

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**WPC(OAC) NO.1184 of 2019**

In the matter of an application under Section 19 of the Odisha  
Administrative Tribunal Act, 1985

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**AFR**

**Dr. Smita Patra** .... **Petitioner**

-versus-

**State of Odisha & Others** .... **Opposite Parties**

**For Petitioner** :M/s. Dr. J.K. Lenka, Advocate

**For Opp. Parties** : M/s.M.K. Balabantaray,AGA  
(for State-Opp. Party)  
Dr. D.K. Panda, Adv.  
(for Opp. Party No.3)  
Mr. S.B. Jena, Adv.  
(for Opp. Party No.2-OPSC)

**PRESENT:**

**THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY**

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**Date of Hearing: 26.09.2023 and Date of Judgment: 21.12.2023**  
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**Biraja Prasanna Satapathy, J.**

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. The present Writ Petition has been filed inter alia with the following prayer.

*“In view of the facts mentioned in para-6 above, the applicant prays for the following relief(s):-*

- (i) *Set aside the OPSC recommendation dt.07.06.2019 at Annexure-9 recommending the name of Respondent NO.3 bearing Roll. NO.167 for the only post meant for UR for recruitment to the post of Asst. Professor, Anatomy in Specialty in Group-A of OMES Rules, 2013 pursuant to advertisement NO.12 of 2018-2019.*

- (ii) *Direct the OPSC (Respondent NO.2) to recommend the name of the application for the post of Asst. Professor in Anatomy in Group-A OMES pursuant to advertisement NO.12 of 2018-19 meant for UR category and direct the Respondent NO.1 to appoint the applicant for the said post of Asst. Professor in Anatomy with all consequential benefits.*
- (iii) *Issue any other order(s) which deem fit and proper for adjudication.*

**3.** It is the case of the Petitioner that Petitioner passed her MBBS examination from Berhampur University in the year 2001. Petitioner on her passing the MBBS examination was recruited and appointed as an Asst. Surgeon pursuant to the recruitment conducted by the Orissa Public Service Commission. Petitioner joined as an Asst. Surgeon on 19.04.2004. Petitioner while so continuing, she was admitted to prosecute the Post Graduate in the discipline Anatomy as an inservice candidate leading to her acquiring M.D in Anatomy from MKCG Medical College and Hospital, Berhampur. Petitioner acquired such qualification of M.D. in Anatomy in the year 2013. After completing her M.D in Anatomy, Petitioner joined as a Tutor in S.C.B Medical College and Hospital, Cuttack, where she joined on 01.01.2014.

**3.1.** It is contended that while the matter stood thus, Orissa Public Service Commission in short("The Commission") issued an advertisement vide Advertisement No.12/2018-2019 for recruitment to the post of Asst.

Professor in Super Speciality and Speciality in different discipline in SCB Medical College and Hospital, Cutack and MKCG Medical College and Hospital, Berhampur. It is contended that in the advertisement issued under Annexure-3, as against the post of Asst. Professor, Speciality, five(5) posts were advertised as against the discipline Anatomy and out of the said 5 vacancies, two(2) were reserved for S.T, two (2) for S.C and one(1) for unreserved candidate.

**3.2.** It is contended that under Para 4-(ii) of the advertisement, the qualification for the post of Asst. Professor in Speciality with regard to the discipline Anatomy, is prescribed as follows:

<b>Sl.No.</b>	<b>Name of the discipline</b>	<b>Academic qualification &amp; Teaching experience</b>
1.	Anatomy	M.D (Anatomy)/M.Sc.(Anatomy) with 3 years teaching experience in the subject from a recognized Medical College as Tutor or Sr. Resident.”

**3.3.** It is contended that as provided under Paragraph-7(ii) of the advertisement, applications submitted if found to be incomplete in any respect are liable for rejection without entertaining any correspondence with the applicants on that score. It is also contended that as provided under Paragraph-8, various documents are required to be enclosed along with the applications, which

includes certificate from competent authority regarding the prescribed experience of three (3) years as Tutor or Sr. Resident /Trainee as the case may be.

