

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OA) No.2342 of 2015

Prasant Kumar Rout

....

Petitioner

*Ms. A. Mishra along with
Mr. R.K. Bisoi, Advocate*

-versus-

State of Odisha

....

Opp.parties

Mr. Tapas Ku. Praharaj, Standing Counsel

**CORAM:
JUSTICE M.S.SAHOO**

**ORDER
28.03.2023**

Order No.

Hybrid Mode

2. 1. When the matter was last taken up on 30.06.2022 after hearing the learned counsel for the petitioner as well as the learned counsel for the State and considering the matter in some detail, the following order was passed :

“2. The writ petition has been registered before this Court on 26th August, 2021, after the original application was transferred from the learned Odisha Administrative Tribunal, Principal Bench, Bhubaneswar upon its abolition.

3. On perusal of the available order sheets of the learned Tribunal, it is indicated that notices were issued on 02.09.2015 and has noted the prayer made in the O.A. as quoted herein:-

“The applicant has filed this O.A. with a prayer to direct the Respondent No.1 to relax the educational qualification provided under Rule 7 (d)(ii) of OTES Rules, 1981 by deleting Automobile Engineering as a special paper by way of amendment of the said Rule and consider the case of the applicant along with others for the post of Motor Vehicle Inspector by quashing the Annexure-6 within a time stipulation.”

4. Though the learned Tribunal has marked the prayer for direction to the Legislature to amend the Rules which is not entertainable even by a

constitutional court, it had proceeded with the matter and directed the State Transport Commissioner to remain present on the next date.

5. It is held by the Hon'ble Supreme Court that the legislature cannot be directed by issuance of mandamus to amend a particular Rule, though the Court can determine the constitutional vires of a statute and strike it down to be ultra vires. In **State of U.P. vrs. Mahindra & Mahindra Ltd. : (2011) 13 SCC 77 (at para-10 of SCC)**, it has been held that ".....It is inappropriate for the Court to issue a mandate to legislate an Act and also to make a subordinate legislation in a particular manner,....." (Relied and affirmed in **State of U.P. vrs. Anil Kumar Sharma : (2015) 6 SCC 716**, (at page-720).

6. The matter was listed on several occasions and after 17.05.2018, the matter was not taken up/pursued. A counter has been filed on behalf of the opposite party no.1- State.

7. It is submitted by the learned ASC that individual difficulty of a person cannot be a ground to strike down a statute and therefore the writ petition should be dismissed.

8. List on 11th August, 2022, to grant another opportunity to the petitioner."

2. Today, when the matter is taken up the learned counsel for the petitioner at the outset prays for accommodation.

3. As prayed for to grant another opportunity to the petitioner, list on 10.05.2023.

(M.S.Sahoo)
Judge