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**IN THE HIGH COURT OF ORISSA, CUTTACK**

**WP(C) No.21215 of 2019**

**Anushrav Gantayat** ..... **Petitioner**

**-Versus-**

**State of Odisha and others** ..... **Opposite Parties**

For Petitioner - Mr. P.K. Sinha, Advocate  
Mr. A.K. Chhatoi, Advocate

For Opposite Parties - Mr. S.K. Samal & Mr. S.N. Pattnaik,  
Addl. Government Advocates  
(O.P. Nos. 1 to 6)

Mr. P.K. Mohanty, Senior Advocate

Mr. Pronoy Mohanty, Advocate

Mr. P.K. Pasayat, Advocate

(O.P. No.7-OPSC)

Mr. P.C. Mahapatra, Advocate

सत्यमेव जयते (O.P. No.9)

**CORAM: JUSTICE SANJAY KUMAR MISHRA**

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**Date of Hearing: 25.07.2023 and Date of Judgment: 19.12.2023**

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***S.K. Mishra, J.***

Being aggrieved by the Order dated 19.12.2018 (Annexure-8) so also the decision of Odisha Public Service Commission communicated vide letter dated 02.04.2019 (Annexure-15), the Petitioner has preferred the present Writ Petition. A prayer has been made to set aside the said

communications and direct the Opposite Parties to include the name of the Petitioner in the merit list in appropriate place and give him appointment as an unreserved candidate in the post of Odisha Administrative Service, Group-A (JB).

2. The factual matrix of the case, in hand, is that an Advertisement No.11 of 2017-18 was published by the OPSC to submit application through online for the post of Odisha Civil Services (OCS) Examination, 2017. Having all the criterion, the Petitioner submitted his application, which was duly accepted by the OPSC. In the said advertisement, OPSC invited applications to fill up 106 nos. of posts, out of which 36 were meant for OAS and 24 for OFS.

It is further case of the Petitioner that he has acquired B. Tech degree in Mining Engineering from NIT, Rourkela and has secured 1<sup>st</sup> Division with higher percentage of mark in all examinations despite physical disabilities. Petitioner got disability certificate from the Competent Authority declaring him 40% disable and he belongs to unreserved community. Because of his physical disability, as per the provisions of the Rights of Persons with Disabilities Act, 2016, shortly, the Act, 2016, the Petitioner applied for OCS examination as a candidate belonging to Person with Disability (PwD) category.

It is further case of the Petitioner that as his application and other required documents were in order, OPSC called him to appear in preliminary examination along with others, which was scheduled to be held on 18.02.2018. Since his performance was satisfactory, the Petitioner was declared provisionally qualified along with 1295 candidates for OCS (main) Examination. In this regard, OPSC published the preliminary examination result vide notice bearing No.301667.

It has been further pleaded that the Petitioner, after successfully passed the preliminary examination, was called upon by the OPSC to appear in written/main examination, which was held in between 25.06.2018 to 16.07.2018. The result of the examination was declared vide notice No.8435 dated 14.11.2018 of OPSC, in which 212 nos. of candidates, including the Petitioner, were declared provisionally qualified. Thereafter, it was intimated to the successful candidates, including the Petitioner, that the verification of documents will be done from 01.12.2018 onwards. The Petitioner appeared in the office of the OPSC on 01.12.2018 and officials verified his documents. Then, he was directed to appear in the personality test, which was held on 03.12.2018.

It is further case of the Petitioner that though he had done very well in the personality test, but to his utter surprise, the OPSC rejected the candidature of the Petitioner on the ground that he has 40% permanent

disability. On the other hand, the OPSC provisionally selected 106 candidates ignoring the Petitioner, which was published in the notice dated 19.12.2018.

It is the case of the Petitioner that though he has secured more marks than his counterparts, his name could not find place in the provisional select list of 106 candidates on the ground that his candidature was rejected vide Order dated 19.12.2018. It is crystal clear from the document of OPSC that the Petitioner had secured more marks than many other selected candidates. It is alleged that though marks in OCS (main) examination and personality test were published, the Roll Number of the Petitioner was missing. It has been further averred that from the result sheet, as at Annexure - 9 and 10, it is crystal clear that the Petitioner secured much more marks than many other candidates and his name/roll number should have been placed in between serial nos. 17 & 18 of the merit list.

It is further case of the Petitioner that he has secured much more marks than the last candidate selected under unreserved male as well as Physically Handicapped (Visually Impaired) category. Being shocked with Notice No.10121 dated 19.12.2018, the Petitioner submitted representations to different quarters, such as Governor of Odisha, Chief Minister, Principal Secretary, Social Security and Empowerment of

Persons with Disabilities (SSEPD) Department and the Special Secretary to Government, General Administration and Public Grievance Department (GA & PG) etc. Responding to his genuine grievance, the Principal Secretary, SSEPD Department, made communications with GA & PG Department and OPSC. The GA & PG Department also requested OPSC to do the needful to give justice to the Petitioner keeping in view the statutory Provision under the Act, 2016.

When the Petitioner did not receive any response from OPSC, he approached the Administrative Tribunal by filing O.A. No.422(c) of 2019, which was disposed of directing OPSC to take a decision on the letter of Government keeping in view the provisions under the Act, 2016 and pass a reasoned order taking into consideration the averments made in the O.A. within a period of one month. Without applying mind and provisions of law, the OPSC rejected the grievance of the Petitioner, who secured better marks in comparison to more than 88 candidates of the provisional select list. In the order of rejection, OPSC relied upon Para 2(2) of the Resolution of SSEPD Department bearing No.7140 dated 05.09.2017 and ignored Paras 5, 8 & 12 of the Resolution and Section 2(r) of Act, 2016 so also Corrigendum to said Resolution published in Odisha Gazette on 17.07.2018. OPSC rejected the candidature of the Petitioner as the Petitioner has only 40% disability. It is also stated that the grounds taken in

the impugned Order of rejection dated 02.04.2019 (Annexure-15) is contrary to the provisions of Act, 2016.

The Petitioner has not availed relaxation with respect to upper age limit, standard of selection, extra chances in recruitment test etc. As he has scored more marks, he is to be considered against unreserved vacancies first on merit and then against reserved vacancies meant for his category. Among the PWD candidates of his category, the Petitioner secured highest mark and among others, his name should have been placed between serial Nos. 17 and 18 of the select list as per law. Being aware about violation of the provisions of the Act, 2016, both SSEPD Department and GA & PG Department requested OPSC to do the needful to give justice to the Petitioner vide their letters dated 11.02.2019 and 25.02.2019. Thus, it has been stated that in order to uphold the rule of law, the impugned order of rejection deserves to be quashed directing the Opposite Parties to give appointment to the Petitioner in the Post of OAS, Group-A (JB). As the Petitioner has done fairly well in all the examinations, his case for appointment is to be considered against unreserved vacancies on merit as per his preferential options following Paragraphs 5, 8 & 12 of the Resolution dated 05.09.2017 (Annexure-16).

The Petitioner, in his application form, has preferred to be appointed in OAS as first option and OFS was his second choice. Without

availing reservation the Petitioner could have been appointed as UR candidate on the basis of his merit. Though the Petitioner has no personal grievance against Abhisek Dash, Tushar Jyoti Ranjan, Bibhuti Bhusan Nayak, Nilayam Sarangi & Sanoth Kumar Barik, he has impleaded them as Opposite Party Nos. 8 to 12 respectively in the Writ Petition as the Petitioner has secured more marks than them and others.

After publication of provisional select list (Annexure-8) and during pendency of the O.A. before Tribunal, orders of appointment were issued in which good number of candidates securing lesser marks than the Petitioner have been appointed. In such backdrop, the Petitioner has filed the present Writ Petition.

3. Being noticed, the OPSC (Opposite Party No.7) has filed its Counter Affidavit, *inter alia*, stating that basing on the requisition received from the Government in G.A. & P.G. Department and as per provisions of relevant recruitment Rules & Resolution, Advertisement No.11 of 2017-18 for Odisha Civil Services Examination, 2017 was issued by the Commission. The Petitioner applied for Odisha Civil Services Examination, 2017 as a PwD candidate. It has further been stated that the Petitioner furnished a disability certificate, where from it is revealed that he has only 40% disability. Para 2(2) of the SSEPD Department Resolution No.7140/SSEPD, dated 05.09.2017 stipulated that persons with more than

40% of any disability as certified by a Competent Certifying Authority appointed under Section 57(1) of the Rights of Persons with Disabilities Act, 2016, irrespective of nature of disability, shall be eligible for reservation. Accordingly, the OCS Advertisement No.11 of 2017-18 had been prepared in strict compliance of the aforesaid SSEPD Department Resolution, incorporating the said provision at Paragraphs-3 & 10 (h) of the Advertisement. As the Petitioner had furnished the certificate of having only 40% disability and the same was not in consonance with the enforced SSEPD Resolution dated 05.09.2017 and the Advertisement No.11 of 2017-18, the candidature of the Petitioner was rejected by the OPSC.

