

IN THE HIGH COURT OF ORISSA : CUTTACK.

WPC(OAC) No. 1376 of 2017

(An Application under Articles 226 and 227
of the Constitution of India, 1950)

Smrutirekha Biswal
Binita Prajapati
Chitralkha Mohanta
Gangotri Ghosh

... Petitioners

VERSUS

State of Odisha
and Others

... Opposite parties

Advocates appeared in the case:

For the Petitioners : M/s. Kunal Kumar Swain and
Soubhagya Chandra Dev Dash,
Advocates

For the Opposite Parties : Mr. G.R. Mohapatra,
Additional Standing Counsel

CORAM:
JUSTICE MURAHARI SRI RAMAN

Date of Hearing 16.12.2022 :: Date of Judgment: 27.01.2023

JUDGMENT

MURAHARI SRI RAMAN, J.—

- I.** The petitioners, claiming to have fulfilled eligibility criteria for the post of “HINDI TEACHER” (Contractual), moved the Original Application under Section 19 of the Administrative Tribunals Act, 1985, with a prayer to quash the Notice

dated 17.05.2017 (Annexure-10) whereby the Provisional Select List and the Provisional Select List of Hindi Teacher and Sanskrit Teacher published vide Notice dated 22.11.2016 stood cancelled and Revised Provisional Merit List (Annexure-11), and grant following reliefs:

*“*** the impugned cancellation Notice dated 17.05.2017 under Annexure-10 and the subsequent revised provisional select list dated 17.05.2017 under Annexure-11 may be quashed/set aside and necessary direction may be made to the respondents to issue engagement orders for the post of Hindi Teacher in favour of the applicants as they have already been selected which is evident from the first provisional select list and on the basis of their position as agreements have already been executed, within a time to be stipulated by this Hon’ble Tribunal or in the alternative, any other order/orders or direction/directions may be issued so as to give complete relief to the applicant.”*

1.1. The learned Odisha Administrative Tribunal vide Order dated 02.06.2017, passed the following order:

“3. 02.06.2017 P.P. No.176(C)/2017

Heard Mr. K.K. Swain, learned counsel for the applicants and learned standing counsel the relief sought for the same, the joint

As the grievance and the relief sought for by the applicants is one and the same, the joint application is entertained the as per Rule 4(4)(a) of the OAT(P) Rules. P.P. is disposed of and it be registered as O.A.

The applicants pursuant to the advertisement for the post of Hindi teacher vide Annexure-1 submitted application and have been selected as per the order vide Annexure-6. Thereafter they entered into agreement on 29.11.2016 and while waiting for their engagement, the impugned order of cancellation vide

annexure-10 was issued and revised merit list vide annexure-11 was published. Learned counsel for the applicants submitted that preparation of the revised merit list is not in accordance with the stipulation made in the advertisement and hence is illegal and liable to be quashed and as an interim measure, it is submitted to stay the cancellation of the select list and direct not to take any action pursuant to the revised merit list and to stay the order of cancellation.

Learned Standing Counsel seeks time to take instruction in the matter.

Considering the submission, issue notice on admission and list this matter in the 1st week of July, 2017, by which date counter be filed positively. As the candidates who have been selected as per the revised merit list have not been impleaded as parties, we are not inclined to stay the revised merit list or the order of cancellation but direct to maintain status quo as on the date till the next date.

In view of the interim order passed, the O.A. is likely to be disposed of at the stage of admission.

Send copies.”

- 1.2. Subsequent thereto the learned Odisha Administrative Tribunal allowed impletion of affected parties and passed the following Order on 11.09.2017:

“6. 11.09.2017 M.P.832(C)/17 in O.A.1376(C)/17

Heard learned counsel for the applicant and learned Addl. Standing Counsel.

The applicant has filed this petition for amendment of the O.A. by way of impleading the persons who have been subsequently appointed as per the schedule attached to the petition. Besides, by amendment of the O.A, the applicant has challenged the order

dtd.17.5.2017 vide annexure-10 and the provisional select list vide annexure-11.

It is submitted that the proposed amendment do not change the nature and character of the O.A. but is necessary for proper adjudication.

Learned Addl. Standing Counsel has no objection.

Considering the submission, as the amendment sought for is formal in nature, the petition is allowed.

Let the O.A, be amended by incorporating the pleading as per the schedule attached to petition.

A consolidated O.A. be filed within a period of two weeks.

The cause title be corrected accordingly.

List this matter in the 4th week of October, 2017.

M.P. is disposed of.”

- 1.3. Though notice was issued vide Memo No.2015, dated 27.03.2018 to the newly added parties from the Office of the Odisha Administrative Tribunal, at the time of hearing before this Court (as the Original Application is converted to Writ Petition after abolition of the Odisha Administrative Tribunal by virtue of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Notification F. No. A-11014/10/2015-AT [G.S.R.552(E).], dated 2nd August, 2019) none appeared for opposite party Nos.4 to 9. However, the opposite party Nos.1 to 3 contested the matter through Additional Standing Counsel.

1.4. Since the matter has been pending since 2017, this case has been heard and disposed of. At the outset, Mr. Kunal Kumar Swain, learned counsel for the petitioners has not pressed the matter *qua* petitioner No.4, namely Gangotri Ghosh and confined his arguments with respect to the petitioner Nos.1 to 3. Therefore, the writ petition is dismissed so far as the petitioner No.4 is concerned.

Fact of the case:

2. Responding to the Advertisement No.7640/DWO, dated 15th December, 2015, for recruitment for the post of Contractual Teaching Staff in Educational Complexes and Schools under ST and SC Development Department in Mayurbhanj District issued by the Collector & District Magistrate, Mayurbhanj, and subsequent Corrigendum dated 31st December, 2015 to said advertisement, the petitioners applied for the post of “HINDI TEACHER”.

2.1. Following eligibility criteria was specified in the Advertisement dated 15.12.2015:

“For the post of Hindi Teacher, an applicant must have passed Bachelor Degree Exam. from a recognised University with Hindi as one of the elective subject or with Rastrabhasha Ratna from Rastrabhasha Prachar Samiti Wadha or with Shastri from Odisha Rastra Bhasa Parisad, Puri or with Snatak (acquired by June 2005, the date upto which temporary recognition had been granted) from Hindi Sikshya Samiti, Odisha, Cuttack or an equivalent Degree from a recognised Institution and Hindi Shikshyan Parangat from Kendriya Hindi Sansthan Agra/Hindi

Teacher Training Certificate Course from Hindi Training Institute, Cuttack/Bhubaneswar/Sambalpur.”

