IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.32117 of 2026
CNR No. ODHC010704682026

Bharati Mohanty …. **Petitioner**
Mr. S.K. Das, Advocate

-Versus-

State of Odisha and others …. **Opposite Parties**
Mr. Surya Kanta Parhi, ASC

CORAM:
MR. JUSTICE R.K. PATTANAIK

ORDER
27.10.2026

Order No.

01. 1. Heard Mr. Das, learned counsel for the petitioner and Mr. Parhi, learned ASC for the State.

2. Instant writ petition has been filed by the petitioner to direct opposite party No.2 to modify the order dated 4th March, 2023 as at Annexure-3 and to give effect to her appointment from 4th April, 2016 at par with batchmates and other juniors in the select list who received appointments and to grant consequential service and financial benefits including the regularization within a stipulated period as would be fixed by the Court.

3. Mr. Das, learned counsel submits that the petitioner approached this Court in WPC (OA) No.1405 of 2015 disposed of by order dated 22nd December, 2022 as at Annexure-2, consequent upon which, she was given the appointment order vide Annexure-3. The submission is that despite such an appointment, the petitioner is entitled to consequential benefits since she was erroneously excluded from the select list for

having secured less than 45% of marks in the written examination held and while claiming so, Mr. Das, learned counsel refers to the order as at Annexure-2. The demand is for notional benefits to be extended to the petitioner and according to Mr. Das, learned counsel, she has approached the Authority concerned with the representation dated 25th May, 2026 as at Annexure-6.

4. State's response is noted down.

5. In course of hearing, Mr. Das, learned counsel cites following decisions, such as, **Union of India and others Vrs. Pritilata Nanda (2010) 11 SCC 674**; **Sri Basant Kumar Sahoo Vrs. State of Odisha represented through its Principal Secretary in the School & Mass Education Department & others**; **State & others Vrs. Sailasuta Dei** (W.P.(C) No.9015 of 2014) and **State & others Vrs. Durga Prasad Sinha & others** (W.P.(C) No.5321 of 2014). It is contended that the petitioner is not a fault and therefore, she having secured more than the cut-off marks should have been included in the select list but for the error on the part of opposite party No.2, there has been a delayed appointment. To consider and appreciate the plea of the petitioner, it would be profitable to quote the relevant observations of the Apex Court in **Pritilata Nanda** (supra) and hence, are reproduced below.

> "21. We also agree with the High Court that once the candidature of the respondent was accepted by the authorities concerned and she was allowed to participate in the process of selection i.e. the

written test and viva voce, it was not open to them to turn around and question her entitlement to be considered for appointment as per her placement in the merit list on the specious ground that her name had not been sponsored by the employment exchange. In our considered view, by denying appointment to the respondent despite her selection and placement in the merit list, the appellants violated her right to equality in the matter of employment guaranteed under Article 16 of the Constitution.

22. However, there is a small aberration in the operative part of the impugned order. While the High Court was fully justified in directing the appellants to appoint the respondent from the date persons lower in merit were appointed, but it is not possible to confirm the direction given for payment of full salary with retrospective effect. In our view, the High Court should have directed the appellants to notionally fix the pay of the respondent with effect from the date the person placed at Sl. No. 12 in the merit list was appointed and give her all monetary benefits with effect from that date.

23. In the result, the appeal is dismissed. However, the operative part of the impugned order is modified in the following terms:

(1) The competent authority concerned of the South-Eastern Railway shall, within a period of two weeks from today, issue order appointing the respondent on a Class III post. The appointment of the respondent shall be made effective from the date the person placed at Sl. No. 12 in the merit list was appointed. The pay of the respondent shall be notionally fixed with effect from that date

and she shall be given actual monetary benefits with effect from 5-9-2008 i.e. the date specified in the order passed by the High Court.

(2) The pay of the respondent shall also be fixed in the revised pay scales introduced from time to time and she be paid arrears within a period of four months.

(3) The seniority of the respondent among Class III employees shall be fixed by placing her below the person who was placed at Sl. No. 10 in the merit list.

(4) If during the intervening period, any person junior to the respondent has been promoted on the next higher post, then her candidature shall also be considered for promotion and on being found suitable, she shall be promoted with effect from the date any of her junior was promoted and she be given all consequential benefits.