4. Being noticed, the private Opposite Party No.9 has also filed a Counter Affidavit, *inter alia*, taking the same stand, as has been taken by the Opposite Party No.7. That apart, it has been averred that the candidature of a candidate shall be rejected at any stage of recruitment process, when discrepancy is noticed/detected. In that way, the candidature of the Petitioner was rightly rejected before the publication of the result. Hence, claim for his fitment in the merit list (Annexure-8), on the basis of marks secured, does not arise at all. It has further been stated that since the Petitioner has not deposited the fees to be paid by UR category of candidates, he cannot claim to be a candidate for UR category. To counter the averments made under Paragraph No.18 of the Writ Petition, it has been



stated that since the Petitioner's candidature was rejected as a PwD candidate, he cannot claim to be considered for any other category, more specifically as a general category candidate. On the ground of non-deposit of examination fees, the candidatures of more than 3000 candidates for the year 2017 have been rejected by the OPSC vide Notice dated 03.02.2018 and on this ground alone, the Writ Petition deserved to be dismissed. It has further been averred that the Petitioner has admitted that he had filed O.A. No.422(c)/2019 and the order passed by the Tribunal has been complied with by the OPSC. Hence, the order of rejection made by the Opposite Party No.7 is not a new cause of action to be challenged in form of present Writ petition. A further stand has been taken in the Counter, if the Petitioner's claim is entertained to any extent, it will certainly affect the interest of all private Opposite Parties because, the number of posts are limited and any addition to the list is only possible through displacement by some other person.

5. The State-Opposite Party No.3-Principal Secretary, Government of Odisha, Social Security and Empowerment of Persons with Disabilities Department, has also filed an Affidavit, *inter alia*, stating therein that the OPSC has accepted the application of the Petitioner and allowed him to appear in the OCS Examination, which leads to the fact that the Petitioner

was found eligible for his 40% disability and his name is to be placed in the merit list of UR category.

6. In response to the Affidavit and Counter Affidavit filed by the Opposite Party Nos. 3, 4, 7 and 9, a Rejoinder Affidavit has been filed by the Petitioner stating therein that the said Opposite Parties have admitted that the Petitioner has secured 1365 marks, whereas last selected candidate under UR category scored 1302 marks and selected PwD (VI) candidate scored 1065 marks. The grievance of the Petitioner has been admitted in the Counter reply of SSEPD Department, whereas OPSC has taken the ground that on the basis of Resolution of SSEPD Department, the candidature of the Petitioner has been rejected after personality test, despite admitting in the Counter Affidavit and Affidavit of Opposite Party No.3 that Para 2 (2) of the said Resolution was contrary to Section 2(r) of the Act, 2016 and the State Government issued appropriate corrigendum on such Resolution to rectify the said error. Apart from the same, it has been specifically pleaded that the OPSC committed grave error in not considering the candidature of the Petitioner either against PH quota or against UR category, despite specific advice from the SSEPD Department so also G.A. & P.G. Department. The Chief Secretary, Government of Odisha, in response to the grievance petition of the Petitioner, vide letter dated 11.03.2020 (Annexure-24), intimated the Petitioner that the OPSC

has been requested to reconsider its earlier decision and include the Petitioner in the select list in UR category.

7. It is seen from the record that notices were duly served on private Opposite Party Nos. 8 to 12. Since one of the private Opposite Parties has already appeared in the present case and is contesting the case opposing the prayer made in the Writ Petition and despite service of notice, the private Opposite Party Nos. 8 to 12, except Opposite Party No.9, did not appear, on consent of the learned Counsel for the Parties, the matter was taken for final disposal. It may not be out of place to mention here that the Apex Court in **Ajay Kumar Shukla and others v. Arvind Rai and others**, reported in (2022) 12 SCC 579, vide Paragraph-47, held as follows:

“47. The present case is a case of preparation of seniority list and that too in a situation where the appellants (original writ petitioners) did not even know the marks obtained by them or their proficiency in the examination conducted by the Commission. The challenge was on the ground that the Rules on the preparation of seniority list had not been followed. There were 18 private respondents arrayed to the writ petition. The original petitioners could not have known who all would be affected. They had thus broadly impleaded 18 of such Junior Engineers who could be adversely affected. **In matters relating to service jurisprudence, time and again it has been held that it is not essential to implead each and every one who could be affected but if a section of such affected employees is impleaded then the interest of all is represented and protected. In view of the above, it is well settled that impleadment of a few of the affected employees would be sufficient compliance of the principle of joinder of parties and they could defend the interest of all affected persons in their representative capacity. Non-joining of all the parties cannot be held to be fatal.**”

**(Emphasis supplied)**

8. Learned Counsel for the Petitioner submitted that the State, as an ideal employer, holds recruitment examination through recruiting Agencies to select the best from among the rest. But, in the instant case, by rejecting the candidature of the Petitioner after he successfully cleared all the examinations, the recruiting Agency tried its best to select the less meritorious candidates as per their documentary admission. It is further submitted that while submitting application before OPSC, the Petitioner has not suppressed any material fact and approached the Agency with clean hands. After scrutiny of such documents, his application was allowed and the Petitioner was given chance to appear in preliminary examination. The candidature of the Petitioner was rejected on the sole ground that he is suffering from 40% permanent disability though allegedly it should have been more than 40%. The Petitioner has not availed age relaxation in the examination meant for PwD candidates.

It was further submitted that the law is well settled that if any person belonging to reserved category is selected on the basis of merit in open competition along with general category candidates, then he would be considered as unreserved candidate and he shall not be adjusted against reserved vacancies. In case he secures less marks, then only his merit is to be weighed along with other candidates of such reserved category.

Learned Counsel for the Petitioner further submitted that Section 2(r) of RPwD Act, 2016 defines bench mark disability of a person. It means a person with not less than 40% of a specified disability. When the certifying Authority certified the Petitioner as 40% disabled, rejection of his candidature is contrary to the RPwD Act, 2016. After rejection of candidature of the Petitioner, OPSC selected several candidates having 40% disability as has been detailed in the Writ Petition. Rejection of candidature of the Petitioner on the ground that he has 40% disability, is illegal and discriminatory, being contrary to the provisions of Article 14 & 16 of the Constitution of India as well as the Section 2(r) of the Act, 2016.

It was further submitted, law is well settled that resolution/notification/administrative instructions cannot supersede the provisions of statutory Act and Rules. Para 2(2) of the Resolution dated 05.09.2017, at Annexure-16, is non est in the eye of law, as it is contrary to the Act, 2016. Any action taken on the basis of said provision of Resolution dated 05.09.2017 is also illegal. Being aware of such illegality, State Government issued corrigendum dated 16.07.2018, in which defect in Resolution dated 05.09.2017 was rectified. Unfortunately, without following constitutional as well as legal provisions, the OPSC is harping upon Para 2(2) of the Resolution even after it is corrected. When the Act, 2016 is very clear to give benefits to persons having not less than 40%

disability, such legal right cannot be taken away by any Resolution. Thus, Para-2(2) of the Resolution at Annexure-16, being contrary to the Act, 2016, is to be treated as void in the eye of law.

Mr. Sinha, learned Counsel for the Petitioner, further submitted that among the PwD candidates of his category, the Petitioner secured highest mark and among others, his name should have been placed in between serial Nos. 17 and 18 of select list as per law. Being aware about violation of the provisions of the Act, 2016, both SSEPD Department and GA & PG Department requested OPSC to do the needful to give justice to the Petitioner vide their letters dated 11.02.2019 and 25.02.2019. Thus, in order to uphold the rule of law, the impugned order of rejection deserves to be quashed directing the Opposite Parties to give appointment to the Petitioner in the post of OAS, Group-A (JB). As the Petitioner has done fairly well in all the examinations, his case for appointment is to be considered against unreserved vacancies on merit as per his preferential options following Paragraphs 5, 8 & 12 of the Resolution dated 05.09.2017. Since the Petitioner, in his application form, has preferred to be appointed in OAS as first option and OFS is his second choice, without availing reservation, he could have been appointed as UR candidate on the basis of his merit.

