

## **HIGH COURT OF ORISSA: CUTTACK**

### **WPC (OAC) No.2066 OF 2016**

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

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**Abhilash Nanda**  
**(In WPC (OAC) No.2066 of 2016)**

**Lalit Ranjan Adhikari**  
**(In WPC (OAC) No.67 of 2014)**

**Runesh Kumar Rahajan**  
**(In WPC (OAC) No.68 of 2014)**

**Bhupindra Sahu**  
**(In WPC (OAC) No.69 of 2014)**

**Prasanta Kumar Sahu**  
**(In WPC (OAC) No.70 of 2014)**

**Balaram Sahu**  
**(In WPC (OAC) No.71 of 2014)**

**Jitendra Giri**  
**(In WPC (OAC) No.138 of 2014)**

**Manoj Kumar Sethy**  
**(In WPC (OAC) No.820 of 2015)**

**Aditya Sahu**  
**(In WPC (OAC) No.4245 of 2015)**

**Susanta Kumar Behera**  
**(In WPC (OA) No.1093 of 2016)**

**Santosh Kumar Pattanaik**  
**(In WPC (OA) No.1095 of 2016)**

**Jitendra Kumar Swain**  
(In WPC (OA) No.1096 of 2016)

**Tekaram Mohanta**  
(In WPC (OA) No.1108 of 2016)

**Abhinash Sahani**  
(In WPC (OA) No.1109 of 2016)

**Prasanta Kumar Behera**  
(In WPC (OA) No.1110 of 2016)

**Chitta Nayak**  
(In WPC (OA) No.1111 of 2016)

**Pratap Samal**  
(In WPC (OA) No.1112 of 2016)

**Shaikh Isteyaque**  
(In WPC (OA) No.1113 of 2016)

**Ajit Kumar Mohanty**  
(In WPC (OA) No.1114 of 2016)

**Nasib Khan**  
(In WPC (OA) No.1115 of 2016)

**Ashok Kumar Jued**  
(In WPC (OA) No.1116 of 2016)

**Srikanta Dash**  
(In WPC(OA) No.1123 of 2016)

**Sribatsa Sahoo**  
(In WPC (OA) No.1129 of 2016)

**Sarat Ch. Behera**  
(In WPC (OAC) No.2069 of 2016)

**Sangram Parida**  
(In WPC (OAC) No.2070 of 2016)

**Tusar Kanti Behera**  
**(In WPC (OAC) No.2072 of 2016)**

**Siba Sankar Das**  
**(In WPC (OAC) No.2274 of 2016)**

**Rajesh Kumar Mohanty and Others**  
**(In WPC (OAC) No.2275 of 2016)**

**T. Rajesh Kumar Rao**  
**(In WPC (OAC) No.3872 of 2017)**

**Anit Kumar Bagh**  
**(In WPC(OAC) No.3870 of 2017)**

**Pramod Kumar Biswal**  
**(In WPC(OAC) No.3871 of 2017)**

**Chandan Kumar Dalei**  
**(In WPC (OAC) No.3873 of 2017)**

**Khiramani Behera**  
**(In WPC (OAC) No.3874 of 2017)**

**Binoj Kumar Biswal**  
**(In WPC (OAC) No.3875 of 2017)**

**Malaya Kumar Patel**  
**(In WPC (OAC) No.3876 of 2017)**

**Pabitra Parida**  
**(In WPC (OAC) No.3877 of 2017)**

**... Petitioners**

**- Versus -**

**D.G. & I.G. of Police, Odisha,  
Cuttack and others**

**... Opposite parties**

For Petitioners

... Mr. Budhadeb Routray,  
Senior Counsel.

