
(2021) 12 OHC CK 0125

In the Orissa High Court

Case No : Writ Petition Civil (OA) NO. 923 Of 2015

Bikash Mahalik

APPELLANT

Vs

State Of Odisha & Ors

RESPONDENT

Date of Decision : 03-12-2021

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Odisha Ministerial Service Rules, 1985 — Rule 10
Evidence Act, 1872 — Section 115

Citation : (2021) 12 OHC CK 0125

Hon'ble Judges : Dr. B.R.Sarangi, J

Bench : Single Bench

Advocate : P.K. Mishra, K.L. Kar, A Ganejdra, M. K. Balabantaray

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J

1. The petitioner, who belongs to Scheduled Caste category and is serving as Junior Clerk in the establishment of Collectorate, Boudh, has filed this writ petition to quash the show-cause notice dated 31.03.2015 under Annexure-13 issued by opposite party no.3 directing him to give reply within 30 days from the date of its receipt as to why his services shall not be terminated; as well as letter dated 09.02.2015 under Annexure-13/1 issued by opposite party no.2 to opposite party no.1 intimating for deletion of the name of the petitioner from the final list and his removal from service on the ground of violation of G.A. Department Notification; and the letter dated 26.03.2015 under Annexure-13/2 issued by the Joint Secretary to Govt. of Odisha, Revenue & Disaster Management Department to opposite party no.2 recommending for issuance of show-cause notice prior to termination of the petitioner from service. He further seeks direction to the opposite parties to allow him to continue as Junior Clerk as usual with all service and financial benefits, as stipulated in the appointment order under Annexure-7 dated 26.11.2013, as he was validly recruited as per the

statute.

2. The facts of the case, in brief, are that opposite party no.3-Collector & District Magistrate, Boudh issued an advertisement dated 8.07.2013, captioned as "Special Recruitment Drive for ST/SC" to fill up the vacant posts of Jr. Stenographer/Jr. Clerk/ Revenue Inspector/Assistant Revenue Inspector/Amin. So far as the vacancy position of Jr. Clerk is concerned, total vacancies were 16 and the posts were distributed as per post based roster i.e. 8 posts meant for ST, 4 posts meant for ST (W), 3 posts meant for SC and 1 post meant for SC (W). For recruitment to the posts of Jr. Clerk, the candidate shall have to appear written test and practical computer skill test as provided in appendix to Rule-10 of Odisha Ministerial Service Rules, 1985, as amended vide notification dated 12.04.2010. As per appendix, opposite party no.3 had specified in the advertisement, that the competitive examination shall consist of written test and practical skill test. The written test shall consist of paper-1 for 3 hours and paper-II for 3 hours. Each paper consists of two parts. Paper-1 consists of Part-1, Language Test (English and Oriya) and Part-II, Objective General Knowledge, carrying each 100 marks and the duration of examination was three hours. Similarly Paper-II consists of Part-1, Objective Mathematics and Part-II, Basic Computer Skill carrying each 100 marks. Total mark of written test (Paper-1 & Paper-II) was 400. The maximum mark of practical skill test i.e. Basic Computer Skill (Objective) was 50. Therefore, total maximum mark was 450 as provided under the statute. In similar manner, another advertisement dated 08.07.2013 was issued in order to fill up the posts of Junior Clerks and other posts from among the UR and SEBC category.

2.1. When the advertisement was published, the petitioner was serving as Jogan Sahayak on consolidated pay of Rs.3,500/- per month in Mathura G.P. under Panchayat Samiti Charichhak in the district of Boudh. While serving as such, he having requisite qualification, applied for the post of Jr. Clerk with required documents within the prescribed period of time. As his application was in order, opposite party no.3 issued admit card bearing his Roll No.JC-0071 instructing him to attend the written test, which was to be held on 06.10.2013 (Sunday) in Jogindra Dev High School, Boudh. Pursuant thereto, he appeared in the written test on the scheduled date and time and secured 234 marks (113 in Paper-I + 121 in Paper-II), out of total 400 marks. Taking into account the marks secured in the written test, opposite party no.3 vide letter dated 19.11.2013 asked the petitioner to appear in the computer skill test on 16.11.2013 at 10.00 AM in the Collectorate, Boudh. Accordingly, the petitioner appeared computer skill test and secured 31 marks out of total marks 50.