Learned Counsel for the Petitioner further submitted that after publication of provisional select list as at Annexure-8 and during pendency of the O.A. before Tribunal, order of appointments were issued in which good number of candidates, securing lesser marks than the Petitioner, have been appointed.

To substantiate the stand of the Petitioner, Mr. Sinha, learned Counsel for the Petitioner relied upon the judgments of the Apex Court in **Indra Sawheny vs. Union of India**, reported in 1992 SCC ( L & S) Supp-1, **State of Odisha vs. Janamohan Das and others**, reported in AIR 1993 Orissa 180, **Maharashtra State Mining Corporation vs. Sunil**, reported in 2006 SCC (L & S) 926, **Sekhar Ghosh vs. Union of India**, reported in (2007) 1 SCC (L & S) 247, **Union of India and others vs. Miss Pritilata Nanda**, reported in 2010 (II) OLR (SC) 636, **ESI Corporation vs. Mangalam Publications India Private Limited**, reported in (2018) 2 SCC (L & S) 241, **Raminder Singh vs. State of Punjab**, reported in (2018) 1 SCC (L & S) 523, **Gaurav Pradhan vs. State of Rajasthan**, reported in (2018) 2 SCC (L & S) 102, **Brigadier Nalin Kumar Bhatia vs. Union of India**, reported in (2020) 1 SCC (L & S) 728, **Dr. (Major) Meeta Sahai vs. State of Bihar**, reported in (2021) 1 SCC (L & S) 704, , **Saurva Yadav vs. State of U.P.**, reported in (2021) 1 SCC (L & S) 752, **Gambhirdan K. Gadhvi v. State of Gujarat**, reported in (2022) 5 SCC 179 and the

judgment of this Court in **Prasanta Kumar Nayak vs. State of Odisha and others**, reported in 2021 (Supp.) OLR 951.

9. Mr. Samal, learned Counsel for the State-Opposite Party No.3, reiterated the stand taken in the Affidavit filed by the State, which supports the stand of the Petitioner.

10. Mr. Mohanty, learned Senior Counsel for the Opposite Party No.7 (OPSC), reiterating the stand in the Counter Affidavit, submitted that the role of OPSC is limited. It has to act basing on the requisition received from the Government and as per the provisions of relevant recruitment Rules and Regulations. Accordingly, it issued the Advertisement No.11 of 2017-18 for OCS Examination, 2017. The Petitioner applied for the said examination as a PwD candidate. He further submitted that Para 2(2) of the SSEPD Department Resolution dated 05.09.2017 stipulates that person with more than 40% of disability, as certified by the Competent Certifying Authority appointed under Section 57(1) of the Act, 2016. As the Petitioner is having only 40% disability, his candidature was rightly rejected by the Commission. Being directed by the Administrative Tribunal in O.A. No.422(C) of 2019, the Commission had considered the matter and intimated its decision to the Petitioner vide communication dated 02.04.2019 (Annexure-15), which is under challenge in the present Writ Petition. There is no infirmity in the impugned order deserving



interference. Rather, the Writ Petition deserves to be dismissed in *limine* as the OPSC has acted strictly in terms of requisition of the Government in G.A. and P.G. Department.

11. Mr. Mahapatra, learned Counsel for the private Opposite Party No.9, submitted that inclusion of the name of the Petitioner in the select list (Annexure-8) to the Odisha Civil Services Examination, 2017 shall alter the position of all the candidates from the point where the name of the Petitioner is proposed to be included in terms of the prayer made in the Writ Petition. As a result, person selected and served for a period more than three years in Group-A service, may be reverted back to Group-B service having substantial difference in his status of the service condition and the last man in the select list may be out of employment, who has not been made a party and without affording him any opportunity of being heard, the prayer of the Petitioner may not be entertained. He further submitted that the Advertisement No.11 of 2017-18 for recruitment of OCS Examination, 2017 was published by the OPSC (O.P. No.7) in consultation with the requisition made by the State Government. In terms of the said Advertisement, one post under PwD for blind has been reserved under horizontal reservation. In terms of Point No.5 (V) of the said Advertisement, only those candidates, who possess the requisite qualification and fulfilled other eligibility conditions, are to be considered

eligible. Similarly, in terms of Point No.9 (XIV), admission to examination will be provisional. If on verification, at any stage before or after the examination, it is found that a candidate does not fulfill all the eligibility conditions, his or her candidature is liable to be rejected. Hence, there is no infirmity or illegality committed by the OPSC Authority while rejecting the representation of the Petitioner.

Mr. Mahapatra, referring to Point No.10 (h) so also Point No.11 of the Advertisement, further submitted that in terms of the said points of the Advertisement and the noting below Point No.11, the application/candidature of a candidate can be rejected at any stage of recruitment process, when discrepancy is noticed/ detected. Even though the Petitioner was allowed to participate in the written examination followed by other process of selection, his candidature was rightly rejected by OPSC vide Notice dated 19.12.2018. He further submitted that even though by way of corrigendum the Government in the concerned Department, vide Odisha Gazette Notification dated 16.07.2018, clarified and corrected the error crept in the Resolution dated 5.09.2017 by substituting the same that the person with not less than 40% of any disability shall be eligible for reservation, as the Advertisement was made inviting online application on 14.12.2017, such corrigendum issued vide Notification dated 16.07.2018 will apply prospectively. The Petitioner

cannot rely on the said corrigendum issued by the Opposite Party No.3. He further submitted that ignoring the claims of the private Opposite Parties, the Petitioner cannot be included in the select list long after the select list has been acted upon and in the meantime, the private Opposite Parties have served for a period of more than three years.

Mr. Mahapatra, relying on the judgment of the Apex Court in **K. Meghachandra Singh & others vs. Ningam, Siro & 42 others**, reported in (2020) 5 SCC 689, submitted that unless a candidate joins in the cadre physically, he cannot incur any seniority in the inter position. His inter se seniority shall only be counted from the date he actually joins the post and not prior to that. In view of the settled position of law in **K. Meghachandra Singh** (supra), if the Petitioner is allowed to be included in the select list, he has to submit an unconditional undertaking in shape of an Affidavit that he shall be at the bottom of the select list and shall not claim any seniority over the selected candidates, who have joined since 21.06.2019.

Mr. Mahapatra further submitted that as per the settled position of law, once the norms were published in the advertisement for notice of all, the same cannot be changed at a later stage without notice to any of the candidates and general public and without issuing any corrigendum of the advertisement in question. Since no corrigendum was issued pursuant to

Advertisement No.11 of 2017-18 making inclusion therein in terms of the corrigendum issued by the State Government dated 16.07.2018, thereby, giving opportunity to similarly placed other candidates, that would amount to changing the norms without any notice to the citizens, giving them equal of opportunity in relation to employment.

Mr. Mahapatra, relying on the Resolution of the Government of Odisha, General Administration & Public Grievance Department dated 09.09.2021, which has been appended to Additional Written Notes of Submission filed by the Opposite Party No.9, drew attention of this Court as to the manner of fixation of inter-se-seniority and the principles regarding, which was resolved by the concerned Department relying on the judgment in **K. Meghachandra Singh** (supra) and submitted that if the prayer of the Petitioner to appoint him in the post of OAS, Group-A (JB) is allowed, his seniority has to be fixed in terms of the said Resolution of the Government dated 09.09.2021 and not as claimed by the Petitioner.

To substantiate his argument, Mr. Mahapatra further relied on the judgments of the Apex Court in **Durga Charan Mishra vs. State of Odisha and other**, reported in 1987 AIR SC 2267, **State of Odisha and another vs. Mamata Mohanty**, reported in (2011) 3 SCC 436 and judgment of this Court in **Miss Madhusmita Das & another vs. State of Odisha and others**, reported in 100 (205) CLT 465.

12. Apparently an error was crept in Para 2 (2) of the Resolution No.7140/SSEPD dated 05.09.2017, which was for implementation of the Act, 2016. Subsequently, the said Para being found to be contrary to the Act, 2016, it was rectified by issuing necessary Corrigendum to the said effect vide Corrigendum No.5334 dated 16.07.2018. The Petitioner became a victim of the said error made by the State Authority. From the discussions and admitted facts as detailed above, the following issues emerge for adjudication/decision.

(i) Whether the Petitioner, after knowing fully well about the eligibility criteria so also terms of Advertisement, and participating in the recruitment process can challenge the same at a subsequent stage on technical ground that one of such terms of Advertisement was contrary to the statute?