- 2.2. On 31.12.2015, a Corrigendum bearing No.7940/DWO, dated 31st December, 2015 to the Advertisement No.7640/DWO, dated 15th December, 2015 was issued wherein the following eligibility criteria has been specified:

“For the post of Hindi Teacher, an applicant must have passed Bachelor Degree Exam. from a recognised University with Hindi as one of the elective subject or with Rastrabhasha Ratna from Rastrabhasha Prachar Samiti, Wardha or with Shastri from Odisha Rastra Bhasa Parisad, Puri or with Snatak (acquired by June, 2005 the date upto which temporary recognition had been granted) from Hindi Sikshya Samiti, Odisha, Cuttack or an equivalent Degree from a recognised Institution and Hindi Shikshyan Parangat from Kendriya Hindi Sansthan, Agra/B.H.Ed. (a course prescribed by NCTE) from a Institution recognized by NCTE and affiliated to a recognized University/B.Ed. in (a course prescribes by NCTE) from Dakhin Bharat Hindi Prachar Sabha, Madras, an Institution recognized by NCTE and affiliated to a recognized University

OR

Bachelor’s Degree with Hindi as one of the optional/Hons. Subject from a recognized University and M.A. from a recognized University.

The trained candidates shall have to undergo the required training within a stipulated period as decided by Govt. from time to time.

[First preference is to be given to the trained candidates.]”

- 2.3. Ms. Smrutirekha Biswal, petitioner No.1, has passed Shastri Examination from Shri Jagannath Sanskrit Vishvavidyalaya in the year 2014 with Second Class Honours. She has also

passed Bachelor of Education from Dakshina Bharat Hindi Prachar Sabha, Madras in First Class in 2015. She has also qualified Rashtrabhasha— Ratna from Rashtrabhasha Prachar Samiti, Wardha in the year 2013.

2.4. The petitioner No.2, namely Ms. Binita Prajapati, has passed Bachelor of Arts without Hindi as elective subject in the year 2013 from North Orissa University. She qualified Bachelor of Education from Dakshina Bharat Hindi Prachar Sabha, Madras in First Class in the year 2015. She also passed Rashtrabhasha— Ratna from Rashtrabhasha Prachar Samiti, Wardha in the year 2013.

2.5. Ms. Chitralekha Mohanta, petitioner No.3, passed Three Year Degree Course Examination, 2009 from North Orissa University; Rashtrabhasha Shastri from Odisha Rashtra Bhasa Parishad, Puri in the year 2014; and qualified Bachelor of Education in the year 2015 in First Class from Dakshina Bharat Hindi Prachar Sabha, Madras.

2.6. It is the case of the petitioner Nos.1 to 3 that they have requisite qualifications as on the date of advertisement and on the date of corrigendum thereto. All these three petitioners were found to be eligible in the select list published on 22.11.2016, wherein the petitioner No.1 was at serial No.2, the petitioner No.2 was at serial No.4 and the petitioner No.3 was at serial No.1. All the three petitioners being called for verification of original documents, they appeared on 29.11.2016 in the Office of District Welfare

Officer, Mayurbhanj and on the said date agreements were executed between the petitioners and the authorities and their respective placements as Hindi Teachers in different schools were also disclosed.

2.7. However, the Collector and District Magistrate, Mayurbhanj issued Notice No.3192/DWO, dated 17th May, 2017 indicating cancellation of Provisional Merit List of Hindi Teachers and Sanskrit Teachers published on 22.11.2016 and directed the candidates of the Hindi and Sanskrit posts in the Revised Provisional Select List to attend for verification of original certificates.

2.8. Since the names of the petitioners did not find place in the said Revised Select List, they have approached the learned Odisha Administrative Tribunal by way of filing Original Application under Section 19 of the Administrative Tribunals Act, 1985.

Argument advanced by the counsel for the petitioners:

3. Sri Kunal Kumar Swain, learned counsel has brought the attention of this Court to the document at Annexure-6 to the writ petition which is titled “PROVISIONAL SELECT LIST OF APPLICANTS FOR THE POSTS OF HINDI TEACHERS (CONTRACTUAL) IN EDUCATIONAL COMPLEXES AND SCHOOLS UNDER SSD DEPTT. IN MAYURBHANJ FOR 2015”. In the said document it has been clearly acknowledged that the petitioner Nos.1 to 3 have trained B.Ed. qualification with “Ratna”/“Shastri” and they have been awarded total

percentage of marks at 253.15, 251.66 and 253.84 respectively. Further he has placed on record comparative chart and demonstrated that at the time of publication of revised select list, the percentage of marks secured in Ratna/Shastri has been excluded. Therefore, the learned counsel submitted that had that been taken into consideration the petitioner Nos.1 to 3 would have been in the position of 2nd, 4th and 1st respectively.

- 3.1. Even though the petitioners are found to have the requisite eligibility criteria as specified in the Advertisement dated 15.12.2015 read with Corrigendum thereto dated 31.12.2015, the cases of the petitioners have been side-tracked.
- 3.2. Referring to “Equivalence Degree” as recognized *vide* Document dated 31.07.2012 signed by Deputy Registrar (Special Cell) of the Utkal University, Vani Vihar, Bhubaneswar, Sri Kunal Kumar Swain, learned advocate for the petitioners submitted that “Rastrabhasha Ratna” has been treated as equivalent to “+3 pass and Elective Hindi” and Odisha Rastrabhasha Parisad, Puri has been recognized as “Rashtra Bhasha with +3 Hindi Pass”. He further relied on Letter No.F.9-4/72-D-1(L), dated 26th July, 1979, issued by the Government of India, Ministry of Education & Social Welfare (Department of Education), New Delhi addressed to the Secretary, Odisha Rastrabhasha Parisad to contend that “Shastri” has been declared as equivalent to “B.A.”.

- 3.3. In such view of the matter, the marks awarded to the petitioners in such examinations could not have been ignored while preparing revised select list. The opposite parties fell in grave error in not taking into consideration the percentage of marks obtained in Ratna/Shastri Examination while computing total marks obtained.
- 3.4. It was further argued that under one Government two different sets of systems of computation of marks for the post of HINDI TEACHER could not have been adopted in two different districts. Sri Swain urged that the action of the opposite parties attracts *vice* of Article 14 of the Constitution inasmuch as in the Keonjhar District while publishing the select list for the post of HINDI TEACHERS the marks secured by the candidates in Ratna/Shastri Examination(s) have been taken into consideration (*vide* Annexure-18 enclosed to Rejoinder), whereas in the revised select list published in the Mayurbhanj District percentage of marks obtained in such examination(s) were excluded while computing total marks. Such a course is not only unintelligible but also indicative of arbitrariness which smacks whims of the opposite parties.
- 3.5. Mr. Kunal Kumar Swain submitted that meritorious candidates having qualifications, such as B.A., B.Ed. and Ratna/Shastri have not been given due weight even though they were found at Serial Nos. 2nd, 4th and 1st respectively.