2.2. On the basis of marks secured both in written test and computer skill test, opposite party no.3 prepared a merit list on 26.11.2013. The petitioner having placed at Sl. No.2 securing 265 marks, opposite party no.3 issued appointment letter on 26.11.2013 in his favour appointing him as Jr. Clerk. As a consequence thereof, he was appointed as Jr. Clerk on regular basis being selected through

recruitment test. As a result, he resigned from his previous post, i.e. Jogan Sahayak of Mathura G.P. under Panchayat Samiti, Charichhak on 27.11.2013, which was duly allowed by the Sarapanch of Mathura G.P. vide letter dated 27.11.2013 and he joined in his new post on the very same day under opposite party no.3 as Jr. Clerk and discharged his duty assigned to him.

2.3. After joining of the petitioner, opposite party no.3 sanctioned Rs.7,500/- towards one time refundable G.I.S. advance in favour of the petitioner to enable him to make one time deposit under GIS, pursuant to which said amount was recovered from his salary in 10 equal instalments, and he was also enrolled under defined Contributory Pension Scheme as per Finance Department notification dated 17.07.2009 and 24.10.2005 and accordingly, PRAN kits (Permanent Retirement Account Number) was issued in his favour. After completion of one year service, opposite party no.3 opened the Service Book and his name was placed at Sl. No.38 in the gradation list of Jr. Clerk. He also completed departmental examination to be eligible for consideration of promotion to the next higher rank as per the statute.

2.4. The petitioner, while continuing as Jr. Clerk, having completed about one year and four months of service under opposite party no.3, all on a sudden, pursuant to direction of opposite parties no.1 and 2, opposite party no.3 issued impugned show-cause notice dated 31.03.2015 and vide memo dated 31.03.2015 communicated to the petitioner, along with impugned enclosures such as letter dated 09.02.2015 of RDC, (SD), Berhampur, Ganjam, letter dated 26.03.2015 of Government and letter dated 29.03.2015 of RDC (SD), Berhampur, Ganjam, calling upon him to explain as to why he shall not be terminated from Government Service, for having been appointed vide order dated 26.11.2013 by violating the G.A. Department Notification dated 12.04.2010. Hence this application.

3. Mr. P.K. Mishra, learned counsel for the petitioner contended that in view of provisions contained in appendix to Rule-10 of the Orissa Ministerial Services (Method of Recruitment to the Posts of Junior Clerks in District Offices) Rules, 1985, a candidate has to appear in the written test for maximum marks of 400 and practical skill test of maximum marks of 50 and on the basis of aggregate marks secured in both tests, the merit list/select list has to be prepared for appointment as Junior Clerk. Accordingly, opposite party no.3 conducted the written test and practical skill test for total maximum marks of 450 and on the basis of total marks secured in both the tests, opposite party no.3 rightly prepared the merit list. The petitioner was selected and his name found place at Sl. No.2, pursuant to which he joined as Junior Clerk. Subsequently, the G.A. Department, vide notification dated 12.04.2010, notified that the practical skill test shall be qualifying in nature and the marks awarded in practical skill test should not be added to the marks secured by the candidates in the written test examination. But such notification of the G.A. Department cannot have any justification, as it cannot supersede the statutory provisions contained in Rules,

1985. It is further contended that opposite party no.2, has arbitrarily directed opposite party no.3 to redraw the merit list by excluding the marks of practical skill test, which is absolutely an outcome of non-application of mind. It is further contended that opposite party no.2, vide letter dated 09.02.2015 at Annexure-13/1 issued with regard to the special recruitment drive for the post of Jr. Clerk, directed that the petitioner need to be deleted from the final merit list and removed from the service, because of the reason that he had been awarded 31 marks in practical skill test and thus 31 marks when added to written test marks 234, he secured 2nd position and as per law, the practical test mark is not to be added with aggregate marks of Paper-I and Paper-II and as a consequence his position does not remain in the final merit list. Such a direction contained in Annexure-13/1, being in violation of G.A. Department notification, cannot sustain in the eye of law, as the same is hit by principle of estoppel. Therefore, the petitioner seeks for quashing of the same.

