

AFR



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.2343 of 2024

In the matter an Appeal under Section 10 of the Letter Patent of the Patna High Court, read with Article-4 of the Orissa High Court Order, 1948 and from the order dated 16.07.2024 passed in W.P.(C) No.346 of 2021.

...

Pravat Kumar Mishra

...

Appellant

-versus-

1. State of Odisha, represented through its Chief Secretary-cum-Chairman, Executive Committee, OSEPA, Bhubaneswar

2. State of Odisha, represented through the Principal Secretary. Department of School & Mass Education-cum-Vice-Chairman, Executive Committee, OSEPA, Bhubaneswar

3. State Project Director, Odisha School Education Programme (OSEPA), Bhubaneswar

4. District Project Coordinator, District Project Office, Samagra Shiksha, Mayurbhanj

...

Respondents

Advocates Appeared in this case

For Appellant -

Mr. G. Mukherji, Sr. Advocate along with Ankita Mukherji, A. Mishra, K. Banerjee, A. Nair & A. Acharya, Advocates

For Respondents -

Mr. S.B. Panda, AGA [For R.1 & 2]



Mr. P.K. Mohanty, Sr. Advocate
along with P. Mohanty,
S.N. Dash, S.K. Sahu,
K.T. Muduli, P. Pani & K. Panda
[For R.3]

....

CORAM :

MR. JUSTICE KRISHNA S. DIXIT

MR. JUSTICE CHITTARANJAN DASH

Date of Hearing & Judgment: 07.07.2026

PER KRISHNA S. DIXIT, J.

As a prelude to this judgment, we are quoting what the **Supreme Court of Canada** observed in *Wallace v. United Grain Growers Ltd.*¹:

“Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being.”

This Intra-Court appeal by the Employee is directed against a learned Single Judge's order dated 16.07.2024, whereby his W.P.(C) No.346 of 2021 has been negatived. In the said petition, he had called in question the Office Order dated 24.12.2020 made by Respondent No.3 at Annexure-12 to the Writ Petition by which he was downgraded from the post of Assistant Director, MIS to that of Programmer-cum-Training Officer.

2. Learned Senior Counsel Mr.Mukherjee appearing for the Appellant vehemently submits that his client, having been appointed as Programmer-cum-Training Officer w.e.f. 06.01.1998 after due selection process accomplished pursuant to Recruitment Advertisement dated

¹. [1997] 3 S.C.R 701.



31.07.1997, was placed in-charge of the post of System Analyst w.e.f. 28.09.2005; he having been duly absorbed in the said post w.e.f. 01.03.2006 vide order dated 13.03.2006 and the post of System Analyst having been re-designated as Assistant Director w.e.f. 05.12.2006, the impugned order of Respondent No.3 downgrading him in the position, is absolutely unjustified. He submits that the grounds on which the downgradation of the post is made, are either contrary to law or non-existent in law. He argues that the jurisdictional authority failed to see a certain legal difference between a fictitious degree certificate and a degree certificate issued by unauthorized educational institution. According to him, all these aspects having not been duly adverted to even by the learned Single Judge, the impugned order is liable to be voided.

3. *Per contra*, learned Panel Counsel appearing for the answering Respondents vehemently opposes the Appeal making submission in justification of the impugned order of the learned Single Judge and reasons on which the same has been constructed. He tells that the Appellant lacks the requisite qualification for the post in question and therefore, on the allegations of the public, the Official Respondents have made the impugned order reverting him to the lower position to which he was initially appointed. The same after being examined by the learned Single Judge has been sustained and therefore, interference of this Court in *intra Court* Appeal is not warranted.

4. Having heard learned counsel for the parties and having perused the Appeal papers, we are inclined to grant indulgence in the matter as under & for the following reasons:

4.1. There was Recruitment Advertisement dated 31.07.1997 and that the Appellant had staked his claim for Selection. He came to be



appointed as Programmer-cum-Training Officer on 06.01.1998. Subsequently, he was placed in the charge of post of System Analyst w.e.f. 28.09.2005. Further, his services came to be absorbed in the said post w.e.f. 31.01.2006 vide order dated 13.03.2006. All this is not only borne out by record, but happens to be a broadly admitted position. Therefore, the Appellant had had a right of lien to the post in question regardless of arguable infirmities in the process of Selection & Appointment. In service jurisprudence, lien is treated as the umbilical cord between the incumbent & the post, which cannot be unceremoniously severed. The Apex Court in *State of U.P v. Sughar Singh*² has observed as under:

“...An order of reversion is, in its immediate effect bound always to a reduction in rank. Even a reversion from a higher but temporary or officiating rank to a lower substantive rank is in a sense a reduction. But such orders of reversion are not always reduction in rank within the meaning of article 311. If the officer is promoted substantively to a higher post or rank, he gets a right to that particular post or rank and if he is afterwards reverted to the lower post or rank which he held before, it is a "reduction in rank" in the technical sense in which the expression is used in article 311. The real test in all such cases is to ascertain if the officer concerned has a right to the post from which he is reverted. If he has a right to the post then a reversion is a punishment and cannot be ordered, except in compliance with the provisions of article 311...”

