also be relaxed by the competent authority.

37. Learned counsel for the Petitioners further submits that the Petitioners have the requisite qualification for appointment against the vacant Group C posts under the concerned competent authority. He further emphatically submits that the Petitioners have produced certificates in support of their educational qualification and such eligibility requirement are as per the requirement prescribed by the recruitment rules for appointment to Group C posts. Therefore, the authorities by not considering the case of the Petitioners for appointment against the Group C posts have not only acted contrary to the provisions of the Rules, 1990, they have also acted in violation of Article 14 of the Constitution of India inasmuch as appointments to similarly situated persons have been given against vacant Group C posts.

38. Learned counsel for the Petitioners has relied upon the following judgments of the Hon'ble Supreme Court of India in the case of *Director of Education (Secondary) and another vrs. Pushpendra Kumar and others* : reported in (1998) 5 SCC 192,

State of Uttar Pradesh and others vrs. Pankaj Kumar Vishnoi : reported in (2013) 11 SCC 178, ***State of Himachal Pradesh and another vrs. Shashi Kumar*** : reported in (2019) 3 SCC 653, N.C. ***Santhosh vrs. State of Karnataka and others*** : reported in (2020) 7 SCC 627, ***State of Uttar Pradesh and others vrs. Premlata*** (Civil Appeal No.6003 of 2021) decided on 05.10.2021 and ***State of Odisha vrs. Yagyansis Ray*** (W.A. No.367 of 2021) decided on 26.10.2021.

39. It is not necessary to discuss elaborately the above referred judgments relied upon by the learned counsel for the Petitioners as because the law with regard to compassionate appointment under the Rehabilitation Assistance Scheme has been well settled by a catena of judgments of the Hon'ble Supreme Court of India as well as of this Court. The only remaining confusion that was there, was with regard to the applicability of Rules, 1990 to the Petitioners case. The same has also been clarified by this Court in W.A. No.367 of 2021 dated 26.10.2021 relying upon the decision of the larger Bench of the Hon'ble Supreme Court of India in ***N.C. Santhosh*** (supra) as well as ***State of Uttar Pradesh vrs. Premlata*** (supra). In the aforesaid decisions it has been clearly held "norms" prevailing on the date of the consideration of the application should be the basis for consideration of claims for compassionate appointment.

40. It is a matter of record that the cases of the Petitioners were considered by the Opposite Parties-authorities in the year 2014 and their names were included in the 6th Phase Master list. Accordingly, they were offered appointment against a Group D post in the year 2015. Challenging the said illegality, the

Petitioners had initially approached the Odisha Administrative Tribunal in the year 2015. Therefore, there is no dispute with regard to the applicability of Rules, 1990 to the facts of the present case.

41. Learned counsel for the Opposite Parties further submits that the case of the Petitioners were considered by the authorities keeping in view the existing vacancy as well as the decision taken by the High Power Committee in its meeting held on 16.06.2015. It is submitted by the learned counsel for the Opposite Parties that the High Poser Committee in the said meeting decided that appointments of all candidates shall be made against Group D posts only and separate recruitment policy is to be prepared for Group C posts. Such decision by the High Power Committee was circulated by letter dated 03.08.2015. This Court after examining the decision taken by the High Power Committee in its meeting on 03.08.2015 is of the considered view that the executive decision taken in such meeting, under no circumstances, will over-ride the provisions of the Rules, 1990, which has statutory force being a rule under Article 309 of the Constitution of India. Therefore, the contention of the learned counsel for the Opp. Parties to the effect that the decision taken by the High Power Committee in its meeting dated 03.08.2015 is final and binding is baseless and illegal and as such the same is bound to fail.

42. Having heard learned counsels for the parties and after careful analysis of the facts and circumstances of the present case as well as upon a close scrutiny of the rules and the judgments cited before this court, this Court is of the considered view that the Opposite Party authorities have committed an illegality and

have acted in an arbitrary manner by not considering the case of the Petitioners for appointment under the Rehabilitation Assistance Scheme against Group C posts taking into consideration the educational qualification of the Petitioners. Further the authorities have failed to realize that a large number of Group C posts were also lying vacant at the relevant point of time and against such posts some of the applicants under the Rehabilitation Assistance Scheme have also been given appointment. Such conduct of the Opposite Parties is highly discriminatory and arbitrary.

43. In view of the aforesaid analysis of law and keeping in view the facts and circumstances of the case narrated herein above, the writ petitions filed by the Petitioners deserves to be allowed and the same is accordingly allowed. The Opposite Parties, particularly Opposite Party No.4 i.e. District Education Officer, Bhadrak is hereby directed to consider the appointment of the Petitioners under OCS (RA) Rules, 1990 taking into consideration their educational qualifications and if the Opposite Party No.4 is satisfied that in fact, the Petitioners have the requisite qualification to be appointed against vacant Group C posts, in such event, the Opposite Party No.4 shall immediately issue appointment orders to the Petitioners against the vacant Group C posts. Further while considering the cases of the petitioners in both the writ petitions, the authorities are directed to consider the fact that by an interim order passed at the time of admission of the O.A. applications, the OAT had directed to keep Group C posts vacant. Let the entire exercise be completed within

a period of two months from the date of production of an authenticated copy of this judgment.

44. With the aforesaid observation, the writ petitions stand allowed. However, there shall be no other as to cost.

(A.K. Mohapatra)
Judge

Jagabandhu Behera, P.A.