(ii) Whether any action taken by the Authority concerned, including the OPSC (O.P. No.7), based on the Resolution dated 05.09.2017, which was subsequently rectified vide corrigendum dated 16.07.2018, being contrary to the Statute i.e. Section 2(r) of the Rights of Persons with Disabilities Act, 2016, can be held to be legal and justified?

(iii) If not, what relief the Petitioner is entitled to?

13. Before delving with the issues, as detailed above, it would be apt to reproduce below relevant provisions under the Rights of Persons with Disabilities Act, 2016.

**“ 2 (r) “person with benchmark disability” means a person with not less than forty percent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;**

3. (1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

(2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

**(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.**

**(4) No person shall be deprived of his or her personal liberty only on the ground of disability.**

**(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.**

12. (1) The appropriate Government shall ensure that persons with disabilities are able to exercise the right to access any court, tribunal, authority, commission or any other body having judicial or quasi-judicial or investigative powers without discrimination on the basis of disability.

**20. (1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:**

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if any employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.

**33.** The appropriate Government shall—

(i) **identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;**

(ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

**34. (1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—**

**(a) blindness and low vision;**

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the

case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

**56. The Central Government shall notify guidelines for the purpose of assessing the extent of specified disability in a person.**

**57. (1)** The appropriate Government shall designate persons, having requisite qualifications and experience, as certifying authorities, who shall be competent to issue the certificate of disability.

(2) The appropriate Government shall also notify the jurisdiction within which and the terms and conditions subject to which, the certifying authority shall perform its certification functions.

**58. (1)** Any person with specified disability, may apply, in such manner as may be prescribed by the Central Government, to a certifying authority having jurisdiction, for issuing of a certificate of disability.

(2) On receipt of an application under sub-section (1), the certifying authority shall assess the disability of the concerned person in accordance with relevant guidelines notified under section 56, and shall, after such assessment, as the case may be,—

(a) issue a certificate of disability to such person, in such form as may be prescribed by the Central Government;

(b) inform him in writing that he has no specified disability.



(3) The certificate of disability issued under this section shall be valid across the country.

**89.** Any person who contravenes any of the provisions of this Act, or of any rule made thereunder shall for first **contravention be punishable with fine which may extend to ten thousand rupees and for any subsequent contravention with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.**”

**(Emphasis supplied)**

**14.** From the said provisions under the Act, 2016, it is amply clear that Section 2 (r) is in respect to person with benchmark disability of 40% and above, whereas Section 3 of the said Act speaks about equality and non-discrimination. Section 12 of the Act deals access to justice. Section 20 of the RPwD Act, 2016 has warned that no Government Establishment shall discriminate against any person with disability in any manner relating to employment. Sections 33 and 34 of the said Act deal with identification of posts for reservation whereas Sections 56, 57 and 58 speak about procedure for issue of disability certificate by the designation of certifying authority. Similarly, Section 89 of the Act, 2016 prescribes as to punishment for contravention of any of the provisions of the said Act.

**15.** **So far as Issue No.(i)**, after promulgation of the RPwD Act, 2016, which came into effect from 19.04.2017, the State Government issued a Resolution dated 05.09.2017, wherein an error was crept in vide Para 2 (2) of the said Resolution, which speaks that persons with more than 40% disability, as certified by the competent Certifying Authority appointed

under Section 57(1) of the Act, 2016, irrespective of nature of disability, shall be eligible for reservation. Admittedly the said clause in the Resolution dated 05.09.2017 was contrary to the provisions enshrined under Section 2(r) of the Act, 2016. Hence, the State Government issued corrigendum dated 16.07.2018 in which it is clearly mentioned that Sub-Para-2 of Para-2 of SSEPD Department Resolution dated 05.09.2017 shall be substituted as follows:

**“Persons with not less than 40% of any disability as certified by a competent Certifying Authority appointed under Section 57(1) of ‘Rights of Persons with Disabilities Act, 2016’ irrespective of nature of Disability, shall be eligible for reservation”.**

**(Emphasis supplied)**

16. Such a corrigendum was issued after about ten months to rectify the said error crept in the Resolution dated 05.09.2017, the same being contrary to the statute. The dictionary meaning of the word “**corrigendum**” is an error in a printed work discovered after printing and shown with its correction on a separate sheet. Law is well settled that “**ratification**” by definition means, to correct an error and such correction is to be accepted from the date and time the error was made. In **Maharashtra State Mining Corporation** (supra), the Apex Court, vide Paragraphs-7 and 8, held as follows.

“7. The High Court was right when it held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act cannot be subsequently 'rectified' by ratification of the competent authority. **Ratification**

by definition means the making valid of an act already done. The principle is derived from the Latin maxim *Ratihabitio mandato aequiparatur*, namely, a subsequent ratification of an act is equivalent to a prior authority to perform such act". Therefore ratification assumes an invalid act which is retrospectively validated.

8. In Parmeshwari Prasad Gupta, the services of the General Manager of a company had been terminated by the Chairman of the Board of Directors pursuant to a resolution taken by the Board at a meeting. It was not disputed that that meeting had been improperly held and consequently the resolution passed terminating the services of the General Manager was invalid. However, a subsequent meeting had been held by the Board of Directors affirming the earlier resolution. The subsequent meeting had been properly convened.

"Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance of the invalid resolution of the Board of Directors passed on 16-12-1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorized to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorized, was done on behalf of the Company. **Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on 17-12-1953.**"

The view expressed has been recently approved in High Court of Judicature for Rajasthan V. P.P. Singh (supra)."

**(Emphasis supplied)**

17. The RPwD Act, 2016 is a Central Act and any provisions of the said Act can only be interfered with by the judiciary, provided such a provision is unconstitutional. Further, Section 3 of the said Act, 2016 prescribes that the appropriate Government shall ensure that the person

with disabilities enjoys the right to equality, life with dignity and respect of his or her integrity equally with others. The appropriate Government shall take steps to utilize the capacity of persons with disabilities by providing appropriate environment. No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim. No person shall be deprived of his or her personal liability only on the ground of disability and the appropriate Government shall take necessary steps to ensure reasonable accommodation for person with disabilities.

As per Section 2(r) of the RPwD Act, 2016, “**person with benchmark disability**” means a person with not less than forty per cent of a specified disability, where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measured terms, as certified by the certifying Authority. Similarly, Sub-Section (s) of Section (2) of the said Act, 2016 defines “**person with disability**” means a person with long term physical, mental, intellectual or sensory impairment, in interaction with barriers, hinders his full and effective participation in society equally with others. Para 2 (2) of the Resolution dated 05.09.2017, being contrary to the provisions under Section 2(r) of the RPwD Act, 2016, the concerned Department of the State Government, realizing said error crept in the said

Resolution, issued Corrigendum on 16.07.2018 in consonance with the provisions enshrined under Section 2(r) of the Act, 2016.

**18.** The Apex Court in **Dr (Major) Meeta Sahai vs. State of Bihar and others**, reported in (2019) 20 SCC 17 held that candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. Paragraphs 15 to 17, 21 and 22 of the said judgment are extracted below:

“**15.** Furthermore, before beginning analysis of the legal issues involved, it is necessary to first address the preliminary issue. The maintainability of the very challenge by the appellant has been questioned on the ground that she having partaken in the selection process cannot later challenge it due to mere failure in selection. The counsel for the respondents relied upon a catena of decisions of this Court to substantiate his objection.

**16.** It is well settled that the principle of estoppels prevents a candidate from challenging the selection process after having failed in it as iterated by this Court in a plethora of judgments, including *Manish Kumar Shahi v. State of Bihar*, reported in 2008 SCC Online Pat 321 : (2008) 4 PLJR 93, observing as follows: (SCC p.584, para 16)

“**16.** We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the appellant is not entitled to challenge the criteria or process of selection. Surely, if the appellant’s name had appeared in the merit list, he would not have been dreamed of challenging the selection. The appellant invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the appellant clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.

The underlying objective of this principle is to prevent candidates from trying another shot at consideration, and to avoid an impasse wherein every

disgruntled candidate, having failed the selection, challenges it in the hope of getting a second chance.

17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.

21. It is the responsibility of the courts to interpret the test in a manner which eliminates any element of hardship, inconvenience, injustice, absurdity or anomaly. This principle of statutory construction has been approved by this Court in *Modern School v. Union of India*, reported in (2004) 5 SCC 583, by reiterating that a legislation must further its objectives and not create any confusion or friction in the system. If the ordinary meaning of the text of such law is non-conducive for the objects sought to be achieved, it must be interpreted accordingly to remedy such deficiency.