**3.4.** It is the case of the Petitioner that Petitioner as well as Opp. Party No.3 made their applications as against the post of Asst. Professor, Speciality in the discipline Anatomy.

**3.5.** It is also contended that the selection as against the post of Asst. Professor, Speciality in the discipline Anatomy is required to be conducted in accordance with the provisions contained under Orissa Medical Education Service (Methods of Recruitment and Conditions of Service) Rules, 2009 ( In short "The Rules"). Rule 4 of the 2009 Rules prescribes the eligibility criteria for the post of Asst. Professor. Rule 4 of the Rules prescribes as follows:-

*"4. Eligibility criteria for the Post of Assistant Professor (I) Selection shall be made through the Orissa Public Service Commission, from amongst the Tutors and Senior Residents having P.G., Degree in the same discipline with three years experience as such.*

*Provided that, the recruitment may also be made from amongst the Assistant Professors in any other Speciality or Higher Speciality subject to the condition that seniority in the Speciality or Higher Speciality, as the case may be, shall be determined from the date of appointment in the new discipline in accordance with the placement given by the Commission, and accepted by the Government.*

*Provided further that, in the Departments of Anatomy, Physiology, Pharmacology and Microbiology, non-medical teachers may be appointed to the extent of 30% of the total number of posts and in the department of Bio-Chemistry, non-medical teachers may be appointed to the extent of 50% of the total number of posts.*

*(2) No person shall be eligible to be considered for appointment as an Assistant Professor unless he has acquired a post graduate degree in the concerned Speciality or any other equivalent degree or qualification prescribed by the Council.*

*(3) Selection of candidates shall be made with due regard to the candidates' academic attainment, teaching experience, aptitude, ability to teach, performance Appraisal Report and such other modalities as may be decided by the Commission."*

**3.6.** It is contended by the learned counsel appearing for the Petitioner that by the time she made the application, she had the required teaching experience of three(3) years as a Tutor and the Petitioner being a M.D in Anatomy, she has to get preference with regard to selection as against Opp. Party No.3.

**3.7.** It is contended that by the time Opp. Party No.3 made her application in terms of the advertisement, she was not having the required teaching experience certificate with her and the said certificate was only obtained on 08.03.2019. Since as provided under Paragraph-7(ii,) applications submitted if found to be incomplete in any respect are liable for rejection, without entertaining any correspondence with the applicant on that score, the application of Opp. Party No.3 having not been enclosed with the required experience certificate which was only obtained on 08.03.2019, on the face of the last date for making the application being 28.11.2018, the application of Opp. Party No.3 could not have been

entertained and it should have been rejected in limini. In support of his aforesaid submission, learned counsel for the Petitioner relied on the decision of the Hon'ble Apex Court of the following case laws: -

1. (2009) 2 SCC(L & S )  
Uttar Pradesh Public Service Commission  
Vs Satya Narayan Sheohare & Others
2. JT (1998) (9) SC 190  
State of Haryana & Others Vs.  
Anurag Srivastav and Others
3. AIR 2003 SC 4411  
(State of U.P Vrs. Vijay Kumar Misra)  
This Court in the
4. 2015(II OLR – 752  
(Sasmita Manjari Das. Vs.  
State of Orissa and Others)

In the case of **State of Uttar Pradesh Public Service Commission Vs. Satya Narayan Sheohare and Others**, Hon'ble Apex Court in Paragraphs-9 & 10 has held as follows:

**9.** Section 2(b) of the Act defines 'other backward classes of citizens' as those backward classes of citizens specified in Schedule I to the Act. Where a particular caste was not included in the list of 'other backward classes' in Schedule I to the Act, when the Act was enacted, and when such caste is subsequently added to the list of other backward classes in Schedule I of the Act by way of an amendment, for all purposes, the Act commences in respect of the newly added caste, from the date when the [Amendment Act](#) came into effect.