Arguments advanced by the learned Additional Standing Counsel for the opposite party Nos.1 to 3:

4. Learned Additional Standing Counsel submitted that revised select list was published so as to “recruit the best efficient candidates for the post of Hindi Teacher in consonance with the guidelines provided in Resolution dated 27.10.2014”.

4.1. It is submitted that “in the first selection of marks secured in Ratna and Shastri subjects by the petitioners have been taken for computerization of marks”, but in the second/revised select list, “the marks secured in Ratna and Shastri were not taken into consideration for computerization of marks as per decision of the Selection Committee in consonance with the Resolution No.23395 dated 27.10.2014 issued by the Government of Odisha in School and Mass Education Department”. Therefore, when the marks secured in Ratna/Shastri are excluded from total marks while preparing revised select list, the petitioner Nos.1 to 3 did not get berth within the zone of selection. It is further urged that “in the zone of selection of 12 candidates, *i.e.*, double the vacancy, the petitioner Nos.1 and 2 were placed at Serial No.10 and 8 of the second selection list” and the petitioner No.3 could not even come within the selection of 12 candidates.

- 4.2. It is vehemently objected to that the petitioners did not fulfil the eligibility criteria as per extant provisions of law and the guidelines.

Consideration of rival contentions and decision of the Court:

5. Analysis of eligibility criteria for HINDI TEACHER as contained in Advertisement dated 15.12.2015 read with Corrigendum dated 31.12.2015 *vis-à-vis* Resolution No.23395-VIII-(B)-SME-(X)-231/2014/SME, dated 27.10.2014 would depict as follows:

Advertisement dated 15.12.2015	Corrigendum dated 31.12.2015	Resolution No.23395, dated 27.10.2014
<i>For the post of HINDI TEACHER, an applicant must have</i> <i>passed Bachelor Degree Exam. from a recognised University</i> <i>with Hindi as one of the elective subject</i> or <i>with Rastrabhasha Ratna from Rastrabhasha Prachar Samiti, Wadha</i> or <i>with Shastri from Odisha Rastra Bhasa Parisad, Puri</i> or	<i>For the post of HINDI TEACHER, an applicant must have</i> <i>passed Bachelor Degree Exam. from a recognised University</i> <i>with Hindi as one of the elective subject</i> or <i>with Rastrabhasha Ratna from Rastrabhasha Prachar Samiti, Wadha</i> or <i>with Shastri from Odisha Rastra Bhasa Parisad, Puri</i> or <i>with Snatak (acquired by June 2005, the date upto which temporary</i>	<i>The S&ME Department have prescribed the common qualification of Hindi Teachers in Government, Fully Aided and Block Grant High Schools vide Resolution No.3424, dated the 18th February, 2008, No.7685, dated 12th May, 2009, No.6552, dated 29.03.2011 and Addendum No.25114/SME, dated 03.10.2012.</i> <i>In spite of the above common qualification in Hindi are not available in the State as a result large numbers of posts of Hindi Teachers are lying vacant in such institutions.</i> <i>Now, therefore, the Government after careful consideration of the matter have decided to prescribe the qualification of Hindi Teachers in the following order of preference for providing quality and better education to the students.</i> <i>Bachelor's degree from a recognized University with Hindi as one the elective subject with minimum 50% marks in aggregate (45% for SC/ST/PH/OBC/SEBC candidates)</i>

with Snatak (acquired by June 2005, the date upto which temporary recognition had been granted) from Hindi Sikshya Samiti, Odisha, Cuttack or an equivalent Degree from a recognised Institution and Hindi Shikshyan Parangat from Kendriya Hindi Sansthan, Agra/BH.Ed. (a course prescribed by NCTE) from a Institution recognized by NCTE and affiliated to a recognized University/B.Ed. in (a course prescribed by NCTE) from Dakhin Bharat Hindi Prachar Sabha, Madras, an Institution recognized by NCTE and affiliated to a recognized University. OR Bachelor's Degree with Hindi as one of the optional/Hons. subject from a recognized University and M.A. from a recognized University. The untrained candidates shall have to undergo the required training within a stipulated period as decided by Govt. from time to time [First preference is to be given to the trained candidates]	recognition had been granted) from Hindi Sikshya Samiti, Odisha, Cuttack or an equivalent Degree from a recognised Institution and Hindi Shikshyan Parangat from Kendriya Hindi Sansthan, Agra/BH.Ed. (a course prescribed by NCTE) from a Institution recognized by NCTE and affiliated to a recognized University/B.Ed. in (a course prescribed by NCTE) from Dakhin Bharat Hindi Prachar Sabha, Madras, an Institution recognized by NCTE and affiliated to a recognized University. OR Bachelor's Degree with Hindi as one of the optional/Hons. subject from a recognized University and M.A. from a recognized University. The untrained candidates shall have to undergo the required training within a stipulated period as decided by Govt. from time to time [First preference is to be given to the trained candidates]	or with Rastrabhasa Ratna from Rastrabhasa Prachar Samiti, Wardha or with Sastri from Orissa Rastrabhasa Parisada, Puri or with Snataka (Acquired by June-2005, the date up to which the temporary recognition has been granted) from Hindi Sikshaya Samiti, Orissa, Cuttack or an equivalent degree from a recognized institution with at least 50% marks in aggregate (45% for SC/ST/PH/OBC/SEBC candidates and Hindi Shikshyan Parangat from Kendriya Hindi Sansthan, Agra/B.H.Ed (a course prescribed by NCTE) from a Institution recognized by NCTE and affiliated to a recognized university/B.Ed. in Hindi (a course prescribed by NCTE) from Dakhin Bharat Hindi Prachar Sabha, Madras, a institution recognized by NCTE and affiliated to a recognized university, OR Bachelor's Degree with Hindi as one of the optional/Hons. subject with 50% of marks in aggregate (45% for SC/ST/PH/OBC/SEBC candidates) from a recognized University and M.A. in Hindi with minimum 50% marks in aggregate from a recognized University. The untrained candidates shall have to undergo the required training within a stipulated period as decided by Govt. from time to time. The S&ME Deptt. Resolution No.6552/SME, dated 29.03.2011 is modified to the above extent. This will come into force with immediate effect.
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- 5.1. Bare perusal of the above would suggest that so far as Ms. Smrutirekha Biswal, petitioner No.1, is concerned, she has acquired Shastri qualification from Shri Jagannath Sanskrit Vishvavidyalaya; Bachelor of Education from Dakshina Bharat Hindi Prachar Sabha, Madras; and Rashtrabhasha—Ratna from Rashtrabhasha Prachar Samiti, Wardha. As per Corrigendum dated 31.12.2015 to the Advertisement dated 15.12.2015, a candidate is eligible for the post of HINDI TEACHER if he/she passed Bachelor Degree Examination from a recognised University with Rastrabhasha Ratna from Rastrabhasha Prachar Samiti, Wardha *or* with Shastri from Odisha Rastra Bhasa Parishad, Puri. Therefore, the petitioner is found to have fulfilled the conditions laid in the aforesaid Advertisement read with Corrigendum thereto.
- 5.2. So far as Ms. Binita Prajapati, petitioner No.2, is concerned, she has passed Bachelor of Arts from North Orissa University; Bachelor of Education from Dakshina Bharat Hindi Prachar Sabha, Madras; and Rashtrabhasha—Ratna from Rashtrabhasha Prachar Samiti, Wardha. It is, therefore, accepted that the terms of eligibility as specified in the Advertisement read with Corrigendum have been fulfilled.
- 5.3. Similarly, having passed Three Year Degree Course Examination, 2009 from North Orissa University; Rashtrabhasha Shastri from Odisha Rashtra Bhasa Parishad, Puri in the year 2014; and Bachelor of Education in the year 2015 in First Class from Dakshina Bharat Hindi Prachar