22. There is no doubt that executive actions like advertisements can neither expand nor restrict the scope or object of laws. It is therefore necessary to consider the interpretation of the phrase "government hospital" as appearing in the Rules. Two interpretations have been put forth before us which can be summarized as follows:

- (a) Only hospitals run by the Government of Bihar.
- (b) Hospitals run by the Bihar Government or its instrumentalities, as well as any other non-private hospital within the territory of Bihar.

The former interpretation to the term, as accorded to it by the respondents, forms a narrower class whereas the latter interpretation used by the appellant is broader and more inclusive."

**(Emphasis supplied)**

19. Relying on the said judgment of the Apex Court, this Court in

**Prasanta Kumar Nayak** (supra), vide Paragraph-27, held as follows:

“27. In the above judgment, their Lordships have differentiated the principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. **In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it.** The prescribed qualification is a prescribed procedure, which the petitioner accepted. There is no doubt about it. As Jammu University, from which the petitioner acquired the training qualification, is duly recognized by NCTE and affiliated to Utkal University, therefore, he approached the Odisha Administrative Tribunal.

(Emphasis supplied)

20. As to contention of the learned Counsel for the private Opposite Party No.9 for rejection of the prayer of the Petitioner on the ground of non-deposit of Examination Fees, the stand of the private Opposite Party is not sustainable in the eye of law, as the Petitioner was exempted from paying Examination Fees in view of Point No.3 of the Advertisement No.11 of 2017-2018, he being a handicapped person having 40% disability in terms of the Act, 2016.

Hence, this Court is of the view that even though the Petitioner acted in terms of the Advertisement knowing fully well about the eligibility criteria, has rightly approached this Court, the action so also

decision of the Authority concerned being contrary to the statute, Issue No.(i) is answered accordingly in favour of the Petitioner.

**21. So far as Issue No. (ii),** the OPSC (O.P. No.7), to substantiate its action to be legal and justified, has relied on the requisition sent to it by the concerned Department of the State Government. Such requisition was admittedly sent to OPSC based on the erroneous Resolution dated 05.09.2017 of the SSEPD Department, which was subsequently rectified by the Department on 16.07.2018, as the terms of the Resolution dated 05.09.2017 was contrary to Section 2(r) of the Act, 2016. Admittedly, the OPSC processed the application of the Petitioner in terms of the provisions prescribed under the Act, 2016. However, at final stage of selection, when the Petitioner was called for personality test, it came to the notice of the OPSC that the percentage of disability of the Petitioner to be 40% only instead of “more than 40%”, as prescribed in the erroneous requisition sent by the concerned Department. Hence, invoking the note under Clause-11 of the said Advertisement No.11 of 2017-18, the candidature of the Petitioner was rejected by the OPSC. Such a mistake being de hors the law, was rightly rectified by the concerned Department of the State Government (Opposite Party No.3).



22. The State-Opisite Party No.3, instead of filing Counter, has filed an Affidavit. Paragraph No. 3 of the said Affidavit, being relevant to answer Issue No.(ii), is extracted below for ready reference:

**“3. That, in reply to the averments made in Paragraphs 1-37 of the Writ Petition it is submitted that, OPSC has accepted the application of the petitioner and allow him to appear the Odisha Civil Services (OCS) Examination which leads to the fact that he was found eligible for his 40% of disability. Further, the provisions under law provide the following.**

- a) Section 2(r) of the Rights of Persons with Disabilities Act, 2016 provides that “person with benchmark disability” means a person with not less than forty percent, of a specified disability where specified disability has not been defined in measureable terms and includes a person with disability where specified disability has been defined in measureable terms, as certified by the certifying authority;
- b) Section 34(1) of the Act provides that “Every appropriate Government shall appoint in every Government establishment, not less than four percent, of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities under clauses (a), (b) and (c) and one percent, for persons with disabilities under clauses (d) and (e)”. xxx.
- c) **Para 2(2) of Resolution no.7140 dated 5<sup>th</sup> Sept 2017 wherein it has been mentioned that Persons with more than 40% of any disability shall be eligible for reservation, has subsequently been amended through corrigendum as the specifications were not in consistent to the Act provisions. In the corrigendum Para 2(2) of the resolution substituted as “persons with not less than 40% of any disability as certified by a competent certifying Authority appointed under section 57(1) of Rights of Persons with Disabilities Act, 2016 irrespective nature of Disability, shall be eligible for reservation”. xxx.**

In view of the above facts, the **petitioner is eligible for recruitment in PWD quota**. Further, said Resolution provides the following:

**“5. Persons with Disabilities selected on their merit without relaxed standards, along with other candidates shall not be adjusted against the reserved share of vacancies.xxx”.**

As per the averment of the petitioner, he has come out successfully in the examination and placed in the merit list with rank better than candidates under UR category. **The provisions of the said law and resolution denotes that the petitioner is eligible under PWD category basing on his application and eligible to be placed in the merit list of UR category and denial of the benefit of the said provisions may affect natural justice in this particular case.”**

**(Emphasis supplied)**

**23.** Admittedly Para 2(2) of the Resolution of the Opposite Party No.3, being contrary to the provisions enshrined under Section 2(r) of the RPwD Act, 2016, the appropriate Government issued necessary Corrigendum dated 16.07.2018 to rectify the said error crept in the Resolution dated 05.09.2017. Hence, there being no dispute that such a provision erroneously crept in the Resolution dated 05.09.2017, the same being contrary to the statute, i.e. RPwD Act, 2016, was rectified by the appropriate Government. Despite request made by the State Government, vide letters dated 11.02.2019 and 25.02.2019, as at Annexures-12 and 13 of the Writ Petition, copies of which were marked to the Petitioner, the OPSC did not include the name of the Petitioner in the select list of UR category. Further, being directed by the Tribunal, instead of acting in a positive

manner, the OPSC mechanically rejected the prayer of the Petitioner relying on a faulty Requisition made to it. At this juncture, it would be apt to reproduce below the contents of the said letters dated 11.02.2019 and 25.02.2019 :

“ No. 1351 PRS

**Date:11.02.2019**

From

Niten Chandra, IAS  
Principal Secretary to Government

To

Special Secretary to Government  
GA & PG Department

Sir,

This is the case of Sri Anushrav Gantayat, S/o Sri Bijayananda Gantaya of Boriguma, District Koraput. Sri Gantayat, a 40% visually impaired person. Sri Gantayat has successfully passed the Preliminary & Main Examination of Odisha Civil Service Examination, 2017. In this regard a letter was issued to the address of Secretary, OPSC vide this Department letter No.S12/PRS dated 28.12.2018 (copy enclosed). But no reply has yet been received. He met me today and submitted his mark sheets that he has secured in the OCS (Pre.), OCS Main & Viva Voce Test Examination. **As it appears from the mark-sheets he has secured 1365 marks in Main Examination and in interview. It is also observed that cut off marks of UR category in Main (plus interview) is 1302 (Mark sheets and OPSC Notice are enclosed for reference). But his name has not found place in the final list and his Roll Number is in the reject list.**

2. Parliament has enacted Rights of Persons with Disabilities Act, 2016 which has come into force from 19 April, 2017. According to Section 2(r) of RPwD Act, 2016 "person with benchmark disability" means a person with not less than forty per cent, of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority. In this regard a Corrigendum has been issued vide this Department letter No.5334 dated 16.07.2018 in which it is mentioned that "Persons with not less than 40% of any disability as certified by a competent Certifying Authority appointed under Section 57(1) of Rights of Persons with Disabilities Act, 2016

irrespective of nature of Disability, shall be eligible for reservation".  
(Copy of Corrigendum enclosed for reference).

3. **I shall appreciate if the case of Sri Anushrav Gantayat is considered by issuing suitable instruction to Secretary, OPSC. Since he has obtained marks sufficient to qualify him among the general candidates, his case may be considered on priority.**

Encl: As above.

Yours faithfully,  
Sd/-  
Principal Secretary”

**(Emphasis supplied)**

**“No. PT1-GAD-SER2-CSE-0007-2016-6184/SCS. BBSR, dated the 25” February, 2019**

From

Shri Abanikant Pattanaik  
Additional Secretary to Government

To

The Secretary.  
Odisha Public Service Commission,  
19 Dr. P.K. Parija Road, Cuttack, Odisha.

Sub:

Grievance petition filed by Shri Anushrav Gantayat, a candidate for OCS Examination 2017, applied under PwD category, bearing Roll No.301667.