M/s. Biswabihari Mohanty,  
M. Harichandan, J. N. Panda,  
B. Tripathy & B. Samantray  
(In WPC(OAC) Nos.66, 67, 68,  
69, 70, 71, 138 of 2014 &  
4245 of 2015)

(For Intervener in WPC (OA)  
No.1108 of 2016, WPC(OAC)  
Nos.2069, 2070, 2072 & 2275  
of 2016)

M/s. Biswajit Mohanty,  
B. Tripathy & M. Harichanan  
(In WPC (OAC) No.820 of 2015)

M/s. P.K. Rout, M. Mishra &  
G.D. Singh  
(In WPC (OA) No.1123, 1093,  
1095, 1096, 1108 to 1116,  
1129 of 2016 and WPC(OAC)  
Nos.3872 to 3877 of 2017)

M/s. S. Das, R.P. Dalai,  
S. Jena, S.P. Nath &  
S.D. Routray  
(In WPC(OAC) No.2066 of 2016)

M/s. D. Routray, P.K. Rout &  
M. Routray  
(In WPC(OAC) Nos.2069 & 2070  
of 2016)

M/s. R.N. Mishra(2),  
B.N. Sarangi, S. Acharya &  
D. Dhal  
(In WPC(OAC) No.2072 of 2016)

M/s. L. K. Mohanty &  
B.K. Jena  
(In WPC(OAC) Nos.2274 & 2275  
of 2016)

For Opposite Parties ... Mr. B. Panigrahi,  
Additional Government Advocate.

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**PRESENT:**

**THE HONOURABLE SHRI JUSTICE BIRAJA PRASANNA SATAPATHY**

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Date of hearing: 16.09.2022 : Date of judgment :16.11.2022

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***Biraja Prasanna Satapathy, J.*** I have heard Mr. Budhadeb Routray, learned Senior Counsel along with learned counsels appearing for the Petitioners in these batch of writ petitions and Mr. B. Panigrahi, learned Additional Standing Counsel appearing for the State-Opposite Parties and Mr. Biswabihari Mohanty, learned counsel appearing for the Petitioners in the writ petitions filed in the year 2014 and 2015 as well as appearing for the Intervenors in some of the writ petitions filed in the year 2016.

**2.** Since all these writ petitions have been filed with regard to selection and appointment of Assistant Drivers in Odisha Police Motor Transport Establishment pursuant to the advertisement issued on by the Superintendent of Police, PMT, Cuttack for

recruitment of 437 regular Assistant Drivers, they are heard analogously and disposed of by this common order.

**3.** WPC (OAC) No.66 of 2014, 67 of 2014, 68 of 2014, 69 of 2014, 70 of 2014, 71 of 2014, 138 of 2014, 820 of 2015 and 4285 of 2015 were filed with similar prayer and the same is quoted hereunder:-

*“(a) This Hon’ble Tribunal may graciously be pleased to quash the Select List afresh and*

*(b) This Hon’ble Tribunal further be pleased to issue appointment order in favour of the applicant on the basis of his performance in the selection process forthwith or within a time stipulated by this Hon’ble Tribunal with all financial and service benefits and*

*(c) May pass any other order / orders as would be deemed fit and proper be issued”.*

**4.** The writ petitions filed in the year 2016 and 2017 are with similar prayer and the same is quoted hereunder:-

*“In view of the facts stated above, the applicant prays that this Hon’ble Tribunal may graciously be pleased to admit the original application, call for the records and after hearing the parties be pleased to quash the impugned order issued by respondent No.2 to respondent No.3 under Annexure-3 insofar as the discharge the applicant from his service and the respondents be directed to allow the applicant to continue against any post of Assistant Driver and to protect the services of the applicant and to give all consequential service benefit to the applicant.*

*And may pass any other order / orders as this Hon'ble Tribunal may deem fit and proper in the eye of law”.*

**5.** Mr. Budhadeb Routray, learned Senior Counsel appearing on behalf of the Petitioners submitted that pursuant to the advertisement issued by the Superintendent of Police, P.M.T., Odisha, Cuttack in the year 2013 for recruitment of 437 posts of Assistant Drivers, the Petitioners herein participated in the said selection process. It is submitted that out of the 437 posts so advertised vide the advertisement in question, 219 posts were reserved for UR Category, 49 posts for S.E.B.C. Category, 71 posts for S.C. Category and 19 posts for S.T. Category. It is submitted that after holding of the selection process, a select list was published by the Department concerned initially on 28.8.2013 selecting 397 candidates basing on the proceeding of the selection committee held from 25.7.213 to 17.8.2013.