To substantiate his contentions, he has relied upon the judgment of this Court in *Pratima Sahoo v. State of Orissa*, 2021 (I) OLR 174.

4. Mr. N.K. Praharaj, learned Standing Counsel for the State argued with vehemence that opposite party no.3 published the common merit list, vide office order dated 26.11.2013, by adding the marks secured in the skill test to the marks secured in the written test. In the said merit list, the petitioner stood second, got appointed and continued in service. Such select list prepared by opposite party no.3 was declared wrong by opposite party no.2, vide letter dated 09.02.2015 stating that the computer skill test is qualifying in nature and the marks awarded therefor should not be added with the marks secured in the written test, otherwise it would be in deviation of the Government guidelines. It is further contended that the petitioner has secured 31 marks in computer skill test and got qualified as the qualifying mark was 15 and his merit list should be placed taking into account 234 marks (Paper-I=113, Paper-II=121) secured in written test only. It is further contended that opposite party no.3 has conducted the written test and the practical skill test for total maximum mark of 400 and 50 respectively. There is stipulation in the G.A. Department notification dated 12.04.2010 in paragraph-3 at foot note that the practical skill test shall be qualifying in nature and the marks awarded for practical skill test should not be added with the mark secured by the candidates in the written test examination, as observed by opposite party no.2. Therefore, inclusion of the name of the petitioner in the final merit list, by adding his marks secured in the computer skill test and placing him at serial no.2 cannot sustain. As a consequence thereof, he should be removed from service.

5. This Court heard Mr. P.K. Mishra, learned counsel for the petitioner and Mr. N. K. Praharaj, learned Standing Counsel for the State by hybrid mode. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

6. In exercise of powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Orissa framed the rules to regulate the method of recruitment to the posts of Junior Clerks in the District Offices and the offices subordinate thereto called the "Orissa Ministerial Services (Method of Recruitment to the Posts of Junior Clerks in the District Offices) Rules, 1985 (hereinafter referred to as "Rules, 1985").

7. For just and proper adjudication of the case, Rule 10 of the Rules, 1985 is extracted below:

"10. Standard and syllabus of the Examination-The Scheme and subjects for the examination and the Syllabus shall be as specified in the APPENDIX.

The said appendix to Rule 10 was amended consequent upon amendment of Rules, 1985 as Orissa Ministerial Services (Method of Recruitment to the post of Junior Clerks in District Offices) Amendment Rules, 2009. Appendix-III of the amended Rule 10 states about scheme and subjects for examination. The extract of the same reads as follows:

"Appendix - III

(See Rule 10)

Scheme and Subjects for Examination

Papers

Subjects

Maximum

Time

Marks

Paper- I

Part- I - Language

100

3 Hours

Test

(English & Odiya)

100

Part -II - Objective

General Knowledge

Paper - II

Part - I Objective

100

3 Hours

Mathematics

Part - II Basic

Computer

100

Skills

TOTAL

400

6 Hours

Practice Skill Test

1 Hour

50

Basic Computer Skills

Note : - (i) The Standard of examination shall be equivalent to that of Secondary School,

(ii) Those who will qualify written test shall be called for the practical Skill test.

(iii) The practical test shall be of qualifying nature."