Sabha, Madras, Ms. Chitralekha Mohanta, petitioner No.3, has rightfully claimed to be eligible for the post of HINDI TEACHER.

5.4. This Court finds force in the submission of Sri Kunal Kumar Swain, Advocate that a list of candidates for the year 2017 when prepared *vide* the document titled “PROVISIONAL SELECT, REVISED PROVISIONAL MERIT AND FINAL REJECT LISTS OF APPLICATIONS OF APPLICANTS APPLIED FOR THE POSTS OF HINDI (CONTRACTUAL) IN DIFFERENT SCHOOLS UNDER SSD DEPARTMENT IN MAYURBJHANJ DISTRICT FOR THE YEAR 2017 [REF.: ADVERTISEMENT No.2832/DWO, DT. 03.05.2017]”, aforesaid qualifications of all these three petitioners have been clearly acknowledged by the concerned authority, who has at the foot of such appended note as “all applicants are advised to follow notice No.3088/DWO, date 01/06/2018, which is also available in www.mayurbhanj.nic.in”.

5.5. At this juncture it is noteworthy to understand the purport of the term “OR”. The word ‘or’ is normally disjunctive and ‘and’ is normally conjunctive, but when other part of the same statute or the clear intention of it obligates they are read as *vice versa*. See *Municipal Corporation of Delhi Vrs. Tek Chand Bhatia*, AIR 1980 SC 360. Reference may also be had to *Indore Development Authority Vrs. Manoharlal*, (2020) 8 SCC 129. It has been observed that if literal reading of the word produces an unintelligible or absurd result, ‘and’ may be read for ‘or’ and ‘or’ may be read for

‘and’. The word ‘or’ cannot be read as ‘and’. They should be considered in an ordinary sense. If two different interpretations are possible, the court will adopt that which is just, reasonable and sensible. The word ‘or’ cannot be read as ‘and’. If the precise words used are plain and unambiguous, they are bound to be construed in their ordinary sense. The mere fact that the results of a statute may be unjust does not entitle a court to refuse to give it effect. If there are two different interpretations of the words in an Act, the court will adopt that which is just, reasonable and sensible rather than that which is none of those things. If the inconvenience is an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if it is read in a manner in which it is capable, though not in an ordinary sense, there would not be any inconvenience at all; there would be reason why one should not read it according to its ordinary grammatical meaning. Where the words are plain, the court would not make any alteration. In *Stroud’s Judicial Dictionary, 3rd Edn., Vol. 1*, it is stated at p. 135: “And” has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of “or”. Sometimes, however, even in such a connection, it is, by force of a context, read as “or”. While dealing with the topic ‘OR is read as AND, and vice versa’, Stroud says in Vol. 3, at p. 2009:

“You will find it said in some cases that ‘or’ means ‘and’; but ‘or’ never does mean ‘and’. Similarly, in Maxwell on Interpretation of Statutes, 11th Edn., pp. 229-30, it has been

accepted that 'to carry out the intention of the legislature, it is occasionally found necessary to read the conjunctions 'or' and 'and' one for the other.'"

The word 'or' is normally disjunctive and 'and' is normally conjunctive, but at times they are read as *vice versa*.

- 5.6. The word 'or' is a disjunctive word. It is well established principle of statutory interpretation that the word 'or' is normally disjunctive and the word 'and' is normally conjunctive. Both of them can be read as *vice versa*, but that interpretation is adopted only where the intention of the Legislature is manifest. The word 'or' is normally disjunctive but at times they are read as *vice versa* to give effect to the manifest intention of the Legislature as disclosed from the context. The reading of 'or' as 'and' is not to be resorted to, unless some other part of the same statute or the clear intention of it requires that to be done. Where provision is clear and unambiguous the word 'or' cannot be read as 'and' by applying the principle of reading down. But if the literal reading of the words produces an unintelligible or absurd result of so modifying the words is less favourable to the subject provided that the intention of the Legislature is otherwise quite clear. Conversely if reading of 'and' and 'or' produces grammatical distortion and makes no sense of the portion following 'and', 'or' cannot be read in place of 'and'. The alternatives joined by 'or' need not always be mutually exclusive. The substitution of conjunctions, however, has been sometimes made without sufficient reasons, and it has been doubted

whether some of the cases of turning ‘or’ into ‘and’ and *vice versa* have not gone to the extreme limit of interpretation. Refer: *Competition Commission of India Vrs. Steel Authority of India Ltd.*, (2010) 10 SCC 744; *Union of India Vrs. Ind-Swift Laboratories Ltd.*, (2011) 7 GSTR 348 (SC) = (2011) 40 VST 1 (SC) = (2011) 4 SCC 635; *Raghunath International Ltd. Vrs. Union of India*, (2012) 15 GSTR 400 (All); *Peekay Re-rolling Mills Pvt. Ltd. Vrs. Secretary to Government*, (2012) 56 VST 103 (Ker).