**6.** It is submitted that the selection of 397 candidates published in the 1<sup>st</sup> select list on 28.8.2013 was challenged before the learned Tribunal in O.A No.3931(C) of 2013 and batch by some of the Home Guards on the ground that 10% of the Home Guards were not selected following the principles of

horizontal reservation. It is submitted that even though the said Original Application in O.A. No.3931(C) of 2013 and batch were filed challenging the select list published on 28.8.2013, but none of the selected candidates were impleaded as party to the Original Applications. But, it is submitted that in absence of such material irregularity, learned Tribunal not only entertained all those Original Applications, but also passed the final order on 7.5.2014 with a direction to take step to prepare the select list for Home Guards keeping in view the principle of horizontal reservation. It was also observed that if the Petitioners therein come within the advertised vacancies meant for the category for which they belong, then they may be favoured with appointment as per their position in the select list. The direction contained in order dated 7.5.2014 is quoted hereunder:-

*“Considering the submissions made by the learned counsel for both the parties and keeping in view the earlier order of this Tribunal dated 20.02.2013 passed in O.A No.578 (C) / 2013, the respondent authorities are directed to take steps to prepare the select list for Home Guards keeping in view the principle of horizontal reservation and if the applicants come within the advertised vacancies meant for the category to which they belong, then they may be favoured with appointment orders as per their position in the select list. The entire exercise be completed within a period*

*of one month from the date of receipt of copy of this order”.*

**7.** It is submitted that pursuant to the said order passed by the learned Tribunal on 7.5.2014, a fresh select list was published on 7.11.2014 and 20 selected candidates of UR, SEBC and SC Categories while were directed to be retrenched as they were not found eligible, 13 candidates of SEBC and SC Candidates were selected in their place.

**8.** It is submitted that challenging such selection and appointment basing on the 2<sup>nd</sup> select list published on 7.11.2014, those 20 candidates approached the learned Tribunal in O.A. No.4308(C) of 2014 and batch. In the said Original Applications, once again none of the selected candidates as per the 2<sup>nd</sup> select list published on 7.11.2014 though were not impleaded as party to the proceeding, but learned Tribunal not only entertained all those applications, but also passed the final order on 20.8.2015. Learned Tribunal in Paragraph-9 of the said order held as follows:-

*“9. Learned counsel for the appellants in the written not of argument submitted that as per the final select list, the last candidate in the UR list has secured 36.5 marks, whereas the last candidate in SEBC category has secured 52 marks. Thus it appears that the applicants in O.A.*

*No.4308(c)/2014 to 4319(c)/2014 and 4494(c)/2014 have secured more marks than 115 candidates selected as UR candidate (from Sl.No.85 to 200). In order to implement the order of the Tribunal, if there is necessity to discharge any employee from service, then candidates who have secured less mark ought to have been discharged. But in violation of the principle as laid down in the case of Jitendra Kumar Singh and another -vrs- State of U.P. and R.K. Sabharwal, the revised merit list which has been prepared, is erroneous and based on the said merit list, the appellants were discharged from service. Besides, as detailed above, when the applicants have been discharged from service without serving any notice or giving them any opportunity of being heard, the said order is liable to be quashed being violative of the principle of nature justice and they be reinstated forthwith. Further, as the revised merit list vide annexure-2 has not been prepared following the settled position of law, the same is quashed. Consequently, the respondents are directed to prepare a fresh merit list following the principle, as laid down in the case of Jitendra Kumar Singh and R.K. Sabharwal (supra) as per the decision in O.A. No.3931(c)/2013 and in the event it is necessary to discharge/terminate the services of any candidate, then action be taken against those candidates who have secured less marks, as per rule. The entire exercise be completed within a period of four months from the date of receipt of a copy of this order.”*

**9.** It is submitted by the learned Senior Counsel appearing for the Petitioners that pursuant to the said order passed by the learned Tribunal on 20.8.2015 another select list was published basing on the proceeding held on 8.4.2016. It is submitted that in the said select list published on 8.4.2016, out of the total advertised post of 437, 406 persons were found eligible and since the Petitioners in the writ petitions filed in the year 2016 and 2017 did not find their place in the said select list, the

notice dated 3.6.2016 was issued proposing their retrenchment from service.