Sir,

In inviting a reference to subject cited above, I am directed to say that one Shri Anushrav Gantayat, bearing Roll No.301667, having applied under Unreserved-PwD (PH-VI Category (visual Impairment of 40%), had appeared and cleared the Preliminary as well as the Mains stage of the Exam and was subsequently shortlisted for the Personality Test However, his candidature for Odisha Civil Services was rejected by the OPSC vide Notice No. 10121/PSC dated 19.12.2018, on the Ground that the Petitioner was suffering from "only 40% Permanent Disability".

The Marks secured by Shri Gantayat with reference to the cut-off marks published by the OPSC is given below.

	Marks secured by the Petitioner	Official Cut-Off Marks (UR-PH-VI-Male Category)	Official Cut-off Marks (UR Male Category)
Preliminary	Paper-I - 135.845	Paper-I - 78.780	Paper-I-

Exam	Paper-II - 117.763	Paper-II-Qualifying	107.585 Paper-II- Qualifying
Mains Exam	1164	Not Available	Not Available
Personality Test + (Total Marks)	1365	1065	1302

Having cited the above facts, the Petitioner has contended the decision of OPSC to reject his candidature, on the following grounds (stated in his representation).

1. The Definition of Persons with Disability, as mentioned under Sub-Para-2 of Para-2 of the SSEPD Department Resolution No.7140 dated 05.09.2017 defining Disability as "Persons with more than 40% of any Disability" (based on which the Petitioner was disqualified), though was amended vide a Corrigendum issued by the SSEPD Department as "Persons with not less than 40% of any Disability, the Petitioner has been disqualified despite his eligibility to avail PwD reservation as per the amended definition of PwDs cited above.

2. He has cited reference to a similar case of another candidate, Shri Samarjit Kar, selected and given appointment through OCS Examination-2016 under Unreserved-PwD (PH-VI)-Male Category with 40% Visual Impairment, which is identical to the case of the present petitioner.

3. The Union Public Service Commission (UPSC) also considers 40% or more as Benchmark Disability.

**Besides, on the occasion of rejecting his candidature by the OPSC, for reasons discussed above, the claim of Shri Gantayat is to have been selected under the "UR-Male" category (since he has cleared the UR-Male Cut-off) in terms of the provisions envisaged under Point No.5 of the SSEPD Department resolution No.7140 dated 05.09.2017 wherein is clearly stated that the PwDs selected on their Merit without relaxed standards, along with other candidates, shall not be adjusted against the reserved share of vacancies.**

**In view of the on-going process of appointment of the candidates selected through OCS Examination-2017, it is required to sort out the grievance of Shri Gantayat at the earliest to avoid any legal issues arising out of the above case.**

**It is, therefore, requested to kindly look into the above points raised by the petitioner, and any clarification in this regard, if considered appropriate, may kindly be furnished to this Department, at the earliest, so as to enable this Department to decide upon the**

**further course of action relating to disposal of the Grievance petition of Shri Anushrav Gantayat.**

Yours faithfully,  
Sd/-  
Additional Secretary Government”

**(Emphasis supplied)**

That apart, the Chief Secretary, Government of Odisha, intimated the Petitioner through mail indicating therein that OPSC has been requested to reconsider its earlier decision and include the name of the Petitioner in the select list in UR category, which is reproduced below:

“Chief Secretary  
Office of the Chief Secretary Secretariat Bhubaneswar – 751001

Dated: 11-03.2020

To

Shri Anushav Gantayat  
Lane-3, Mill Sahi, Borigumma, Koraput-764056  
Borigumma

Subject : e-Grievance – Report on grievance petition on Registration  
No.CS100/P/2020/00061

**OPSC has been requested to reconsider its earlier decision and include Shri Anushrav Gantayat in the selected list in UR category.**

N.B.: - Computer generated copy. Needs no signature”

**(Emphasis supplied)**

**24.** In **Gambhirdan K. Gadhvi** (supra), the Apex Court in Paragraph-50 held as follows:

“50. It cannot be disputed that the UGC Regulations are enacted by the UGC in exercise of powers under Sections 26(1)(e) and 26(1) (g) of the UGC Act, 1956. Even as per the UGC Act every rule and regulation made under the said Act, shall be laid before

each House of Parliament. Therefore, being a subordinate legislation UGC Regulations becomes part of the Act. **In case of any conflict between the State legislation and the Central legislation, Central legislation shall prevail by applying the rule/principle of repugnancy as enunciated in Article 254 of the Constitution** as the subject “education” is in the Concurrent List (List III) of the Seventh Schedule to the Constitution. Therefore, any appointment as a Vice-Chancellor contrary to the provisions of the UGC Regulations can be said to be in violation of the statutory provisions, warranting a writ of quo warranto.”

**(Emphasis Supplied)**

Similarly, in **ESI Corporation** (supra) in Paragraph-16, the Apex

Court held as follows:

**“ In our considered opinion, the High Court has ignored to appreciate that the effect of ESI Act enacted by the Parliament cannot be circumvented by the department office memorandum.** The High Court has also failed to appreciate that the payment of interim relief/wages emanates from the provisions contained in terms of the settlement, which forms part of the contract of employment and forms the ingredients of “wages” as defined under Section 2(22) of the ESI Act and that the respondent paid interim relief, as per a scheme voluntarily promulgated by it as per the notification dated 20.04.1996, issued by the Government of India, in view of the recommendations of “Manisana’ Wage Board, pending revision of rates of wages. It was not an ex-gratia payment. xxx”

**(Emphasis supplied)**

In **Raminder Singh** (supra), vide Paragraph Nos. 23.1, 23.3 and

25, held as follows.

**“ 23.1** First, it is an admitted case that the appellant being an in-service candidate, his case for promotion from the post of Silt Observer/Analyst to the next promotional post of "Research Assistant, Grade B" was required to be considered as an in-service candidate as provided in Rule 10.

**23.3** Third, the appellant had admittedly fulfilled the eligibility criteria and qualification prescribed in Rules 10

(1)(b)(i) and (2) as also the qualifications prescribed for appointment to the post in question for direct recruits.

**25.** As held supra, the appellant had fulfilled the necessary criteria prescribed in Rule 10. It was, in our view, sufficient compliance for the in-service candidate. **Anything prescribed in the advertisement, which was dehors the Rules was bad in law.**

**(Emphasis supplied)**

**25.** From the discussions made above, this Court is of the view that the Advertisement No.11 of 2017-18 of OPSC for recruitment of OCS Examination, 2017 pertaining to Point No. 5(1), with regard to reservation of one post under the PwD for blind, should not have been contrary to the statute i.e. provisions enshrined under Section 2(r) of the Act, 2016. Hence, action of the Authority concerned, including the OPSC, thereby debarring the Petitioner from his legitimate legal right to seek for appointment under the reserved category of PwD for Blind/Low vision based on such faulty advertisement, is illegal, arbitrary and unreasonable.

**26.** In view of the above admitted facts on record so also settled position of law, as discussed above, this Court is of further view that any action, based on the said erroneous Resolution made by the State Government, being contrary to statute, is bad and deserves interference. Hence, Issue No.(ii) is answered in favour of the Petitioner. Accordingly, both the impugned rejection orders, as at Annexures 7 and 15, are hereby set aside.



27. So far as Issue No. (iii) as to the relief to be extended in favour of the Petitioner, a prayer has been made in the Writ Petition to appoint him in the post of OAS, Group-A (JB). A further prayer has been made to direct the State Government to grant the Petitioner all service and financial benefits with effect from the date the other candidates of UR/PwD-VI category availed such benefits in terms of the Notification dated 20.06.2019 (Annexure-21) vide which the candidates, who came out successful in OAS Examination, 2017, were appointed to Odisha Administrative Service, Group-A (Junior Branch) in Cell-1, Level-12 of the pay matrix under the Odisha Revised Scale of Pay Rules, 2017.

28. Admittedly, the Petitioner applied under the PwD-B/LV category claiming himself to be eligible under the PwD Blind/Low vision category in terms of Point No.2 of the Advertisement No.11 of 2017-2018. He was also exempted from paying examination fee in terms of Point No.3 of the said advertisement. At this stage, it would be apt to reproduce below Point No.2(a) of the said Advertisement.