**10.** Thus, the principle contained in [Section 15](#) would apply whenever a new caste, which was not an OBC earlier, is added to Schedule I of the Act by an amendment to the Act. Therefore whenever the Act is amended by including new castes/classes in the list of other backward classes in Schedule I, the date of amendment to the Act would be the date of commencement of the Act in regard to such caste/class inserted by the amendment.

In the case of **State of Haryana & Others Vs. Anurag Srivastav and Others**, Hon'ble Apex Court in Paragraphs-2 & 3 has held as follows:

*“2. On the last date for receipt of applications, namely, 7-1-1981, Respondent 2 did not possess a Master's degree in Modern Indian History. She did possess a Master's degree in History, but in Group 'A', i.e., Medieval India. The marks-sheet which was annexed by her showed that the four papers which she had appeared in were in the group "Medieval India". The 2nd respondent herself has stated in her letter dated 3-7-1981, addressed to the Director, Haryana State Archives, Chandigarh, that she had passed MA Examination in History (1200 AD-1787 AD) from Kurukshetra University in 1978. One paper was for the period 1627 AD-1761 AD Apart from this, she had already appeared in MA Examination in Modern Indian History (1707 AD-1947 AD) for obtaining additional qualifications and the result was awaited.*

*3. She subsequently obtained an MA in History in Group 'B' "Modern Indian History" on 16-7-1981. The High Court has rightly held that on 7-1-1981, the last date for submitting the application, the 2nd respondent did not possess a Master's degree with Modern Indian History as her subject. She obtained this qualification on 16-7-1981 subsequent to her interview and selection.”*

In the case of **State of Uttar Pradesh Vs. Vijay Kumar Misra**, Hon'ble Apex Court in Paragraph-8 has held as follows:

*“8. The position is fairly well settled that when a set of eligibility qualifications are prescribed under the rules and an applicant who does not possess the prescribed qualification for the post at the time of submission of application or by the cut off date, if any, described under the rules or stated in the advertisement, is not eligible to be considered for such post. It is relevant to note here that in the rules or in the advertisement no power was vested in any authority to make any relaxation relating to the prescribed qualifications for the post. Therefore, the case of a candidate who did not come within the zone of consideration for the post could not be compared with a candidate who possess the prescribed qualifications and was considered and appointed to the post. Therefore, the so-called confession made by the officer in the Court that persons having lower merit than the respondent have been appointed as SDI (Basic), having been based on misconception is wholly irrelevant. The learned single Judge clearly erred in relying on such a statement for issuing the direction for appointment of the respondent. The Division Bench was equally in error in confirming the judgment of the learned single Judge. Thus the judgment of the learned single Judge as confirmed by the Division Bench is unsustainable and has to be set aside.”*

In the case of **Sasmita Manjari Das Vs. State of Orissa and Others**, this Court has held as follows:

*“Law is well settled that if any condition stipulated in the advertisement, it is strictly to be followed by the authority and in no case it will be deviated which has been decided in the case of **Ramana Dayaram Shetty v. International Airport***

**Authority of India**, reported in (1979) 3 SCC 489 wherein at paragraph-10 it has been held:

“it is well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its action to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them.”

The Supreme Court also in the case of **B. Ramakichenin Alias Balagandhi-v-Union of India and Others**, reported in (2008) 1 SCC 362 has reiterated the same view after taking into consideration the ratio laid down by the Hon'ble Supreme Court in the case of **Ramana Dayaram Shetty-v-International Airport Authority of India.**”

**3.8.** However by accepting the application of Opp. Party No.3 and by allowing her to participate in the selection process as against the post of Asst. Professor, Speciality in the discipline Anatomy, when she was recommended by the Commission as against the discipline Anatomy as an UR candidate vide notification dtd.07.06.2019, so issued under Annexure-9, the Petitioner being aggrieved by such recommendation of Opp. Party No.3 is before this Court in the present Writ Petition.