**10.** Learned Senior Counsel for the Petitioners submitted that not only in the first batch of writ petitions filed by some affected persons in O.A. No.3931(C) of 2013 and batch, but also in the second batch of Original Applications filed in O.A. No.4308(C) of 2014 and batch, none of the selected candidates were ever impleaded as party to the proceeding. It is accordingly submitted that in absence of such non-joinder of necessary parties, learned Tribunal should not have entertained all those Original Applications with passing of the orders in question. It is further submitted that since the Petitioners in all those writ petitions filed in the year 2016 and 2017 were not party to the proceeding either in O.A. No.3931(C) of 2013 and batch or in O.A. No.4308(C) of 2014 and batch, those orders are not binding on the Petitioners nor the consequential action taken by the Opposite Parties in preparing a fresh merit list in terms of those orders. It is also submitted that since the Petitioners were never impleaded as party to the proceeding nor were given opportunity of hearing, no action would have been taken against them

basing on the said order with preparation of the 3<sup>rd</sup> merit list published on 8.4.2016. It is, accordingly, submitted that in view of such material illegality and irregularity with regard to the orders passed by the learned Tribunal in both the batch of Original Applications, the impugned notice issued on 3.6.2016 needs interference of this Court. It is submitted that by virtue of the interim order passed by the learned Tribunal, all the Petitioners are continuing in their respective posts till date.

**11.** Learned Senior Counsel appearing for the Petitioners, in support of the aforesaid submissions, relied on the decision of Hon'ble the Apex Court in the case of ***Ranjan Kumar and Ors. -v.- State of Bihar and Ors., reported in (2014) 16 SCC 187.*** It is submitted that in the said reported decision, Hon'ble Apex Court interfered with the matter as all the appointees were not impleaded and by holding the writ petition as defective, the order passed by the Hon'ble High Court of Judicature at Patna was set aside. For better appreciation, Paragraphs-4 and 13 of the said judgment are reproduced hereunder:-

*“4. On a perusal of the orders impugned, we find that only 40 persons were made respondents before the High Court and hardly a few appointees filed applications for intervention. It is well settled in law that no adverse order*

*can be passed against persons who were not made parties to the litigation. In this context, we may refer with profit to the authority in Prabodh Verma v. State of U.P.<sup>3</sup>, wherein a three-Judge Bench was dealing with the constitutional validity of two Uttar Pradesh Ordinances which had been struck down by the Division Bench of the Allahabad High Court on the ground that the provisions therein were violative of Articles 14 and 16(1) of the Constitution of India. In that context, a question arose whether the termination of the services of the appellants and the petitioners therein as secondary school teachers and intermediate college lecturers following upon the High Court judgment was valid without making the said appointees as parties. The learned Judges observed that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects; the core defect was that of non-joinder of necessary parties, for respondents to the Sangh's petition were the State of Uttar Pradesh and its officers concerned and those who were vitally concerned, namely, the reserve pool teachers, were not made parties — not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. Thereafter the Court ruled thus: (Prabodh Verma case<sup>3</sup>, SCC pp. 273-74, para-28)*

*“28. ...The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition Under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the Petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties.”*

13. *In view of the aforesaid enunciation of law, we are disposed to think that in such a case when all the appointees were not impleaded, the writ petition was defective and hence, no relief could have been granted to the writ Petitioners.”*

**12.** Learned Senior Counsel appearing for the Petitioners also relied on another decision of Hon’ble the Apex Court in the case of **J.S. Yadav -v.- State of Utter Pradesh and Another, reported in (2011) 6 SCC 570** wherein Hon’ble Apex Court at Paragraph-31 held as follows:-

*“31. No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice. The principles enshrined in the proviso to Order I Rule 9 of the Code of Civil Procedure, 1908 provide that impleadment of a necessary party is mandatory and in case of non-joinder of necessary party, the petitioner/ plaintiff may not be entitled for the relief sought by him. The litigant has to ensure that the necessary party is before the Court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail. In Service Jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity. In case the services of a person is terminated and another person is appointed at his place, in order to get relief, the person appointed at his place is the necessary party for the reason that even if the petitioner/ plaintiff succeeds, it may not be possible for the Court to issue direction to accommodate the petitioner without removing the person who filled up the post manned by petitioner/ plaintiff. (Vide Prabodh Verma v. State of U.P.<sup>25</sup>, Ishwar Singh v. Kuldip Singh<sup>26</sup>, Tridip Kumar Dingal v. State of W.B.<sup>27</sup>, State of Assam v. Union of India<sup>28</sup> & and Public Service Commission v. Mamta Bisht<sup>29</sup>). More so, the public exchequer cannot be burdened with the liability to pay the salary of two persons against one sanctioned post.”*