Learned author **Justice M. Rama Jois** in his **Services under the State**³, writes as under:

“Reversion of persons holding higher post substantively: Persons holding the posts substantively have the right to the post. Any order passed against them reverting them to a lower class or grade of post, except on account of abolition of posts amounts to imposition of penalty of reduction in rank and, at once attracts the provisions of article 311(2). Unless such a penalty is imposed after complying with the provisions of article 311(2), it would be illegal and invalid...”

The above observations broadly apply to the case of the Appellant.

². AIR 1974 SC 423.

³. Justice M. Rama Jois, Services Under the State, Chapter IV at Page 265.



4.2. The post of System Analyst came to be re-designated as Assistant Director, MIS by treating the said post as being equivalent, vide order dated 05.12.2006. The Appellant was working in the said position with no complaint whatsoever. When this was the position, the order dated 24.12.2020 came as a bolt from the blue. By the said order, his position was reduced to the entry level i.e. Programmer-cum-Training Officer. This was on two erroneous premises, namely, (i) that the Appellant lacked MCA qualification and (ii) the MCA Certificate which he had obtained is fictitious. Despite strenuous submission, learned Panel Counsel is not in a position to demonstrate from the record that MCA happened to be a prescribed qualification for the post Assistant Director. Very importantly, before reverting from the position, what one has to show is that there was a prescribed qualification for the post in question as on the date the appointment was made preceded by selection and that the candidate lacked such a qualification as on the date of such Selection & Appointment. Unless this Twin Test is satisfied, no employee can be reduced in rank by a stroke of pen. An argument to the contrary would offend the settled principles of service jurisprudence.

4.3. F.A. Hayek (1899-1992), Political Philosopher & Nobel Laureate (1974) in his **The Road to Serfdom**⁴, says as under:

“Nothing distinguishes more clearly conditions in a free country from those in a country under arbitrary government than the observance in the former of the great principles known as the Rule of Law. Stripped of all technicalities this means that government in all its actions is bound by rules fixed and announced beforehand —rules which make it possible to foresee with fair certainty...”

In **P. Mahendran v. State of Karnataka**⁵, the following observation appears:

⁴. F.A. Hayek, *The Road to Serfdom* 1944, Routledge London and New York Publication, Chapter 6 Planning and the rule of law, Page 75.



“...The amended Rule could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter...the vacancies which occurred prior to the amended Rules would be governed by the old Rules and not by the amended Rules.”

As already stated, Respondents are not in a position to bring out that the post in question required MCA qualification when the Appellant was Selected & Appointed or even now. A qualification not prescribed by law cannot be superimposed by some Officials who have propensity to act as despots. The act of answering Respondent runs contrary to the well-established canons of service law. All this being borne in mind, one can safely state that the so called fictitious certificate of MCA would pale into insignificance. What pains us is the mindless & arbitrary act of the answering Respondents in not noticing the subtle difference that exists between a fictitious certificate of qualification and the one secured by the candidate at the hands of an institution that was enlisted by the Regulatory Bodies such as UGC & AICTE as not being authorized to award degree/diploma to the students. It is not the case of Respondent that the Appellant has perpetrated any act of fraud or fabrication.

4.4. We need to deliberate bit more on the certificate the Appellant has obtained after prosecuting the studies at the hands of Naba Bharat Shiksha Parishad Institute, Rourkela that was enlisted by both AICTE & UGC, as not being authorized to confer MCA degree. Obviously, such enlistment is done when the concerned educational institution does not comply with the requisite conditions for running the classes for particular courses. That is done to ensure that the half-baked candidates

⁵. AIR 1990 SC 405.



are not produced by such institutions, to the disadvantage of society at large. If such institutions award degrees/certificates to the candidates, who have duly prosecuted their courses, that is not a case of fictitious degrees/diplomas. We hasten to add that such degrees/diplomas are invalid. That does not mean fraud & fabrication, unless the candidate concerned too has an active role in all that. However, no such case is alleged and much less made out against the Appellant herein. In a similar fact matrix, the High Court of Jammu & Kashmir and Ladakh in ***Mohammed Shafiq Dar v. Union Territory of J&K***⁶, observed as under:

“...Thus it is established beyond doubt that the petitioner had not submitted any fake or forged certificate before the respondents for the purpose of seeking employment. He had only submitted the certificate issued by un-recognized Association. Had the petitioner submitted any fake or forged certificate, this Court would not have shown any indulgence but in view of the fact that the petitioner had submitted certificate by un-recognized Association and at the most while conducting scrutiny of the documents submitted by the candidates, the respondent...could have excluded the said Certificate while determining the merit of the petitioner...”

This subtle difference having been lost sight of, the impugned order has been issued by Respondent No.2. Therefore, the same is unsustainable. This aspect of the matter has not been duly considered by the learned Single Judge and therefore, his judgment becomes vulnerable for challenge.

4.5. The learned Senior Advocate appearing for the answering Respondents vehemently resisted our inclination to award consequential benefits to the Appellant on the ground that during the said period the employee did not join the post to which he has been reverted, when asked. We do not find any merit in this resistance and reasons for this are not far to seek: Firstly, years ago services of the Appellant were

⁶. 2025 LiveLaw (JKL) 162.



absorbed in the post which he was placed in at the discretion of answering Respondents. It is not that the Appellant had anything culpable in securing such absorption. Secondly, the posts in question were equated to each other and therefore it cannot be gainfully argued that the Appellant was bestowed a position higher than what he has been entitled to. An employee who has been wrongly reverted to a lower position with no justification whatsoever cannot be faltered when he does not report for duty in such reversion. An argument to the contrary could not be less than humiliating an honest official by the Respondents who happen to be State entities under Article 12 of the Constitution of India, *vide Bhupendra Nath Hazarika v. State of Assam*⁷, such entities are constitutionally expected to conduct themselves as model employers, foreign regime having ended decades ago.

4.6. We would have simply allowed the Appeal by reversing the impugned order and thereby set at naught the injustice meted out to the Appellant. That would not have done complete justice to him, who was made to fight the legal battle for long, having been demoted to the lower post at the hands of answering Respondents. No reasonable person in the armchair of Respondent No.2 would have issued order of the kind without ascertaining all credentials, that too after a long lapse of more than 15 years. Added, the service records of the Appellant are not stated to be spotted. They are clean. There is no complaint whatsoever from any quarters as to the performance of Appellant in the post in which he was absorbed. Such absorption took place years ago. Passage of time, the sages of law say, would dilute the arguable infirmities in the action of public authorities that answer the expansive description of Article 12

⁷. AIR 2013 SC 234.



of the Constitution. The Apex Court in *E.P. Royappa v. State of Tamil Nadu*⁸ warned that any action of the State Entities that is arbitrary or unreasonable is unsustainable. Where there is gross arbitrariness or that no reasonable person in the armchair of the answering Respondents would not have made the decision of the kind in the given fact matrix, mere invalidation by the Writ Court would not do complete justice to the aggrieved litigants. Something more is required. In our considered opinion, imposition of exemplary cost would bring about the public accountability in governance. Regard being had to the facts & circumstances of this case, a cost of Rs.1,00,000/- (Rupees One Lakh) only would do complete justice to the Appellant herein, who was unfairly treated with no justification whatsoever. He was made to wage the legal battle which continued for long.

In the above circumstances, this Appeal succeeds; the impugned order of the learned Single Judge is set at naught; Appellant's W.P.(C) No.346 of 2021, having been favoured, the order by Respondent No.3 dated 24.12.2020 that was challenged therein is quashed by issuing writ of certiorari; the Appellant shall be reinstated in the post of Assistant Director with service & financial benefits. The Respondent Nos.1 & 2 collectively shall pay a sum of Rs.1,00,000/- (Rupees One Lakh) only to the Appellant as exemplary cost, which may be recovered personally from the erring officers in accordance with law.

Time for compliance is eight (8) weeks. Delay shall be viewed very seriously at the next level of legal proceedings, if & when brought.

⁸. AIR 1974 SC 555.



This Court places on record its deep appreciation for the able research & assistance rendered by its official Law Clerk-cum-Research Assistant Mr. Mohammed Nihad Sharief.

Web copy of judgment to be acted upon by all concerned.

(Krishna S. Dixit)
Judge

(Chittaranjan Dash)
Judge

Orissa High Court, Cuttack
The 7th day of July, 2026/Anisha