(5) The General Manager, South-Eastern Railway is directed to ensure that the respondent is not victimised by being posted in a remote area.

(6) Since the respondent has been deprived of her rights for almost 21 years, we direct the appellants to pay her costs of ₹3,00,000. The amount of costs shall be paid within two months from today."

6. A Co-ordinate Bench of this Court in **Sri Basant Kumar Sahoo** (supra) held as under.

"21. We also agree with the High Court that once the candidature of the respondent was accepted by the concerned authorities and she was allowed to participate in the process of selection i.e., written test and viva voce, it was not open to them to turn around and question her entitlement to be

considered for appointment as per her placement in the merit list on the specious ground that her name had not been sponsored by the employment exchange. In our considered view, by denying appointment to the respondent despite her selection and placement in the merit list, the appellants violated her right to equality in the matter of employment guaranteed under Article 16 of the Constitution.

22. However, there is a small aberration in the operative part of the impugned order. While the High Court was fully justified in directing the appellants to appoint the respondent from the date persons lower in merit were appointed, but it is not possible to confirm the direction given for payment of full salary with retrospective effect. In our view, the High Court should have directed the appellants to notionally fix the pay of the respondent with effect from the date person placed at Sl. No.12 at the merit list was appointed and give her all monetary benefits with effect from that date.

In the above circumstances, this petition is allowed in part; a Writ of Certiorari issues quashing the impugned order dated 22.07.2020 issued by the Collector-Cum-C.E.O., Zilla Parishad, Cuttack-opposite party no.3 at Annexure-9; a Writ of Mandamus issues to the said opposite party to grant the benefit of notional service to the petitioner sans any monetary or seniority benefits, so that he shall be deemed to have been regularized in service with effect from the date, i.e., 16.12.2012, when his immediate

junior figuring in the select list got such regularization. It is again made clear that the petitioner shall not be entitled to claim the seniority against anyone nor any monetary benefits on the basis of this order."

7. In **Sailasuta Dei** (supra), it has been held and observed by a Division Bench of this Court as to the following.

> "xxx In the case of **Union of India v. Pritilata Nanda, reported in (2010) 11 SCC 674** held thus: In our considered view, by denying appointment to the respondent despite her selection and placement in the merit list, the appellants violated her right to equality in the matter of employment guaranteed under Article 16 of the Constitution. The Pay of the respondent shall also be fixed in the revised pay scales introduced from time to time and the seniority of the respondent shall be fixed as per the merit list. If during the intervening period, any person junior to the respondent has been promoted on the next higher post, then her candidature shall also be considered for promotion and on being found suitable, she shall be promoted with effect from the date any of her junior was promoted and she be given all consequential benefits."

8. In **Durga Prasad Sinha** (supra) relied on and referred to by Mr. Das, learned counsel, similar conclusions have been reached at by this Court, hence, needs no repetition. The submission is that the petitioner is at least entitled to notional benefits like others appointed earlier. This Court finds force in submission of Mr. Das, learned counsel since the petitioner despite having secured more than 45% of marks was excluded

in the select list and hence, had to approach this Court in WPC (OA) No.1405 of 2015 and followed by an appointment order i.e. Annexure-3. In view of the above and on account of the claim for notional benefits to be extended to the petitioner, having regard to the decision in **Pritilata Nanda** (supra) and other decisions discussed hereinabove, this Court, with the State's response noted down, is of the considered view that the petitioner should be given such benefits notionally and accordingly, it is ordered.

9. In the result, the writ petition stands disposed of with the direction as aforesaid. It is further directed that opposite party No.2 shall ensure extension of all such service and consequential benefits notionally in favour of the petitioner with effect from 4th April, 2016 followed by an order at the earliest preferably within a period of six weeks from the date of receipt of a copy of this order.

10. Issue urgent certified copy of this order as per rules.

(R.K. Pattanaik)
Judge

T.Tudu

Signature Not Verified
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Signed by: THAKURDAS TUDU
Reason: Authentication
Location: OHC,CTC
Date: 29-Oct-2026 13:07:22