**13.** Similarly, learned Senior Counsel appearing for the Petitioners also relied on another decision of the Apex Court in the case of **Vikas Pratap Singh and Others -v.- Sate of Chhattisgarh and Others, reported in (2013) 14 SCC 494** wherein Hon'ble Apex Court at Paragraphs-6, 27 and 28 held as follows:-

*“6. The learned Single Judge while entertaining the writ petitions had issued an interim order directing the respondent-State not to take any coercive steps against the appellants and further to allow them to continue their training programme. The learned Single Judge has observed that a substantial question of public importance has arisen in the matter and therefore, referred the matter to the Division Bench with a request to consider and decide the following question of law of public importance:*

*“Whether the VYAPM (the respondent Board) after publication of the select list and passing of the appointment orders also on the basis of evaluation of questions, could have done the exercise of re-evaluating the answers after editing and reframing answers, and prepare the second select list for fresh recruitment of the candidates, cancelling the first select list?”*

*27. Admittedly, in the instant case the error committed by the respondent Board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.*

28. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.”

14. Learned Senior Counsel appearing for the Petitioners also relied on another decision of this Court in the case of **Bikash Mahalik v. State of Odisha & Ors., reported in 2022 (I) OLR-150** wherein this Court at Paragraph-27 held as follows:-

“27. In **Pratima Sahoo** (supra), this Court held that the order of disengagement of the petitioner from the post of Sikhya Sahayak, pursuant to decision of the district administration, having found qualified in the selection process and appointed after resigning from her erstwhile post of Anganwadi Worker and having worked for six to eight months, amounts to putting the petitioner in prejudicial and disadvantageous position and the reason assigned for later finding the petitioner not suitable for securing less marks than other meritorious candidates do holds good, the petitioner cannot be found faulted by the mistake committed by the appointing authority in calculating the percentage. Consequentially, direction was given to absorb the petitioner forthwith applying the doctrine of promissory estoppel in the said case.”

15. Similarly, learned Senior Counsel appearing for the Petitioners also relied on another decision of the Apex Court in the case of **Gaurav Pradhan and Others v. State of**

***Rajasthan and Others, reported in (2018) 11 SCC 352***

wherein the Hon'ble Apex Court at Paragraphs-49 to 51 held as follows:-

*“49. In view of the foregoing discussion, we are of the considered opinion that the candidates belonging to SC/ST/BC, who had taken relaxation of age, were not entitled to be migrated to the unreserved vacancies; the State of Rajasthan has migrated such candidates who have taken concession of age against the unreserved vacancies which resulted displacement of a large number of candidates who were entitled to be selected against the unreserved category vacancies. The candidates belonging to unreserved category who could not be appointed due to migration of candidates belonging to SC/ ST/ BC were clearly entitled for appointment which was denied to them on the basis of the above illegal interpretation put by the State. We, however, also take notice of the fact that the reserved category candidates who had taken benefit of age relaxation and were migrated on the unreserved category candidates, are working for more than last five years. The reserved category candidates who were appointed on migration against unreserved vacancies are not at fault in any manner. Hence, we are of the opinion that SC/ST/BC candidates who have been so migrated in reserved vacancies and appointed, should not be displaced and allowed to continue in respective posts. On the other hand, the unreserved candidates who could not be appointed due to the above illegal migration are also entitled for appointment as per their merit. The equities have to be adjusted by this Court.*

*50. On the question of existence of vacancies, although the learned counsel for the appellant submitted that vacancies are still lying there, which submission, however, has been refuted by the learned counsel for the State of Rajasthan. However, neither appellants had produced any details of number of vacancies nor the State has been able*

to inform the Court about the correct position of the vacancies.

51. We, thus, for adjusting the equity between the parties, issue following directions:

51.1. The appellant-writ petitioners who as per their merit were entitled to be appointed against unreserved vacancies which vacancies were filled up by migration of SC/ST/BC candidates, who had taken relaxation of age, should be given appointment on the posts. The State is directed to work out and issue appropriate orders for appointment of such candidates who were as per their merit belonging to general category candidates entitled for appointment, which exercise shall be completed within three months from the date, copy of this order is produced.