5.7. It is also significant to notice the following view expressed by this Court in the case of *Akhila Kumar Naik and Others Vrs. State of Odisha and Others*, W.P.(C) No.33301 of 2020, *vide Judgment dated 11.12.2021*:

“18. The word “or” is normally disjunctive and ‘and’ is normally conjunctive. In *Hyderabad Asbestos Cement Product Vrs. Union of India*, 2000 (1) SCC 426 = AIR 2000 SC 314, it has been held that ‘or’ in its natural sense denotes an ‘alternative’ and is not read as ‘substitutive’. In *Green Vrs. Premier Glynrhonwy State Co.*, (1928) 1 KB 561, it has been held that ‘or’ does not generally mean ‘and’ and ‘and’ does not generally mean ‘or’. The same view has also been taken in *Nasiruddin v. State Transport Appellate Tribunal*, (1975) 2 SCC 671 = AIR 1976 SC 331 and *Municipal Corporation of Delhi v. Tek Chand Bhatia*, (1980) 1 SCC 158 = AIR 1980 SC 360 and *State (Delhi Administration) Vrs. Puran Mal* (1985) 2 SCC 589 = AIR 1985 SC 741. In *Mersey Docks and Harbour Board Vrs. Henderson Bros.*, (1888) 13 AC 595, it has been held that as pointed out by LORD HALSBURY the reading of ‘or’ and ‘and’ is not to be resorted to, “unless some other part of the same statute or the clear intention of it

requires that to be done”. In Union of India & Ors. Vrs. Rabinder Singh, (2012) 12 SCC 787, the apex Court held that where provision is clear and unambiguous the word ‘or’ cannot be read as ‘and’ by applying the principle of reading down.”

5.8. Applying the aforesaid interpretation to the case at hand, the word ‘or’ used in the Advertisement dated 15.12.2015 read with Corrigendum dated 31.12.2015 it would be fair to indicate that the qualifications conjoined with the word “or” would be read in the disjunctive sense. Otherwise, it would lead to absurd result.

5.9. This Court in *Sampad Samal Vrs. State of Odisha, 2017 (I) ILR-CUT 262*, laid down that:

“The first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only, then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act.”

5.10. This Court to reach at such conclusion, referred to *Madan Lal Vrs. Changdeo Sugar Mills, AIR 1962 SC 1543* wherein it has been laid down that the elementary rule is that words used in a section must be given their plain grammatical meaning. It is enunciated in *Jugal Kishore Vrs. Raw Cotton Co Ltd., AIR 1955 SC 376* that the cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the Legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are

susceptible of another meaning, the court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation. In *Amar Singhji Vrs. State of Rajasthan*, AIR 1955 SC 504 it is stated that recourse to rules of construction would be necessary only when a statute is capable of two interpretations. Where the language is clear and the meaning plain, effect must be given to it.

5.11. Bearing in mind such golden rules of construction, it may not be gainsaid that for the post of HINDI TEACHER, “*an applicant must have passed Bachelor Degree Examination from a recognised University with Hindi as one of the elective subject*” *or* “*with Rastrabhasha Ratna from Rastrabhasha Prachar Samiti, Wardha*” *or* “*with Shastri from Odisha Rastra Bhasa Parisad, Puri*”. As the candidates herein even though have Bachelor Degree they did not have Hindi as one of the elective subjects. Nonetheless, they have “Ratna”/“Shastri” qualification which has been notified as equivalent to +3/B.A. with Hindi as elective subject, which has been elaborately discussed *infra*.

6. From the counter-affidavit it is noticed that the opposite parties have taken a ground that the petitioners were not “graduates”. Such fact which weighed in discarding candidature of the petitioner Nos.1 to 3 is revealed from paragraph 11 of the counter-affidavit, which is reproduced as follows:

“11. That, as would reveal from the first provisional merit list under Annexure-D, the petitioner No.1 Smruti Rekha Biswal is not the graduate but she is possessing the qualification of B.H.Ed. The petitioner No.2 Binita Prajapati having the academic qualification for B.H.Ed. but not the graduate. The petitioner No.3— Chitralkha Mahanta is also not a graduate but with a qualification of Shastri. ***”

6.1. The Utkal University through Deputy Registrar (Special Cell) vide document dated 31.07.2012 has declared as follows:

“Utkal University
Vani Vihar, Bhubaneswar – 751004

Equivalence of Degrees

Sl. No.	Name of the University	Degrees of the University
*	*	*
164.	Equivalence was made for Alankar Hindi 1 st , 2 nd , 3 rd year of Gurukul Kanderi Viswavidyalaya in +3 degree Hindi	With +3 Hindi (Pass) of Utkal University
	(2) Equivalence was made for Rastrabhasa Ratna and Snatak	With +3 Pass and Elective Hindi only
	(3) Equivalence was made for B.H.Ed. of Utkal University	With B.Ed. of Utkal University
*	*	*
168.	Odisha Rastrabasa Parisada, Puri	Rastrabasa Sastri with +3 Hindi Pass
*	*	*

6.2. Another Notification dated 28th October, 2011 issued by the Utkal University notified as follows:

“Notification
No.A.C. Equi/50(A)(P)/50994/2011, dated 28.10.2011

<i>Sl. No.</i>	<i>Name of the University</i>	<i>Degree equivalent with Utkal University</i>
*	*	*
5.	<i>Odisha Rastrabasa Parisad, Puri</i>	<i>Rastrabasa Sastri with +3 Hindi Pass</i>
*	*	*''

6.3. The Government of India, Ministry of Education and Social Welfare (Department of Education), New Delhi, dated 26.07.1979 recognised Hindi Examination as follows:

“Subject: Recognition of Hindi Examination conducted by Voluntary Hindi Organisations

Sir,

I am directed to convey the approval of the Government of India to the extensions of the present period of recognitions to the following examinations conducted by the Voluntary Hindi Organisations for the period shown against each:

<i>Name of the Organisation</i>	<i>Name of the Examination</i>	<i>Standard of Hindi prescribed in the equivalent Examination</i>	<i>Period upto which recognition granted</i>
<i>Orissa Rastrabhasa Parisad, Puri</i>	<i>1. Vinod</i>	<i>SLC</i>	<i>Permanent''</i>
	<i>2. Praveen</i>	<i>Inter</i>	
	<i>3. Shastri</i>	<i>B.A.</i>	

6.4. This Court is fortified with the view expressed in the case of *Smruti Rekha Mishra Vrs. State of Odisha, W.P.(C) No.41672 of 2021, vide Order dated 06.01.2022* wherein it has been held as follows:

“8. *** So far the issue of degree of Sastri by Odisha Rastrabhasa Parishad, Puri is concerned, the same is no more res-integra. The Orissa Administrative Tribunal, Principal Bench, Bhubaneswar while adjudicating O.A.No.1090 of 2016 was also required to adjudicate the above noted issue. **Vide Order dated 24th May, 2019 passed in O.A.No.1090 2016 the Orissa Administrative Tribunal has come to a conclusion that the degree of Sastri from Odisha Rastrabhasa Parishad, Puri along with Bachelor Degree and M.A. in Hindi constitutes sufficient eligibility for being appointed to the post of Contractual Hindi Teacher.**