**2. POSITION OF VACANCIES AND RESERVATION THEREOF:**

**XXX.**

(a) **Out of the vacancies mentioned above, 05 posts are reserved for PWD category (1-Blindness or Low Vision, 1-Deaf & hard of hearing, 1-Locomotor Disabilities including Cerebral Palsy, Leprosy cured, dwarfism, Acid attack victims and muscular dystrophy, 1-Autism, Intellectual Disability, Specific Learning Disability and Mental Illness, 1-Multiple**

Disability as mentioned above including deaf-blindness in the posts identified for each disability time to time). The exchange of reservation between SC & ST will not be considered.

Further, out of the above 05 posts reserved for PWDs, one post shall be earmarked for women with disabilities.

**Candidates belonging to PWD, when selected as per reservation provided for them, shall be adjusted against the categories to which they belong**, which means that the PWD, if belonging to Scheduled Caste will claim the vacancy reserved for S.C., if belonging to Scheduled Tribe will claim the vacancy reserved for S.T. and so on. **Thus the PWD, who do not belong to either any of the reserved communities i.e. S.C./S.T./S.E.B.C., would claim the unreserved vacancies.**

(b) In case of non-availability of the eligible/suitable women candidate(s) belonging to respective category, the unfilled vacancies of that category shall be filled up by eligible & suitable male candidate(s) of the same category.

(c) The exchange of reservation between SC & ST will not be considered.

(d) The number of vacancies to be filled up on the basis of this recruitment is subject to change by the Government without notice, depending upon the exigencies of public service at the discretion of the State Government.”

**(Emphasis supplied)**

29. Admittedly, the Petitioner has secured 1365 marks, which is more than the cut-off marks i.e. 1302 for UR category candidate. Had he been selected as a PwD candidate, he would have claimed an unreserved vacancy in terms of Clause-2(a) of Advertisement No.11 of 2017-18, as has been extracted above.

30. The law is well settled that reserved category candidates, selected in open competition, shall not be counted in reserved quota and they shall be treated as open category candidates. There cannot be any

dispute with the general proposition, which stands well settled, as laid down by the 9 Judge Constitution Bench of the Apex Court in **Indra Sawhney v. Union of India**, reported in 1992 Supp. (3) SCC 212 : 1992 SCC (L&S) Supp.1, wherein it has been held that if the members belonging to the reserved category get selected in the open competition on the basis of their own merit, they will not be counted against the quota reserved for Scheduled Castes and they would be treated as open competition candidates. Paragraph-811 of the said judgment is extracted below:

“811. In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.”

31. The Apex Court in **Gaurav Pradhan** (supra), relying on the said nine-judge Bench judgment in **Indra Sawhney vs. Union of India** (1992) Supp.(3) SCC 217, held that candidates belonging to reserved category, who had taken relaxation of age, were not entitled to migrate to unreserved vacancies. Paragraphs-19 to 21 and 49 to 51.2 of the said judgment are extracted below:

“ 19. Judgment of learned Single Judge in **Chandra Bhan Yadav** (supra) was a judgment where circulars issued by the State Government which are referable to Rule 7(1) of 1989 Rules relevant in the context of selection in question, were neither referred to nor considered. The learned Single

Judge only relied on the judgments laying down that reserved category candidates selected in open competition shall not be counted in reserved quota and they shall be treated as open category candidates. There cannot be any dispute with the general proposition which stands well settled as laid down by nine Judge Bench in **Indra Sawhney and others vs. Union of India** and others. This Court in paragraph 811 laid down the following:

“8...’811. In this connection, it is well to remember that the reservations under members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.” (Indra Sawhney case, SCC p. 735)”

20. Another judgment of learned Single Judge in Mangala Ram Bishnoi relied on in the impugned judgment was a judgment where the learned Single Judge has placed heavy reliance on Jitendra Kumar Singh (supra). The Circular of the State Government dated 04.03.2002 as applicable was considered in para 37. But learned Single Judge held that in view of the law laid down by this Court in Jitendra Kumar Singh, the Circular dated 4.3.2002 does not remain operative. We thus need to look into the judgment of this Court in Jitendra Kumar Singh's case (supra). The Division Bench further held that since the judgment of Mangala Ram Bishnoi which was Judge-made law was holding field, the State Government was required to permit migration of the reserved category candidates having obtained age relaxation into general category candidates and no exception can be taken in following the Circular dated 11.05.2011.

21. As noted above, the nine Judge Constitution Bench had laid down that if the members belonging to the reserved category get selected in the open competition field on the basis of their own merit, they will not be counted against the quota reserved for Scheduled Casts and they would be treated as open competition candidates. In **Post Graduate Institute of Medical Education & Research v. K.L. Narasimhan**, a three Judge Bench of this Court in paragraph 5 has laid down the following:

“5.....It is settled law that if a Dalit or Tribe candidate gets selected for admission to a course or appointment to a post on the basis of merit as general candidate, he should not be treated as reserved candidate. Only one who

**does get admission or appointment by virtue of relaxation of eligibility criteria should be treated as reserved candidate.”**

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 the appellants had produced any details of number of vacancies nor has the State been able to inform the Court about the correct position of the vacancies.

51. We, thus, for adjusting the equity between the parties, issue the 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.”**

**(Emphasis supplied)**

**32.** Similarly, in **Post Graduate Institute of Medical Education & Research, Chandigarh and others v. K.L. Narasimhan**, reported in (1997) 6 SCC 283, a three Judge Bench of the Apex Court, in Paragraph 5, held as follows:

“5..... It is settled that if a Dalit or Tribe candidate gets selected for admission to a course or appointment to a post on the basis of merit as general candidate, he should not be treated as reserved candidate. **Only one who does get admission or appointment by virtue of relaxation of eligibility criteria should be treated as reserved candidate.”**

**(Emphasis supplied)**

**33.** It is also the admitted case of the Petitioner, though he belongs to unreserved community, because of his physical disability, he applied as a candidate belonging to PwD category in terms of Section 2(r) of the Act, 2016. He was also exempted from paying the fee in terms of Clause- 3 of the Advertisement No.11 of 2017-2018 as extracted above. His application for selection was processed till its rejection under the PwD category (UR) and not as a general UR candidate. Hence, in terms of the judgments of the

Apex Court, as detailed above so also the case of the Petitioner and Clause-2(a) of the said Advertisement, as extracted above, this Court is of the view that pursuant to request made by the State Government, the Petitioner ought to have been adjusted and appointed against unreserved (UR) vacancies as a PwD candidate.

So far as his claim for appointment under the reserved category of PwD (UR), such a right accrued in favour of the Petitioner in terms of the Act, 2016. The action of the OPSC in rejecting the application of the Petitioner was based on a requisition by the concerned Department, which was based on an erroneous Resolution of the State Government dated 05.09.2017 (Annexure-16). The said error was subsequently rectified by the State Government on 16.07.2018 (Annexure-17). The concerned Department of the State Government, in its Affidavit, has admitted the said mistake as has been extracted above. Hence, this Court is of the view that such a rectification should relate back to the date of act rectified.

**34.** Admittedly, the online application submitted by the Petitioner was accepted and processed till a rejection order was passed on 19.12.2018 and thereafter, based on the grievance petition of the Petitioner, the Principal Secretary, Government of Odisha, Department of SSEPD wrote to the Special Secretary to Government, G.A. & P.G. Department on 11.02.2019 to issue suitable instruction to the Secretary, OPSC to do the

needful. Immediately, thereafter, on 25.02.2019 the Addl. Secretary to Government, G.A. & P.G. Department wrote to the Secretary, OPSC to do the needful, as has been extracted above. Hence, this Court is of further view that the Petitioner has a right to be appointed as OAS, Group-A (Junior Branch) under the PwD category (UR), as has been alternatively prayed by him.

**35.** It may not be out of place to mention here that pursuant to order dated 19.09.2022 passed by this Court, the State-Opposite Party No.4 filed an Affidavit stating therein the names of the selected candidates of OCS Examination, 2017 under UR/URPH category, who have left their services after joining in the post of OAS Group-A (JB). It has been stated in the said Affidavit that Sri Manas Ranjan Sahu, appointed as OAS Group-A(JB) under UR category of Direct Recruit of 2017, so also one Bibhuti Bhusan Nayak joined under the SC-PwD category have left the service. It is further stated that candidature of one Vincent Lakra under ST category has lapsed as he failed to join within the stipulated time. After verification of record, it is found that no selected candidate in UR-PwD category has left the service.