51.2. The State shall make appointments against the existing vacancies, if available, and in the event there are no vacancies available for the above candidates, the supernumerary posts may be created for adjustment of the appellants which supernumerary posts may be terminated as and when vacancies come into existence.”

**16.** Learned Senior Counsel appearing for the Petitioners also relied on another decision of the Hon’ble Apex Court in the case of **Niravkumar Dilip Bhai Makwana -v.- Gujarat Public Service Commission, reported in (2019) 7 SCC 383** wherein Hon’ble Apex Court at Paragraph-34 held as follows:-

“There is also no merit in the submission of the learned counsel for the appellant that relaxation in age at the initial qualifying stage would not fall foul of the circulars dated 29.01.2000 and 23.07.2004. The distinction sought to be drawn between the preliminary and final examination is totally misconceived. It is evident from the advertisement that a person who avails of an age

*relaxation at the initial stage will necessarily avail of the same relaxation even at the final stage. We are of the view that the age relaxation granted to the candidates belonging to SC/ST and SEBC category in the instant case is an incident of reservation under Article 16(4) of the Constitution of India.”*

**17.** Placing reliance on the aforesaid decisions, learned Senior Counsel appearing for the Petitioners submitted that since the Petitioners were never impleaded as a party to the proceeding nor any of the selected candidates was impleaded in both the batch of Original Applications dealt with by the learned Tribunal with passing of the orders in question, the said orders passed by the learned Tribunal and consequential action taken thereof are illegal and liable to be interfered with in view of the decision of the Hon’ble Apex Court in the case of *Ranjan Kumar* (supra). It is also submitted that since the Petitioners have no fault with regard to their selection and appointment, they are entitled for their continuance in view of the decision of the Hon’ble Apex Court in the case of *J.S. Yadav* (supra). It is also submitted that in view of the continuance of the Petitioners, after being duly appointed by the Opposite Parties without having any fault on their part, in view of the provision contained under Section 115 of the Evidence Act and the decision of this Court in the case of *Bikash Mahalik* (supra), Petitioners are also eligible to continue.

It is further submitted by the learned Senior Counsel appearing for the Petitioners that the select list published on 8.4.2016 in terms of the order passed by the learned Tribunal on 20.8.2015, basing on which the impugned notice has been issued to the Petitioners is also contrary to the decision of the Hon'ble Apex Court in the case of *Gaurav Pradhan* (supra).

**18.** It is, accordingly, submitted that in view of such material irregularity and in view of the decisions of the Hon'ble Apex Court as well as of this Court as cited supra, the impugned notice issued on 3.6.2016 by the Opposite Party-Superintendent of Police, Police Motor Transport, Cuttack proposing retrenchment of the Petitioners, is illegal and liable for interference of this Court.

**19.** Mr. B. Panigrahi, learned Additional Standing Counsel appearing for the State-Opposite Parties, on the other hand, made his submission basing on the affidavit filed before this Court on 16.9.2022. It is submitted that in the selection process undertaken pursuant to the advertisement, in the 1<sup>st</sup> select list published on 28.8.2013, 397 candidates were selected and all the Petitioners in the 2016 and 2017 batch of writ

petitions were appointed in terms of the said select list. However, it is submitted that since while issuing such select list with providing appointment to the selected candidates, the reservation meant for Home Guards to the extent of 10% was not followed, some of the eligible Home Guards challenging such select list, approached the learned Tribunal in O.A. No.3931(C) of 2013 and batch.

**20.** It is submitted that learned Tribunal vide its order dated 7.5.2014 when directed the Opposite Parties to consider the claim of such Home Guards with preparation of a fresh select list, in compliance to the said direction, the 2<sup>nd</sup> select list was published on 7.11.2014.

**21.** It is also submitted that since in the said 2<sup>nd</sup> select list published on 7.11.2014, some candidates were found ineligible, those were selected earlier as per the select list published on 28.8.2013, they approached the learned Tribunal in O.A. No.4308(C) of 2014 and batch. It is submitted that once again basing on the order passed by the learned Tribunal on 20.8.2015, another select list was published on 8.4.2016 and as per the said select list, the Petitioners in all the writ petitions

filed in the year 2016 and 2017 were found ineligible and, accordingly, were issued with the notice on 3.6.2016 proposing their retrenchment from service.