8. There is no dispute with regard to the fact that the petitioner appeared in the written test and secured 234 marks out of 400 marks and also secured 31 marks in practical skill test out of 50. Opposite party no.3 prepared a select list taking into account marks secured in the written test as well as practical skill test and placed the petitioner at Sl. No.2 of the merit list. Subsequently, opposite party no.2 found out that marks secured in the practical skill test, being qualifying in nature, should not be added to the marks secured in the written test. Consequentially, he directed opposite party no.3 to redraw the final merit list on the basis of marks secured by the petitioner in the written test i.e. 234 marks excluding the marks secured in the practical skill test, in which the petitioner had qualified by securing 31 marks, which is above the qualifying mark of 15, out of 50 marks. But fact remains pursuant to merit list prepared by opposite party no.3, the petitioner has already joined and his service book has been opened. The amount towards GIS has been deducted from his salary and he has also been enrolled in the contributory pension scheme of the Government. As a result, a right has been accrued in his favour to continue in his post. Now, after

lapse of one year 4 months, as per direction given by opposite party no.2, opposite party no.3 has redrawn the merit list and called upon the petitioner to show-cause why he shall not be removed from service. Whether such action of opposite party no.3 is hit by principle of estoppel, is the short question to be decided in the facts and circumstances of this case.

9. Section-115 of the Indian Evidence Act, 1872 deals with Estoppel, which reads as follows:-

"115. Estoppel:- When one person has, by this declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing."

To bring the case within the scope of estoppel as defined in Section 115 of the Evidence Act;

1. There must be a representation by a person or his authorized agent to another in any form, a declaration, act or omission;
2. The representation must have been of the existence of a fact and not of promises be future or intention which might or might not be enforceable in contract;
3. The representation must have been meant to be relied upon;
4. There must have been belief on the part of the other party in its truth;
5. There must have been action on the faith of that declaration, act or omission that is to say, the declaration, act or omission must have actually caused another to act on the faith of it, and to alter his former position to this prejudice or detriment;
6. The misrepresentation or conduct or omission must have been the proximate cause of leading the other party to act to his prejudice;
7. The person claiming the benefit of an estoppel must show that he was not aware of the true state of things. If he was aware of the real state of affairs or had means of knowledge, there can be no estoppel;
8. Only the person to whom representation was made or for whom it was designed can avail himself of it."
10. In Black's Law Dictionary, 7th Edn. At page 570 'estoppel' has been defined to mean a bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true.
11. The Law Dictionary expresses promissory estoppel to the following effect:-

"A promise by which the promisor should reasonably expect to induce action or

forebearance of a definite and substantial character on the part of the promise, and which does induct such action or forbearance. Such a promise is binding if injustice can be avoided only by enforcement of the promise."

12. In Halsbury's Laws of England, Fourth Edition, Vol.16 in Para-1514 at page 1017, the "promissory estoppel" has been defined to the following effect:-

"Promissory estoppel: When one party has, by his words or conduct made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced."

13. In Central London Property Trust Ltd. v. High Treas House Ltd., (1956) 1 All ER 256, it has been held that a promise is intended to be binding, intended to be acted upon, and in fact acted upon is binding.

14. In Century Spg. And Mfg. Co. Ltd v. Ulhasnagar Municipal Council, (1970) 1 SCC 582, it has been held that there is no distinction between a private individual and a public body so far as the doctrine of promissory estoppel is concerned.

15. In Gujurat State Financial Corporation v. Lotus Hotels, (1983) 3 SCC 379, it has been held that the principle of "promissory estoppel" would estop a person from backing out of its obligation arising from a solemn promise made by it to the respondent.

16. In Ashok Kumar Maheswari v. State of U.P., 1988 SCC LSS 592, it has been held that doctrine of "promissory estoppel" has been evolved by the Courts on the principle of equity to avoid injustice.

17. In Sharma Transport v. Govt. of A.P., AIR 2002 SC 322: 2002) 2 SCC 188, it has been held that the Government is equally bound by its promise like a private individual, save where the promise is prohibited by law, or devoid of authority or power of the officer making the promise. The equitable doctrine of promissory estoppel must yield where the equity so requires in the larger public interest.

18. In State of Rajasthan v. J.K. Udaipur Udyog Ltd., (2004) 7 SCC 673, it has been held that the "promissory estoppel" operates on equity and public interest.

19. In A.P. Steel Re-rolling Mill Ltd. v. State of Kerala, (2007) 2 SCC 725, it has been held that where a beneficent scheme is made by the State, the doctrine of "promissory estoppel" would apply.