9. The order dated 24th May, 2019 passed by Orissa Administrative Tribunal, Principal Bench, Bhubaneswar in O.A.No.1090 of 2016 was assailed by the State Government before this Court in W.P.(C) No.10616 of 2020. **This Court vide order dated 7th September, 2020 has confirmed the order of the Orissa Administrative Tribunal, Principal Bench, Bhubaneswar.**

12. In the meanwhile, the State Government challenged the order dated 7th September 2020 passed in W.P.(C) No.10616 of 2020 before the Hon'ble Supreme Court of India by filing SLP(C) No.195-196 of 2021. **The Hon'ble Supreme Court of India by order dated 20th January, 2021 disposed of the SLP thereby the order passed by the Orissa Administrative Tribunal has been confirmed and the said order has attained finality.”**

6.5. In view of aforesaid clear declaration of different competent authorities supported by the decisions of the Courts, the stance of the opposite parties that the petitioners are not “graduates” is fallacious.

6.6. Sri Kunal Kumar Swain, learned counsel for the petitioners forcefully argued that if the aforesaid equivalence as declared by the Utkal University and the Government of India is considered with reference to the qualifications of the petitioners (Nos. 1 to 3), which has not been disputed or denied at any point of time by the opposite parties, the opposite parties have committed mistake in not considering the marks awarded in respect of such qualification. Sri Kunal Kumar Swain to drive home his point that the instant petitioners ought to have been selected in higher order in the selection list has submitted a comparative charts which are as follows:

First Select List

Name	HSC	+2	Ratna/ Shastri	B.Ed.	Category	Total
Smrutirekha Biswal (Petitioner No.1)	55.33	62.62	64 (Ratna)	71.2	UR	253.15
Binita Prajapati (Petitioner No.2)	55.63	46.33	72 (Ratna)	77.7	UR	251.66
Chitrlekha Mohanta (Petitioner No.3)	44.93	49.67	88.14 (Shastri)	71.1	UR	253.84

Name	HSC	+2	Ratna/ Shastri	B.Ed.	Category	Total
Mamata Manjari Das (Opposite Party No.4)	42.67	70.31	60.14 (Shastri)	79.7	UR	252.82

<i>Gajendra Behera (Opposite Party No.6)</i>	42.53	65.50	58.67 (Ratna)	75.8	UR	242.50
<i>Mrutyunjaya Behera (Opposite Party No.7)</i>	60.13	51.78	52.67 (Ratna)	78.75	UR	243.33
<i>Gitanjali Sa (Opposite Party No.8)</i>	43.33	64.50	65.14 (Ratna)	77	UR	249.97

Revised Marks of Select List

<i>Name</i>	<i>HSC</i>	<i>+2</i>	<i>+3</i>	<i>B.Ed.</i>	<i>Category</i>	<i>Total</i>
<i>Smrutirekha Biswal (Petitioner No.1)</i>	55.33	62.62	48.71	71.2	UR	237.86
<i>Binita Prajapati (Petitioner No.2)</i>	55.63	46.33	59.36	77.7	UR	239.02
<i>Chitrlekha Mohanta (Petitioner No.3)</i>	44.93	49.67	63.50	71.1	UR	299.20

<i>Name</i>	<i>HSC</i>	<i>+2</i>	<i>+3</i>	<i>B.Ed.</i>	<i>Category</i>	<i>Total</i>
<i>Mamata Manjari Das (Opposite Party No.4)</i>	42.67	70.31	66.62	79.7	UR	259.30
<i>Gajendra Behera (Opposite Party No.6)</i>	42.53	65.50	61.83	75.8	UR	245.66
<i>Mrutyunjaya Behera (Opposite Party No.7)</i>	60.13	51.78	50.00	78.75	UR	240.66
<i>Gitanjali Sa (Opposite Party No.8)</i>	43.33	64.50	55.44	77	UR	240.27

6.7. Aforesaid tables lead to demonstrate that the petitioner Nos.1 to 3 have secured more marks than the opposite party Nos.4, 6, 7 and 8. Minute reading of Notification dated 28.10.2011 along with document dated 31.07.2012 issued by the Utkal University and Communication dated 26.07.1979 of the Government of India suggests that whereas the qualification “Shastri” is notified as equivalent to B.A./“+3 Hindi Pass”, “Ratna” is considered equivalent to “+3 Hindi Pass”. Since the petitioner Nos.1 to 3, though passed +3/B.A. without Hindi as one of the elective subjects from North Odisha University, they having qualified “Shastri”/“Ratna”, the marks awarded in said subject ought to have been taken as Bachelor Degree with elective subject— “Hindi”. This Court accepts the submission of the learned counsel for the petitioners that the first select list, as published by the opposite parties, was correctly drawn and the revised select list, excluding the marks of relevant subject related to Hindi qualification as specified in the Resolution dated 27.10.2014 and the Advertisement dated 15.12.2015 read with Corrigendum dated 31.12.2015, is unjust and improper.

7. The submission of the learned Additional Standing Counsel that “possession of education qualification as has been referred by the petitioners is of no consequence or relevance” is only to be rejected in view of reasons ascribed to above. The present case relates to selection for the post of HINDI TEACHER. From the Resolution dated 27th October,

2014 it is *ex facie* clear that “the Government after careful consideration of the matter have decided to prescribe the qualification of Hindi Teachers” in the order of preference “for providing quality and better education to the students”. If the opposite parties could ascertain that the petitioners in graduation stage did not have “Hindi” as one of the elective subjects, in the alternative they could have taken the equivalent qualification into consideration. Whereas it is noticed that the petitioner Nos.1 to 3 have no Bachelor Degree with Hindi as one of the elective subjects, they have equivalent qualification such as Ratna or Shastri from the Institutions as stated in the said Resolution dated 27.10.2014. In the document titled “PROVISIONAL SELECT, REVISED PROVISIONAL MERIT AND FINAL REJECT LISTS OF APPLICATIONS OF APPLICANTS APPLIED FOR THE POSTS OF HINDI (CONTRACTUAL) IN DIFFERENT SCHOOLS UNDER SSD DEPARTMENT IN MAYURBJHANJ DISTRICT FOR THE YEAR 2017 [REF.: ADVERTISEMENT No.2832/DWO, DT. 03.05.2017]”, with note “all applicants are advised to follow notice No.3088/DWO, date 01/06/2018, which is also available in www.mayurbhanj.nic.in” as appended at the foot, indicates that the opposite parties have acknowledged Ms. Smrutirekha Biswal, petitioner No.1, having passed +3 examination from Shri Jagannath Sanskrit Vishvavidyalaya, Puri; Ms. Binita Prajapati, petitioner No.2, passed +3 from North Odisha University; and Ms. Chitralekha Mohanta, petitioner No.3, passed +3 from North Odisha University. They all also have alternative

qualifications Ratna/Shastri with B.Ed. which could be treated as B.A. with Hindi as elective subject in terms of declarations made by the Utkal University and Government of India.