**3.9.** Learned counsel for the Petitioner contended that as provided under Rule 4(i) of the 2009 Rules, which was amended in the year 2013, it has been clearly provided that in case of non-availability of M.S or M.D candidate, M.Sc. qualified candidates as prescribed by the Medical Council of India will be appointed in the Department of Anatomy and that too to the extent of 30% of the total number of posts. It is contended that Petitioner since was having M.D. in Anatomy and private Opp. Party No.3 was



having M.Sc in Anatomy, in view of the 2<sup>nd</sup> proviso to Rule-4(i) of the Rules, Opp. Party No.3 should not have been considered ignoring the claim of the Petitioner. 2<sup>nd</sup> Proviso to the amended Rule 4(1) of the 2013 Rules provides as follows :

*“Provided further that in case of non-availability of MS or MD candidates M.Sc. qualified candidates as prescribed by the MCI will be appointed in the Department of Anatomy, Physiology, Pharmacology and Microbiology to the extent of 30% and in the Department Bio-Chemistry to the extent of 50% of the total number of posts.”*

**3.10.** It is also contended that since Opp. Party NO.3 along with her application never submitted the teaching experience certificate which she only obtained on 08.03.2019, the application of the Opp. Party No.3 could not have been entertained by the Commission with recommendation of her name as against the vacancy meant for UR category in the discipline Anatomy, in view of the stipulation contained under Para-7(ii) read with Para-8(v) of the advertisement and Note-2 appended to Para-8. Para 7(ii), Para 8(v) and Note-2 appended to Para-8 are quoted hereunder:-

**“7.(ii)** Applications submitted to OPSC if found to be incomplete in any respect are liable for rejection without entertaining any correspondence with the applicants on that scores.

**8.(v)** Certificate from competent authority regarding the prescribed experience of three years as Tutor or Senior Resident/Training as the case may be.

**Note-2:** Degree certificate, caste certificate, experience certificates service certificates and discharge certificate of Ex-Serviceman must have been issued by the competent authority within the last date fixed for submission of online application form.”

**3.11.** Learned counsel for the Petitioner also contended that even though under the relevant Recruitment Rule, the selection of candidates was required to be made taking into account the academic career and performance of the candidate in the viva-voce test, but the Commission only taking into account the qualification of Class-XII and MBBS, towards career assessment, made the selection and no mark was awarded towards Post Graduate qualification. It is also contended that since as against the discipline Anatomy, one Post was meant for UR candidate, taking into account the eligibility of candidate with M.Sc. in Anatomy at 30%, the single post reserved for UR candidate could not have been recommended in favour of Opp. Party No.3 and by doing so, principle of reservation was also violated.

**3.12.** Making all such submissions, learned counsel appearing for the Petitioner contended that the recommendation of Opp. Party No.3 as against the Post of Asst. Professor, Specialty in the discipline of Anatomy is not sustainable in the eye of law and requires interference of this Court.

**4.** Mr. D.K. Panda, learned counsel appearing for Opp. Party No.3 on the other hand contended that since in terms of the advertisement, candidates with M.D in

Anatomy as well as candidate with M.Sc in Anatomy are eligible to get the benefit of appointment and Opp. Party No.3 having secured 78.280 mark as against the Petitioner securing 73.440 mark, she was rightly recommended by the Commission and it requires no interference of this Court.

**4.1.** It is also contended that even though at the time of making the application, Petitioner had not enclosed the experience certificate as required under Para-8(v), but after obtaining the same on 08.03.2019, Petitioner produced the same at the time of for verification of documents, the date of verification being so fixed to 11.03.2019. It is contended that since by the time verification of documents were made, Petitioner was having the required teaching experience certificate which she obtained on 08.03.2019, there is no illegality or irregularity with regard to acceptance of her application and consequential recommendation by the Commission on 07.06.2019 under Annexure-9. It is also contended that since the selection has been made by an expert body like the OPSC, the Courts should be slow to interfere with the opinion by experts unless allegations of mala fide is made and established.