20. In State of Orissa v. Manglam Timber Products Ltd., (2003) 9 Scale 578, it has been held that to attract applicability of promissory estoppel a contract in writing is not a necessary requirement. This principle is based on premise that no

one can take advantage of its own omission or fault.

21. In *B.L. Sreedhar v. K.M. Munireddy*, (2003) 2 SCC 355 (365) it has been held by the apex Court that 'estoppel' is based on the maxim "allegans contrarium non est audiendus" (a party is not to be heard contrary) and is the spice of presumption "juries et de jure" (absolute, or conclusive or irrebuttable presumption).

22. In *H.R. Basavaraj v. Canara Bank*, (2010) 12 SCC 458, it has been clarified that in general words, 'estoppel' is a principle applicable when one person induces another or intentionally causes the other person to believe something to be true and to act upon such belief as to change his/her position. In such a case, the former shall be stopped from going back on the word given. The principle of estoppel is only applicable in cases where the other party has changed his positions relying upon the representation thereby made.

23. The principle of promissory estoppel has been considered by the apex Court in *Union of India v. M/s Anglo, Afghan Agencies etc.*, AIR 1968 SC 718; *Chowgule & Company (Hind) Pvt. Ltd. v. Union of India*, AIR 1971 SC 2021; *M/s Motilal Padampat Sugar Mills Co. Ltd. v. The State of Uttar Pradesh*, AIR 1979 SC 621; *Union of India v. Godfrey Philips India Ltd.*, AIR 1986 SC 806; *Delhi Cloth & General Mills Ltd. v. Union of India*, AIR 1987 SC 2414; and *Bharat Singh v. State of Haryana*, AIR 1988 SC 2181 and many other subsequent decisions also.

24. In *Ambika Prasad Mohanty v. Orissa Engineering College*, 1989(1) OLR 440, the Division Bench of this Court has already held that a student admitted after satisfying all qualifications, subsequently his admission is cancelled and he cannot prosecute his studies elsewhere, rule of estoppel is applicable.

25. This Court in *Dr. (Smt.) Pranaya Ballari Mohanty v. Utkal University*, 2014 (I) OLR 226 has come to a finding that the action taken at belated stage by the University after lapse of 20 years of publication of the result is hit by the principle of estoppel.

26. Similar view has also been taken by this Court in *Rajanikanta Priyadarshy v. Utkal University*, represented through its Registrar, 2015 (I) OLR 212, wherein this Court held that the result of +3 Final Degree (Regular) Examination, 2010 of the petitioner therein having been published and on that basis he has already undergone higher studies and passed in different courses, subsequently his initial result cannot be cancelled on the ground that he has failed in the said examination.

27. In *Pratima Sahoo* (supra), this Court held that the order of disengagement of the petitioner from the post of Sikhya Sahayak, pursuant to decision of the district administration, having found qualified in the selection process and appointed after resigning from her erstwhile post of Anganwadi Worker and having worked for six to eight months, amounts to putting the petitioner in prejudicial and disadvantageous position and the reason assigned for later finding

the petitioner not suitable for securing less marks than other meritorious candidates do holds good, the petitioner cannot be found faulted by the mistake committed by the appointing authority in calculating the percentage. Consequentially, direction was given to absorb the petitioner forthwith applying the doctrine of promissory estoppel in the said case.

28. In view of the law and fact, as discussed above, the irresistible conclusion is that the show-cause notice dated 31.03.2015 under Annexure-13 issued by opposite party no.3, the letter dated 09.02.2015 under Annexure-13/1 issued by opposite party no.2 to opposite party no.1 and letter dated 26.03.2015 under Annexure-13/2 issued by the Government of Odisha, Revenue and Disaster Management Department to opposite party no.2 cannot sustain. Therefore, the same are liable to be quashed and hereby quashed. Pursuant to interim order passed on 07.04.2019 by the Odisha Administrative Tribunal since the petitioner is still continuing, he shall be allowed to continue with all service and financial benefits as due and admissible to him in accordance with law.

29. Accordingly, the writ petition is allowed. However, there shall be no order as to costs.

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