**22.** Mr. Panigrahi, learned Additional Standing Counsel appearing for the State-Opposite Parties submitted that in view of the orders passed by the learned Tribunal in O.A. No.3931(C) of 2013 and batch and O.A. No.4308(C) of 2014 and batch, the select list was published with publication of the 2<sup>nd</sup> select list on 7.11.2014 and 3<sup>rd</sup> select list on 8.4.2016. It is submitted that the Petitioners in the 2016 and 2017 batch of writ petitions since were not found eligible and placed in the 3<sup>rd</sup> select list published on 8.4.2016, they have been issued with the notice on 3.6.2016 proposing their retrenchment.

**23.** It is accordingly submitted that since the entire action has been taken by the State Authorities while complying the order passed by the learned Tribunal and the Petitioners since were found ineligible while proposing and publishing the 3<sup>rd</sup> select list on 8.4.2016, they have been rightly issued with the impugned notice on 3.6.2016. It is also submitted that pursuant to the 3<sup>rd</sup> select list published on 8.4.2016, out of the advertised 437

posts, the Government has filled up 406 Nos. of vacancies and 31 vacancies in S.T. Category could not be filled up due to unavailability of required number of S.T. candidates.

**24.** It is also submitted that by virtue of the interim order passed by the learned Tribunal, all the Petitioners in the writ petitions filed in the year 2016 and 2017 are continuing as on date and because of such continuance, as against 437 advertised vacancies, 462 persons are continuing as Assistant Drivers. It is also submitted that since while publishing the 3<sup>rd</sup> select list, the Petitioners in the writ petitions filed in the year 2016 and 2017, did not come within the cut-off mark so fixed by the selection committee, no illegality has been committed in issuing the impugned notice dated 3.6.2016.

**25.** Mr. Panigrahi, learned Additional Standing Counsel appearing for the State-Opposite Parties submitted that the writ petitions filed in the year 2016 and 2017 since have been filed against the show cause issued on 3.6.2016, the Petitioners are at liberty to submit their reply and after due consideration of such reply, appropriate action will be taken against them. Hence, it is submitted that the prayer made in the 2016 and

2017 batch of writ petitions are pre-mature and no interference of this Court is called for.

**26.** Mr. Biswabihari Mohanty, learned counsel appearing for the Petitioners in the writ petitions filed in the year 2014 and 2015 as well as appearing for the Interveners in some of the writ petitions filed in the year 2016, on the other hand, submitted that since 437 posts were originally advertised and as against those 437 posts, 462 candidates are continuing, the said continuance of the Petitioners of the 2016 and 2017 batch of writ petitions is illegal as vacancies over and above the advertised vacancies can never be filled up. It is also submitted that the 3<sup>rd</sup> select list published on 8.4.2016 has been published not only basing on the order passed by the learned Tribunal on 20.8.2015 in O.A. No.4308(C) of 2014 and batch, but also by following the decision of Hon'ble the Apex Court in the cases of ***Jitender Kumar Singh and Anr. -v.- State of U.P. and Ors., reported in AIR 2010 SC 1851*** and ***R.K. Sabharwal and others -v.- State of Punjab and others, reported in AIR 1995 SC 1371.***

**27.** Mr. Mohanty accordingly submitted that since the 3<sup>rd</sup> select list published on 4.8.2016 has been published by following the decisions of the Hon'ble Apex Court in the cases of *Jitender Kumar Singh* (supra) and *R.K. Sabharwal* (supra), the prayer made in the writ petitions filed in the year 2016 and 2017 is not to be interfered with by this Court. It is also submitted that some of the Petitioners in the writ petitions filed in the year 2016 and 2017 since have not secured the required cut-off mark in their respective categories, they are not eligible for their continuance.

**28.** Heard the learned counsel for the parties. Perused the materials available on record. This Court, after going through the same, finds that pursuant to the advertisement issued on 27.6.2013, the 1<sup>st</sup> select list was published on 28.8.2013 by selecting 397 candidates and all the Petitioners in the writ petitions filed in the year 2016 and 2017 were provided with the appointment basing on their position in the said select list. This Court further finds that 2<sup>nd</sup> select list published on 7.11.2014 basing on the order passed by the learned Tribunal on 7.5.2014 in O.A. No.3931(C) of 2013 and batch and the 3<sup>rd</sup>

select list published on 8.4.2016 basing on the order passed by the learned Tribunal on 20.8.2015 in O.A. No.4308(C) of 2014 and batch, none of the selected candidates were impleaded as party to the proceeding.