7.1. In the Corrigendum dated 31.12.2015 to the Advertisement dated 15.12.2015 laid down the criteria for eligibility for the post of Hindi Teacher *inter alia* that the candidate must have passed Bachelor Degree Examination from a recognised University with Hindi as one of the elective subjects or with Rastrabhasha Ratna from Rastrabhasha Prachar Samiti, Wardha or with Shastri from Odisha Rastra Bhasha Parisad, Puri. When the candidates, the petitioners herein, did not have Hindi as elective subject in Bachelor Degree Examination, Ratna/Shastri which is treated to be equivalent to Bachelor Degree, as discussed above, the same ought to have been taken into consideration by the opposite parties. Reading the eligibility criteria as mentioned in the Advertisement read with Corrigendum thereto in any other manner would result in absurdity. It is, thus, found that the petitioners have requisite qualifications as specified in the Advertisement dated 15.12.2015 read with Corrigendum dated 31.12.2015. Therefore, the opposite parties have fallen in error in discarding the marks of such qualifications while computing the total marks.

8. Further analysis of fact as stated by the petitioner in the petition reveals that a notice dated 9292/DWO, dated

28.10.2016 was issued by the Collector & District Magistrate, Mayurbhanj to the following effect:

*“*** The applicants are instructed to go through the lists and submit their objections, if any or submit required documents as mentioned in the remark column of ‘Provisional Valid List’ to the office of the District Welfare Officer, Mayurbhanj on or before 11.11.2016 by 5.00 pm in the office hour.*

The objections received beyond the date line shall not be entertained.”

8.1. It has been averred by the petitioner that after lapse of objection period as stipulated in the notice above, a notice was published on 22.11.2016 wherein the selected candidates were called upon to attend for verification of original certificates scheduled to be held on 29.11.2016 in the District Welfare Office, Mayurbhanj. On the said date individual notice was issued to the concerned applicant to attend for verification of documents/original certificates and also counselling for the post of Hindi Teacher. It is asserted by the petitioners that on 29.11.2016 after verification, agreement was also executed between the petitioners and the authorities specifying posting at the notified school as Hindi Teacher. It is, therefore, submitted by the counsel for the petitioners that the Selection Committee is powerless to review its own decision.

8.2. Against such a stand, the opposite parties in the counter save and except stating that the Selection Committee constituted as per Rule 5 of the Odisha Subordinate Tribal

Welfare Education (Recruitment and Conditions of Service) Rules, 1993, forwarded list of candidates arranged in order of merit for appointment by direct recruitment to the appointing authority in terms of Rule 6 thereof, the assertion of fact of the petitioners has not been objected to. *Per contra*, the learned Additional Standing Counsel submitted that the Selection Committee having “revised/renewed” selected “best efficient candidates for the post of Hindi Teacher in consonance with the guideline provided in Resolution dated 27.10.2014”. It is contended by the opposite parties that it was well within the knowledge of the petitioners that in view of Rule 6(2) of the aforesaid Rules, “For computation of marks, the total marks and the marks obtained at different examinations are to be added up and percentage calculated. The names of the candidates shall be arranged according to the percentage of marks secured. No marks shall be added for any extra or additional qualification. Honours at Degree level and 4th optional at +2 level will be treated as normal qualification, but not as additional qualification”.

- 8.3. Perusal of aforesaid Rules it is noticed that no power is vested with the Selection Committee to “revise/renew” the select list. Once verification of documents is complete and agreement is executed by disclosing the placement, *i.e.*, school at which the candidate is posted, the selection process got concluded and the Selection Committee becomes *functus officio* so as to inhere the power to

revise/review/renew. Scrutiny of Rule 6(2) of said Rules indicates that no marks shall be added for any extra or additional qualification. In the instant case, the petitioners have not asked to add any extra or additional qualification, but wanted their qualification as Ratna/Shastri which is declared equivalent to graduation with Hindi as elective subject to be considered and added to the total marks while computing for the purpose of preparation of select list. The petitioners are right in claiming that the provisional select list which was initially prepared by adding said marks was just and proper, particularly so when in the neighbouring district in Keonjhar such a course has been followed for selecting candidates for the post of HINDI TEACHER.

- 8.4. In the counter it has been affirmed that Rule 7(2)(c) of the Odisha Subordinate Tribal Welfare Education (Recruitment and Conditions of Service) Rules, 1993 provided as follows:

“For Hindi Teacher/Mistress a candidate must be a graduate with Hindi as an optional subject or having minimum qualification of Matric with Kovid or equivalent with Odia up to High School Certificate Examination.”

Unimpeachable document, like High School Certificate Examination issued by the Board of Secondary Education, Odisha in favour of the petitioner(s), shows that all the petitioners have passed Matric with Odia as First Language subject. So far as “Kovid” qualification is concerned, the petitioners have higher qualification, like “Ratna”/“Shastri”

which is declared equivalent to B.A./“+3 Hindi Pass”. It may be stated that after qualifying “Kovid” test, one is eligible to appear in the Ratna Examination. Thus, it is pertinent to refer to Resolution dated 27th October, 2014 issued by the Government of Odisha in School and Mass Education wherein the requisite qualification has been specified as Ratna/Shastri. In such view of the matter, the contention of the opposite parties that the petitioners have not satisfied eligibility criteria as specified in the Advertisement dated 15.12.2015 read with Corrigendum dated 31.12.2015 is misconceived.

- 8.5. It is observed by this Court that after objection period has been lapsed, and placement in particular school was given by executing agreement, it is not open for the Selection Committee to cancel such select list and revise the list after around 6 months. Such an approach is not beyond reproach.
9. Another pertinent point which is addressed by the learned counsel for the petitioners is that one of the neighbouring districts, namely Keonjhar adopted the procedure by taking into consideration the marks secured by the candidates in HSC, +2 and B.A. with Hindi or Ratna, Shastri and Snataka or B.Ed. in the context of selection of Hindi Teachers. This Court would wish to observe that in the same State, two districts could not have different set of procedure in selection for the post of HINDI TEACHER.