In support of his submission, learned counsel appearing for Opp. Party No.3 relied on a decision of the Hon'ble Apex Court in the case of **Secretary (Deptt. Of Health & Family Welfare Vs. Dr. Anita Puri & Others) (1996) 6 SCC 282** and decision of this Court in **W.P.(C ) NO.31327 of 2022, disposed of on 27.09.2023 (Kartik Senapati Vs. State of Orissa & Others).**

In the case of Dr. Anita Puri, Hon'ble Apex Court in Paragraph- 9 has held as follows:

"9. The question for consideration is whether such sub-division of marks by the Commission on different facets and awarding only 2 1/2 Marks for higher qualification can be said to be arbitrary? Admittedly, there is no statutory rule or any guideline issued by the Government for the Commission for the purpose of evaluation of merit of the respective candidates. When the Public Service Commission is required to select some candidates out of number of applicants for certain posts, the sole authority and discretion is vested with the Commission. The Commission is required to enquire the relative fitness and merit of the candidate and then select candidates in accordance With such evaluation. If, for that purpose the Commission prescribes marks for different facets and then evaluates the merit, the process to evaluation cannot be considered to be arbitrary unless marks allotted for a particular facet is on the face of it excessive. Weightage to be given to different facets of a candidates as well as to the viva voce test vary from service to service depending upon the requirement of the service itself. In course of the arguments before as the learned counsel for the Respondent No. 1 had submitted that the awarding of 20 marks for viva voce and 20 marks for General Knowledge out of 100 marks must be held to be on the face of it arbitrary giving a handle to the Public Service Commission to manipulate the selection and, therefore, the High Court had rightly come to the conclusion that it was arbitrary. We are unable to accept this contention. This Court in the case of Ajay Hasia Etc. v. Khalid Majib Sehravardi and Others Etc., [1981] 1 S.C.C. 722, while considering the Case of selection, wherein 33% marks was the minimum requirement by a candidate in viva voce for being selected, held that it does not incur any constitutional infirmity. As has been stated earlier the expert body has to evolve some procedure for assessing the merit and suitability of the appellants and the same necessarily has to be made only by allotting marks on different facets and then awarding marks in respect of each facet of a candidate and finally evaluating his merit, it is too well settled that when a Selection is made by an expert body like public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by

experts unless allegations of maln fide are made established. It would be prudent and safe for the courts to leave the decisions on such matters to the experts who are more familiar with the problems they face than the courts. If the expert body considers suitability of a candidate for a specified post after giving due consideration to all the relevant factors, then the court should not ordinarily interfere with such selection and evaluation. Thus, considered we are not in a position to agree with the conclusion of the High Court that the marks awarded by the Commission was arbitrary or that the selection made by the Commission was in any way vitiated.”

Similarly, in the case of Kartik Senapati, this Court in Paragraphs- 31 and 32 has held as follows:

**31.** *The next question that was raised before this Court is with regard to the authority of the Commission to reject the application of the Petitioner. In the said context, it is pertinent to refer to // 27 // Clause-11 of the advertisement. The said Clause-11 provides the ground for rejection of applications by the Commission. Sub-clause(d) provides a ground for rejection of application on the ground of non-furnishing of copies of Certificate/documents as provided under para-10 of the Advertisement. Similarly, the Clause11(j), which is relevant for the purpose of the present case, provides that if a candidate fails to furnish any of the original certificates and documents for verification on the date fixed by the Commission, his/her candidature is liable to be rejected on that ground.*

**32.** *On a careful examination of the grounds laid down in Clause11 of the advertisement, this Court observed that there is no specific ground under which the candidature of the Petitioner could have been rejected as has been done in the case of the Petitioner under Annexure-9 to the writ application. In such view of the matter, this Court has no hesitation to hold that the OPSC had no authority to reject the candidature of the Petitioner.”*

**5.** Learned counsel appearing for the Orissa Public Service Commission on the other hand contended that pursuant to the advertisement issued Annexure-3, Petitioner and Opp. Party No.3 participated in the selection process as against the post of Asst. Professor, Speciality in the discipline of Anatomy. Since the vacancy in U.R category was a vacancy arising prior to the amended 2013 Rules, the pre-amended 2009 Rules was followed with regard to selection to the post of Asst. Professor, Speciality

in Anatomy. It is contended that Rule 4(1) of the 2009 Rules was followed in terms of the order of the Hon'ble Apex Court in the case of **Subash Ranjan Behera & Others Vs. State of Odisha & Others (Civil Appeal No.6157-6158 of 2015, decided on 10.08.2015.** Hon'ble Apex Court in the case of Subash Ranjan Behera while disposing the appeal issued the following direction:

*“Keeping in view the aforesaid position in mind, we set aside the final directions contained in the impugned judgment and substitute the same with the following directions: -*

*(1) The Commission shall fill up the posts which had arisen or fallen vacant prior to 18.12.2013 in accordance with Rules, 2009.*

*(2) The posts which arose from 18.12.2013 onward will be filled up in accordance with Rules, 2013.*

*(3) Advertisement shall be issued accordingly.*

*(4) We make it clear that in both the kinds of advertisements, the Assistant Professor already working on ad hoc / contractual basis as well as others shall have right to apply and be considered for the post.”*

**5.1.** Learned counsel for the Commission placing reliance on the direction issued in the case of Subash Ranjan Behera contended that since the vacancy in UR category is a vacancy arisen prior to 18.12.2013, the selection was made in terms of the provision contained under Rule 4(1) of the 2009 Rules. Preference as contained under the 2<sup>nd</sup> proviso to the amended Rule 4 of 2013 Rules is not applicable, in view of the decision in the case of Subash Ch. Behera. The Commission by making the selection in accordance with the provisions contained

under the 2009 Rules rightly recommended Opp. Party NO.3 as she was found more meritorious. However, it is fairly contained that Opp. Party NO.3 obtained the teaching experience certificate on 08.03.2019 and such a certificate was not enclosed to her application while submitting the same on 28.11.2008 i.e. the last date of making the application.

**6.** This Court after going through the materials placed by the respective parties in support of their stand when found that the selection has not been made in terms of the stipulation contained in the advertisement, passed an order on 31.08.2023 directing the learned counsel appearing for the commission to produce the selection file in respect of selection process undertaken pursuant to the advertisement issued under Annexure-3. From the said selection file, so produced on 02.09.2023 before this Court when it was found that the Petitioner and private Opp. Party No.3 and other candidates who had made their applications for the post in question have only been allowed career mark with regard to their qualification of Class-XII and MBBS with no mark awarded in favour of the candidates having M.D. qualification, this Court on 05.09.2023 directed the learned counsel appearing for the Commission to produce the decision so taken by the

Commission with regard to award of mark in favour of the candidates towards career assessment. Order dt.05.09.2023 is reproduced hereunder.

**“Order: 05.09.2023**

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Pursuant to the order passed by this Court on 02.09.2023, the recruitment file to the post of Assistant Professor, Anatomy was produced before this Court. The recruitment file be kept in a sealed cover as before.
3. From the said file, it is found by the Petitioner and private Opposite Party No.3 and other candidates have been allowed marks with regard to their qualification in +2 and MBBS examination.
4. Mr. J.K. Lenka, learned counsel for the Petitioner contended that since the Petitioner has got qualification of M.D. she should have been awarded mark for that also. But Mr. A. Behera, learned counsel appearing for the Commission contended that basing on the decision taken by the Commission no mark has been awarded with regard to qualification of M.D.
5. In view of such submission made by Mr. Behera, this Court directs to Mr. Behera to produce the decision taken by the Commission with regard to award of mark in respect of the candidates appearing for the Post of Assistant Professor, Anatomy on the next date.
6. As requested by Mr. Behera, list this matter on 15th of September, 2023.
7. A free copy of this order be handed over to Mr. A. Behera, learned counsel appearing for the Commission for compliance.

**6.1.** Pursuant to the said order, learned counsel appearing for the Commission produced the instruction so provided by the Commission vide letter dt. 12.09.2023 with the enclosed Note sheet available at Page No.13,38 & 39. From the said instruction, it is found that, initially though the Commission on 03.10.2018 took a decision to award marks towards career assessment by allowing 20% for Class-XII, 40% for MBBS and 40% towards P.G



qualification, but the Commission subsequently took a decision on 25.04.2019 to award 20% towards Class-XII and 80% towards MBBS. This Court after going through the Note sheet enclosed to letter dt.12.09.2023 found the decision taken by the Commission on 03.10.2018, was modified in the subsequent decision taken on 25.04.2019 with regard to award of mark towards Career Assessment. From the note sheet, it was found that the decision taken on 03.10.2018 was taken by the Commission to award 20% for Class-XII, 40% for MBBS and 40% for P.G towards career assessment. But the decision dtd.25.04.2019 was only taken by a single member of the Commission, deciding therein to award 20% towards Class-XII and 80% towards MBBS.