**29.** Therefore, in view of the decision of the Hon'ble Apex Court in the case of *Ranjan Kumar*, as cited supra, the said order passed by the learned Tribunal and consequential action taken thereof is illegal and not binding on the Petitioners in the writ petitions filed in the year 2016 and 2017. Learned Tribunal in absence of the impletion of the selected candidates as party to the Original Applications should not have granted the relief vide its order dated 7.5.2014 as well as 20.8.2015. Since the Petitioners in the 2016 and 2017 batch of writ petitions were not party to the proceeding in both the batch of Original Applications, the order passed by the learned Tribunal on 7.5.2014 and 20.8.2015 is not binding on the Petitioners in the writ petitions filed in the year 2016 and 2017.

**30.** It is also the view of this Court that since the Petitioners in the writ petitions filed in the year 2016 and 2017 were provided with the appointment in the year 2013 basing on the 1<sup>st</sup> select

list published by the Department on 28.8.2013, in view of the decision of the Hon'ble Apex Court rendered in the case of *J.S. Yadav* (supra), no fault can be found with them. It is also the view of this Court that in view of the appointment and continuance of the Petitioners of the writ petitions filed in the year 2016 and 2017 without having any fault on their part, applying the principle of doctrine of promissory estoppel and the decision of this Court in the case of *Bikas Mahalik* (supra), the Petitioners are not liable for their retrenchment basing on the impugned notice issued on 3.6.2016.

**31.** Lastly, this Court relying on the decision of the Hon'ble Apex Court in the case of *Vikas Pratap Singh* (supra) and of this Court in the case of *Bikash Mahalik* (supra), also is of the view that since the Petitioners are continuing for the last 9 years, on being duly appointed by the Department, the Petitioners be allowed to continue as against the posts and if no post is available, then the State-Opposite Parties may adjust all those Petitioners as against the vacancies which might have arisen after publication of the 3<sup>rd</sup> select list on 8.4.2016 or as against future vacancies.

**32.** It is, however, the view of this Court that the prayer made by the Petitioners in the writ petitions filed in the year 2014 and 2015 have become infructuous due to publication of the 2<sup>nd</sup> select list on 7.11.2014 and 3<sup>rd</sup> select list on 8.4.2016. Not only that the decisions relied on by Mr. Mohanty, learned counsel appearing for some of the Interveners in the writ petitions filed in the year 2016, is not applicable to the facts of the said batch of cases, in view of the subsequent decision of the Hon'ble Apex Court in the cases of *Gaurav Pradhan* and *Niravkumar Dilip Bhai Makwana*, as cited *supra*. This Court is unable to accept the submission of Mr. Mohanty that since the select list published on 8.4.2016 is based on the decision rendered by the Hon'ble Apex Court in the cases of *Jitender Kumar Singh* (*supra*) and *R.K. Sabharwal* (*supra*), the action taken by the Department issuing the impugned notice on 3.6.2016 is legal and justified.

**33.** In view of the discussions made hereinabove and placing reliance on the decision of the Hon'ble Apex Court as well as of this Court, as cited *supra*, in the batch of writ petitions by the learned Senior Counsel appearing for the Petitioners, this Court is inclined to interfere with the notice issued on 3.6.2016 and

while interfering with the same, this Court is inclined to quash the said notice. The Petitioners in all the writ petitions filed in the year 2016 and 2017 be allowed to continue as against available vacancies which may have arisen after the appointment of the candidates basing on the 3<sup>rd</sup> select list published on 8.4.2016 or against supernumerary posts with the clause for their absorption as against future vacancies. The prayer made in the writ petitions filed in the year 2014 and 2015 having become infructuous, all those writ petitions are dismissed accordingly.

**34.** With the aforesaid observations and directions, all the writ petitions are disposed of. There shall be no order as to cost.

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

Orissa High Court, Cuttack  
The 16<sup>th</sup> of November, 2022/Subrat (Sr. Steno).