9.1. The following observation of this Court in *Smruti Rekha Mishra Vrs. State of Odisha, W.P.(C) No.41672 of 2021*, vide Order dated 06.01.2022, is relevant:

“21. Law is fairly well settled that in Service Jurisprudence, if a similar benefit is given to an employee, such benefit should be extended to all similarly situated employees without any discrimination. The authorities are required to act with all fairness as fair play is an integral part of all administrative decision making process. In *K.I. Shephard and others Vrs. Union of India*, reported in AIR 1988 S.C. 686 it has been held by the Supreme Court of India as follows:

“15. Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of Law every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The rules of natural justice have developed with the growth of civilisation and the content thereof is often considered as a proper measure of the level of civilisation and Rule of Law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community the concept of fairness and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities. We do not think in the facts of the case there is any justification to hold that rules of natural justice have been ousted by necessary implication on account of the time frame. On the other hand we are of the view that the time limited by statute provides scope for an opportunity to be extended to the intended excluded employees before the scheme is finalised so that a hearing commensurate to the situation is afforded

before a section of the employees is thrown out of employment.”

19. *The writ petitions and the appeals must succeed. We set aside the impugned judgments of the Single Judge and Division Bench of the Kerala High Court and direct that each of the three transferee banks should take over the excluded employees on the same terms and conditions of employment under the respective banking companies prior to amalgamation. The employees would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period. We leave it open to the transferee banks to take such action as they consider proper against these employees in accordance with law. Some of the excluded employees have not come to Court. There is no justification to penalise them for not having litigated. They too shall be entitled to the same benefits as the petitioners. Ordinarily the successful parties should have been entitled to costs but in view of the fact that they are going back to employment, we do not propose to make orders of costs against their employers. We hope and trust that the transferee banks would look at the matter with an open mind and would keep themselves alive to the human problem involved in it.”*
22. *The judgment of the Hon'ble Supreme Court of India in the matter of Maharaj Krishna Bhatta and another Vrs. State of J.K. and others, reported in (2008) 9 SCC 24 has been relied upon by the learned counsel for the Petitioner in support of his argument that the Opposite Parties are bound to treat similarly placed persons in an identical manner without resorting to discrimination and arbitrariness. The relevant paragraphs of the said judgment has been quoted here in below:*

“16. In our considered opinion, in the light of the facts and circumstances, the Government ought to have accepted and respected the decision of the learned Single Judge without filing intra-Court appeal. No distinguishing feature had been brought to the notice of the Division Bench, nor the Division Bench set aside the judgment and order passed by the learned Single Judge holding or observing that though Abdul Rashid Rather was granted the benefit and the learned Single Judge ordered extension of those benefits to the writ petitioners, they were not entitled because the case of Abdul Rashid Rather was different. Even before us, nothing special or extraordinary fact or circumstance was shown to distinguish the case of Abdul Rashid Rather and of the present appellants. In our opinion, therefore, the learned Single Judge was wholly justified in allowing the writ petition and the Division Bench ought not to have interfered with the said decision.

17. It was no doubt contended by the learned counsel for the respondent-State that Article 14 or 16 of the Constitution cannot be invoked and pressed in service to perpetuate illegality. It was submitted that if one illegal action is taken, a person whose case is similar, cannot invoke Article 14 or 16 and demand similar relief illegally or against a statute. There can be no two opinions about the legal proposition as submitted by the learned counsel for the State. But in the case on hand, in our opinion, there was no illegality on the part of the learned Single Judge in allowing Writ petition No. 519 of 1997 instituted by Abdul Rashid Rather and in issuing necessary directions. Since the action was legal and in consonance with law, the Division Bench confirmed it and this Court did not think it proper to interfere

with the said order and dismissed Special Leave Petition. To us, in the circumstances, the learned Single Judge was wholly right and fully justified in following the judgment and order in Writ Petition No. 519 of 1987 in the case of present writ petitioners also. In fairness and in view of the fact that the decision in Abdul Rashid Rather had attained finality, the State Authorities ought to have gracefully accepted the decision by granting similar benefits to present writ petitioners. It, however, challenged the order passed by the Single Judge. The Division Bench of the High Court ought to have dismissed Letters Patent Appeal by affirming the order of the Single Judge. The Letters Patent Appeal, however, was allowed by the Division Bench and the judgment and order of the learned Single Judge was set aside. In our considered view, the order passed by the learned Single Judge was legal, proper and in furtherance of justice, equity and fairness in action. The said order, therefore, deserves to be restored.”

- 10.** It is deserved for consideration the fact that there has been dearth of Hindi qualified persons. *Vide* Resolution dated 27.10.2014 it has been admitted by the Government. Relevant portion of said Resolution reads as follows:

“In spite of the above common qualification, it is noticed that required numbers of candidates having the above qualification in Hindi are not available in the State as a result large numbers of posts of Hindi Teachers are lying vacant in such institutions.”

Under the above premise, the petitioners, having requisite qualification as specified in said Resolution, even though in the first selection list their names found place, should not

have been ignored, more so when testimonials were verified and agreements were executed indicating names of the schools to which they were posted, which fact as pleaded in the writ petition has not been denied by the opposite parties.

Conclusion:

- 11.** In view of the factual scenario unfolded above and for the discussions made with reasons assigned in the foregoing paragraphs, in the result, it is held that the opposite parties have not considered the case of the petitioners (Nos. 1 to 3) in proper perspective and therefore, the Revised Provisional Merit List of Applicants for the Post of Hindi Teachers (Contractual) in Educational Complexes and Schools under SSD Department in Mayurbhanj, dated 17th May, 2017 *vide* Annexure-11 is set aside.
- 12.** As a consequence, the petitioners (Nos.1 to 3) are eligible to be considered for engagement in the post of HINDI TEACHER (Contractual) in terms of Advertisement dated 15th December, 2015 read with Corrigendum dated 31st December, 2015.
- 13.** The opposite parties are directed to take into consideration the candidature of the instant petitioners, consider their case for engagement as HINDI TEACHER (CONTRACTUAL) by re-drawing the select list and extend them all the benefits in accordance with law, as expeditiously as possible, preferably within a period of three months from the date of service of copy of this judgment.

14. In fine, the writ petition is allowed *qua* the petitioner Nos.1 to 3, namely Ms. Smrutirekha Biswal, Ms. Binita Prajapati and Ms. Chitrlekha Mohanta; and dismissed *qua* the petitioner No.4-Ms. Gangotri Ghosh, as not pressed; but in the circumstances, there is no order as to costs.

(MURAHARI SRI RAMAN)
JUDGE

Laxmikant