**6.2** Considering the stand taken by the Commission and after going through the instruction so provided vide letter dt.12.09.2023, this Court passed a further order on 22.09.2023 to the following effect.

**22.09.2023**

**ORDER**

- 1.** This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
- 2.** Instruction provided by Mr. A. Behera, learned counsel appearing for the OPSC in Court today be kept in record.
- 3.** From the said instruction it is found that the Commission on 25.04.2019 was requested to take a fresh decision with regard to awarding of mark for having P.G. qualification in respect of candidates, who had made their application pursuant to the advertisement in question. It is further found from the instruction that the decision has been taken on the very same date itself i.e. on 25.04.2019 and nothing has been indicated that it is a decision of the Commission consisting of 5 members.

4. Mr. Behera, learned counsel for the Commission is directed to produce before this Court the decision of the Commission so taken on the request made by the Selection Committee on 25.04.2019 on the next date.

5. As requested, list this matter on 26.09.2023.

**6.3.** Pursuant to the order passed on 22.09.2023, learned counsel appearing for the Commission produced letter issued by the Commission on 26.09.2023 containing the reason for taking the decision not to award career mark for Post Graduate Qualification. Contents of letter dt.26.09.2023 is reproduced hereunder.

*“In inviting reference to the subject cited above I am to inform you that during scrutiny of documents in the recruitment for Assistant Professor (Anatomy) pursuant to the advertisement No.12 of 2018-19, it was come to the notice of the Commission that since many candidates have not been awarded marks in the PG but only issued with pass certificate, therefore, the then Chairman, OPSC had decided to shortlist candidates on the basis of the marks obtained in 12th Class (20%) and graduation (MBBS) (80%) to maintain uniformity in the recruitment process. The note sheet order of the then Chairman (pat P-39/N) has already been communicated to you in the previous letter (copy enclosed). The same may be placed before the Hon’ble Court for their kind appraisal.”*

**7.** Basing on the stand taken by the Commission in the counter affidavit and the instruction provided vide letter dt.12.09.2023 and 26.09.2023 as well as the reason to follow the 2009 Rules relying on the decision in the case of Subash Ranjan Behera, learned counsel for the Petitioner contended that as per Rule-4(3) of the 2009 Rules, selection of the candidates’ is required to be made with regard to the candidates’ academic attainment, teaching experience, aptitude, ability to teaching performance appraisal report and such other modalities as may be

decided by the Commission. But on the face of Rule 4(3) of the 2009 Rules the decision taken by the Commission not to award any mark for P.G qualification is not sustainable in the eye of law. It is also contended that the decision rendered in the case of Subash Ranjan Behera is not applicable to the facts of the present selection process as the advertisement was published in the year 2018 which is much after the decision of the Apex Court in the case of Subash Ranjan Behera. It is also contended that in view of the subsequent decision of the Hon'ble Apex Court in the case of **Anurag Sharma & Others Vs. State of Himachal Pradesh and Others 2022, Live Law (S.C.) 502**, the provision contained under the 2<sup>nd</sup> Proviso to Rule 4(1) of the 2013 amended Rule is required to be followed. As per the amended Rules, only on the case of non-availability of candidates with M.D in Anatomy, cases of candidates with M.Sc. can be considered. Hon'ble Apex Court in Para-11 of the judgment held as follows:

**11.** In view of the above principles, flowing from the constitutional status of a person in employment with the State, we have no hesitation in holding that the observations in Rangaiah that posts which fell vacant prior to the amendment of Rules would be governed by old Rules and not by new Rules do not reflect the correct position of law. We have already explained that the status of a Government employee involves relationship governed exclusively by rules and that there are no rights outside these rules that govern the services. Further, the Court in Rangaiah's case has not justified its observation by locating such a right on any principle or on the basis of the new Rules. As there are a large number of judgments which followed Rangaiah under the assumption that an overarching principle has been laid down in Rangaiah, we have to necessarily examine the cases that followed

Rangaiah. We will now examine how subsequent decisions understood, applied or distinguished Rangaiah.”