**36.** Though State-Opposite Party No.3 (Social Security and Empowerment of Persons with Disabilities Department) has filed an Affidavit indicating there in that the Petitioner is eligible to be placed in the



merit list of UR category and denial of the benefit of the said provisions may affect natural justice, contrary to such stand so also communications made by various State authorities, including Chief Secretary, Government of Odisha, as has been extracted above, learned State Counsel again filed an Affidavit on 23.05.2023 on behalf of Opposite Party No.2- Additional Secretary to Government, G.A. & P.G. Department, Lokaseva Bhawan, stating that pursuant to order of this Court dated 17.08.2022, the feasibility of accommodating the Petitioner against non-joining/resignation vacancy without disturbing the seniority of the private Opposite Parties was examined by the Department. Vacancies accrued due to resignation of candidates, after joining in the civil services, are treated as new vacancies for the subsequent year of recruitment and can only be filled up by the candidates selected afresh through subsequent Odisha Civil Service Examination. Hence, there is no scope to accommodate/appoint the Petitioner against the vacancy arising due to resignations of Manas Ranjan Sahu and Bibhuti Bhusan Nayak, the candidates who were selected through Odisha Civil Service Examination, 2017.

Similarly, it has been stated in the said Affidavit that so far as vacancies arising due to non-joining of provisionally selected candidates are concerned, as per the provision of the General Administration Department Office Memorandum dated 10.02.1987, in case of initial

recruitment through competitive examination, the recommendation of Public Service Commission shall remain valid for a period of one year from the date of its approval by the Government. But, in the instant case, the final select list of successful candidates of Odisha Civil Service Examination, 2017 was communicated to G.A. & P.G. Department by the Odisha Public Service Commission, Cuttack, vide letter dated 24.12.2018 and same was accepted vide Government Order dated 05.02.2019. Therefore, the recommendation of the OPSC has become invalid after one year from the said date of acceptance of the Government. Hence, the unfilled vacancies arising due to non-joining of the provisionally selected candidates have been carried forward for recruitment through the subsequent Odisha Civil Service Examination.

**37.** Admittedly, because of fault on the part of the State, while passing Resolution for implementation of the Act, 2016, an error being crept in the said Resolution dated 05.07.2017 that the percentage of disability should be more than 40%, the Petitioner suffered a lot and had to approach different forums for redressal of his genuine grievance, including this Court. Also, despite his best effort to expedite the conclusion of pending litigation, this matter is pending since 2019. The conduct of the State is also in contravention of various provisions under the Act, 2016 and

is punishable under Section 89 of the Act, 2016. The same is extracted below:

“ 89. Any person who contravenes any of the provisions of this Act, or of any rule made thereunder shall for **first contravention be punishable with fine which may extend to ten thousand rupees and for any subsequent contravention with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.**”

**(Emphasis supplied)**

38. The State so also OPSC have committed grave illegality by denying appointment to the Petitioner solely on the ground that his percentage of disability was 40% and not more than 40%. The terms of the Advertisement No.11 of 2017-18 admittedly was incorrect and contrary to the provisions under the Act, 2016. The said error in the Resolution made by the State was subsequently rectified by issuing necessary corrigendum to the said effect. Law is well settled that ratification should always relate back to the date the act ratified, as was held in **Maharashtra State Mining Corporation (supra)**

39. It may not be out of place to mention here that the Division Bench of this Court in OJC No.9958 of 2001, decided on 05.08.2008 (**Miss Pritilata Nanda vs. Union of India**), vide Paragraph-8, held as follows:

“8. In view of the aforesaid stand taken by the Railway authority, the averments made by the petitioner remain uncontroverted and are affirmed. The recruitment process started in the year 1987 through an advertisement and thereafter, written test and Viva Voce test were held in the year 1989 and the select list of candidates was published on 14.1.1992. It is indeed necessary to note the very sorry state

of affairs of the manner in which the authorities concerned are dealing with the life and livelihood of common citizens. It needs to be reiterated that whereas physical handicapped candidates are required to be approached with a more compassionate manner, the authorities seem to have acted in a callous and heartless manner.

Once the petitioner's application was accepted by the authorities and she was allowed to appear in the written and viva voce test and after name find mention at serial No.11 of the merit list, it was no longer open to the authorities concerned to raise any question relating to petitioner's application for the purpose of dis-entitling her from the benefit of issuing her with an appointment letter. We consider it to be a gross abuse of the statutory power. In the case at hand, the plight of the petitioner is writ large in the averments contained in the writ application and accompanying documents and unfortunately, the utter callous attitude of the authorities are writ large in the counter affidavit filed on behalf of Opp. Party No.5. It is indeed unfortunate that a physically handicapped female candidate who had applied in the year 1989 and more than 20 years have lapsed by now, has been denied appointment by the Railway authorities which is none else, but the Union of India, which is supposed to be an ideal employer.”

**(Emphasis supplied)**

The said judgment of the Division Bench, being challenging before the Apex Court by the Union of India and others, which is reported in 2010 (II) OLR (SC) 636 (**Union of India and others vs. Miss Pritilata Nanda**), the Apex Court, though confirmed the said observation and direction of this Court, so far as direction for payment of full salary with retrospective effect, the same was modified with the following observation/direction:

**“ 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.**

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

(1) The concerned competent authority 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 person placed at Sl. Nos.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 cost of Rs.3,00,000/-. The amount of cost shall be paid within 2 months from today.**

The Divisional Railway Manager, South Eastern Railway, Khurda Road shall send compliance report to this Court on or before 22nd November, 2010.”

**(Emphasis supplied)**

So far as the case of the Petitioner is concerned, this Court is of the view that the same is in a far better footing than the case in **Miss. Pritilata Nanda** (supra), as has been detailed above.

**40.** Since the Petitioner was eligible to be considered and appointed as PwD candidate in terms of Act, 2016, this Court is of the view that once his candidature is accepted by the concerned Authority and he was allowed to participate in the process of selection i.e. written test and viva voce, it was not open for the OPSC to turn around and question his entitlement to be considered for appointment as per his placement in the selection list on the ground that he is having only 40% disability. Hence, the present Opposite Parties have violated the Petitioner’s right of equality in the matter of employment, guaranteed under Article 16 of the Constitution of India so also right in terms of the provisions enshrined under the Act, 2016, as has been detailed above. So far as the Petitioner’s

case is concerned, this Court is of the view that the same is in a far better footing than the judgment in **Miss. Pritilata Nanda** (supra).

**41.** In the peculiar facts and circumstances, applying the ratio of the above noted judgments as detailed above, this Court directs the Opposite Parties as follows:

- (i) The name of the Petitioner be included in the select list dated 20.06.2019, as at Annexure-21, and he be given appointment as per his placement in the merit list within two months from the date of communication of the certified copy of this order. Appointment order be issued in favour of the Petitioner as an unreserved candidate in the post of Odisha Administrative Service, Group-A (Junior Branch) in terms of Point No.2(a) of the Advertisement No.11 of 2017-2018. If so required, a supernumerary post be created for adjustment of the Petitioner, which post may be terminated as and when vacancies come in to existence.
- (ii) The appointment of the Petitioner shall be made effective from the date similarly placed person (s) in the select/merit list were appointed.
- (iii) The pay of the Petitioner shall be fixed notionally w.e.f. from the said date and he shall be given actual monetary benefit w.e.f. the date he joins in the said post, as ordered by this Court.
- (iv) The pay of the Petitioner shall also be fixed in the revised pay scale introduced from time to time and he be paid in

terms of the said revised scale of pay, as is being paid to his counterparts.

- (v) Since the issue is pending from 2019, if during the interregnum period, any person junior to the Petitioner has been promoted to the next higher post, then his candidature shall also be considered for promotion and on being found suitable, he shall be promoted w.e.f. the date any of his junior was promoted and he be given consequential benefits accordingly.
- (vi) In addition to above, since the Petitioner has been deprived of his legitimate rights accruing out of the Act, 2016 so also Article 16 of the Constitution of India, to mitigate the hardship so also loss caused to the Petitioner, who is a disabled person, this Court directs the State-Opposite Parties to pay the Petitioner a cost of Rs.1,00,000/- (rupees one lakh) within a period of two months from today.
- (vii) The State-Opposite Parties are also directed to implement the directions as above and send compliance report thereof to this Court on or before 31.03.2024.

42. Accordingly, the Writ Petition is allowed to the extent, as directed above.

Signature Not Verified

Digitally Signed  
Signed by: PADMA CHARAN DASH  
Designation: Personal Assistant  
Reason: Authentication  
Location: ORISSA HIGH COURT, CUTTACK  
Date: 12-Jan-2024 11:41:23

Orissa High Court, Cuttack

Dated, 19 December, 2023/Padma

(S.K. MISHRA)  
JUDGE