**8.** Having heard learned counsel for the parties and after going through their materials available on record, this Court finds that pursuant to the advertisement issued under Annexure-3, Petitioner and Opp. Party No.3 made their applications as against the post of Asst. Professor, Specialty in the discipline Anatomy. As found from the record, by the time Petitioner made her application, she was having the qualification of M.D, Anatomy and she had got the teaching experience in her favour so issued on 01.08.2017 under Annexure-2. As per the advertisement, candidates have to make their application in all respect by the last date so fixed to 28.11.2018 and any incomplete application as provided under Para-7(ii) is liable for rejection.

**8.1.** As provided in Paragraph-8 (v) of the advertisement, a candidate along with his/her application has to enclose various certificates which includes certificate from competent authority regarding the prescribed experience of three (3) years as Tutor or Senior Resident/Training as the case may be. As found from the record which is not disputed either by the learned counsel appearing for Opp. Party No.3 or by Opp. Party No.2, Opp. Party No.3 by the time she made her application on 28.11.2018, she was not

having with her the required teaching experience certificate which she obtained only on 08.03.2019. Since in terms of Note-2 appended to Para-8 of the advertisement all such certificates must have been issued by the competent authority within the last date fixed for submission of online applications and the Opp. Party No.3 having obtained such certificate on 08.03.2019 which is much after the last date of making the application which was fixed to 28.11.2018, as per the considered view of this Court, the application of Opp. party No.3 should not have been entertained in view of the decisions of this Court in the case of Sasmita Manjari Das.

**8.2.** Not only that though as per the Rules 4(1) of the 2009 Rules, the selection has to be made by awarding marks towards Career Assessment, but the Commission though initially took a decision on 03.10.2018 to award marks towards Career Assessment at 20% for Class-XII, 40% for MBBS and 40% for P.G, but the Commission, suo moto took a decision on 25.04.2019 by allowing 20% for Class-XII and 80% for MBBS. As per the considered view of this Court such a decision taken by the Commission on 25.04.2019 is not a decision so taken by the Commission. The decision dt.25.04.2019 has been taken by a single member though as per the practice as contended by the

learned counsel for the Commission, such a decision has to be taken by a Committee of 5-members, to be constituted by the Chairman.

**8.3.** In view of such anomaly in the selection process and the fact that Opp. Party No.3 was not having her teaching experience certificate as on the last date of making the application which was a mandatory requirement, her application could not have been entertained by the Commission.

**8.4.** In view of such position, this Court is inclined to set aside the recommendation of Opp. Party No.3 by the Commission as against the post of Asst. Professor Speciality in the discipline Anatomy so made on 07.06.2019 under Annexure-9. While setting aside the recommendation of Opp. Party No.3, this Court directs the Commission to consider the case of the Petitioner and other eligible candidates in UR category as against the post of Asst. Professor, Speciality in Anatomy by awarding mark for post Graduate qualification within a period of one(1) month from the date of receipt of this order. On such consideration of the matter, if Petitioner is found otherwise eligible, Commission may recommend her name for being appointed as against the post of Asst. Professor Speciality in the discipline Anatomy. It is observed that if

the Commission finds the Petitioner eligible and recommend her name for her appointment, consequential follow up action shall be taken by Opp. Party No.1 in providing appointment to the Petitioner. Such a decision be taken by Opp. Party No.1 within a period of one (1) month from the date of receipt of such recommendation.

With the aforesaid observation and direction, the Writ Petition is accordingly disposed of.

Orissa High Court, Cuttack  
Dated the 21th December, 2023/sangita

