
(2025) 11 OHC CK 1936
In the Orissa High Court
Case No : RVWPET No.435 Of 2023

Odisha Public Service Commission

APPELLANT

Vs

Trilochan Dash And Others

RESPONDENT

Date of Decision : 29-11-2025

Acts Referred:

Citation : (2025) 11 OHC CK 1936

Hon'ble Judges : Manash Ranjan Pathak, J;Mruganka Sekhar Sahoo, J

Bench : Division Bench

Advocate : Arnav Behera, Trilochan Dash, Subha Bikash Panda

Final Decision : Disposed Of

Judgement

Mruganka Sekhar Sahoo, J

I.A. No.456 of 2023

1. The I.A. has been filed for condonation of reported delay of 22 days in filing the Review Petition.

We have heard learned counsel for the petitioner as well as the opposite party appearing in person.

Having gone through the I.A. supported by affidavit explaining the reasons of delay in filing the Review Petition particularly paragraphs-2, 3 & 4 and we find that adequate cause has been shown explaining the delay. Reported delay of 22 days in filing the Review Petition is condoned.

Accordingly, the I.A. is favoured and disposed of.

2. RVWPET No.435 of 2023

The RVWPET has been filed by the respondent in the Writ Appeal seeking review of the order dated 18.09.2023 passed in W.A. No.1349 of 2023 arising out of W.P.C(OAC) No.3758 of 2017 disposed of on 09.05.2023. The said order dated

18.09.2023 was passed by a Co-ordinate Bench in which one of us, M.S. Sahoo, J, was a Member. The matter has been placed before this Bench for consideration as per the notification dated 08.05.2025 of the High Court, regarding listing of matters.

3. Learned counsel for the review petitioner-respondent-opposite party Odisha Public Service Commission (OPSC), brings to our notice, the grounds stated in the appeal memo for seeking the review, particularly, grounds-'A & B', which are reproduced herein:-

"A. For that the order dtd. 18.09.2023 passed by the Hon'ble Court has caused serious prejudice to the present petitioner that there is an error apparent on the face of the record. It could not be brought to the notice of the Hon'ble Court despite of due diligence that even if two marks are allowed to be awarded in favour of all the candidates the petitioner is not being able to qualify to be selected as an Asst. Public Prosecutor pursuant to the Advertisement No. 12 of 2016-17.

B. FOR that it is pertinent to mention here that since it is a select list pursuant to the advertisement in the year 2016-17, if two marks are awarded against the Question No, 18 and 58, seven numbers of Asst. Public Prosecutors who are serving now will be out of service as per the revised select list and fresh seven candidates will have to be interviewed to be newly recruited as Asst. Public Prosecutor in respect of the Advertisement No. 12 of 2016-17 and they may also claim their seniority in future. It is pertinent to mention here that those serving Asst. Public Prosecutors whose interest are going to be affected were not also made Parties before this Hon'ble Court. That such important facts could not be brought to the notice of the Hon'ble Court at the time of hearing of the Writ Appeal by the petitioner which would result in serious miscarriage of justice."

4. It was submitted that as indicated in ground 'A' the applicant for the post, Shri Trilochan Dash, the opposite party-respondent-applicant/petitioner (who appears in person before us) is not getting selected after award of one mark each in question Nos. 18 and 58.

Accordingly, we directed the appellant-OPSC to produce the relevant documents in original in a sealed cover to be produced before us to buttress the submission as contended in the grounds- A and B.

5. Pursuant to our order dated 13.10.2025, sealed cover is produced before us which contains the details supporting the grounds 'A' and 'B' as we have noted in paragraph-3 above.

6. It is already noted above that a Coordinate Bench in which one of us, M.S. Sahoo, J. was a Member considered the W.A. No.1349 of 2023 that was preferred by the OPSC challenging the order dated 09.05.2023 passed in WPC(OAC) No.3758 of 2017. For convenience of reference and better appreciation, we reproduce the order dated 18.09.2023 passed in WA No.1349 of 2023:

"6. Heard Mr. B.P. Tripathy, learned AGA for the appellant and Mr. Trilochan Dash, the respondent No.1, appearing in person.

7. By means of this intra-court appeal, the appellant has challenged the order dated 9.5.2023 (Annexure-5 to the writ petition) passed by the learned Single Judge in WPC(OAC) No. 3758 of 2017.

8. Mr. Tripathy, learned counsel has raised a jurisprudential objection in respect of maintainability of the writ petition as the last person who has been selected for the post of Assistant Public Prosecutor has not been served notice. If the vacancy has to be adjusted the person will certainly be affected and hence, he has indefeasible right to represent.

9. Be that as it may, what we find that the judgment is flawed as in paragraph-7 of the judgment (Annexure-5 to the memorandum of appeal), learned Single Judge has observed as follows :

"7. Mr. A. Behera, learned counsel appearing for the Commission on the other hand contended that if Question No.58 has been wrongly drafted, then all the candidates who took the examination will be entitled to get 2(one) grace mark and accordingly the cut-off mark will be higher in all category including U.R. male category."

10. Learned Single Judge has observed as follows :

"8. In view of such position, this Court while disposing the writ petition directs the Commission to award 1(one) mark each in favour of the Petitioner in respect of Question Nos.18 & 58 and reconsider the claim of the Petitioner for his selection and appointment. On such reconsideration if it is found that the Petitioner is coming within the cut-off mark so fixed in U.R. Male Category, consequential action will be taken by the Commission to recommend the case of the Petitioner to the Government-Opposite Party No.1 for his appointment as an Asst. Public Prosecutor pursuant to the Advertisement No.12 of 2016-17. The entire exercise shall be completed by the Commission within a period of one (1) month from the date of receipt of this order. On receipt of the recommendation, if any, Opposite Party No.1 shall provide appointment to the Petitioner within a further period of 1(one) month. The report of the Expert Committee be kept in record."

The above observation has been made on the basis of the report of the said Expert Committee, as referred above.

11. Mr. Tripathy, learned counsel for the appellant has submitted the OPSC-appellant, in view of the observation made in paragraph-7, the inference as drawn in paragraph8 is unsustainable.

12. Mr. Trilochan Das has submitted that he has no objection if all the candidates appearing for the examination are granted one mark each against questions no.18 & 58. In view of the said submission made by the writ petitioner

respondent no.1, waiving the objection raised by Mr. Tripathy on maintainability, we direct the Odisha Public Service Commission-appellant to take up the exercise for adding one additional mark against those question to each of the candidates. We believe that no topsy turvy will happen, in view of this direction. However, if any topsy turvy occurs, we grant liberty to the State Government in the Home Department to adjust those persons against the available vacancies. In terms of the above direction, this writ appeal stands disposed of. The said exercise shall be completed within thirty days from today. If the respondent no.1 is found within the select panel after the said exercise, he shall be appointed against vacancy available at present. A copy of this order be handed over to Mr. Muduli, learned Addl. Government Advocate forthwith."

[Underlined by us]

7. Paragraphs-7 and 9 of the order dated 09.05.2023 passed in the writ petition were reproduced in the order of the Writ Appeal dated 18.09.2023. As would be evident at Paragraph-12 of the order dated 18.09.2023 in W.A. No.1349 of 2023 the submissions of the respondent who appeared in person have been noted. (reproduced above)

8. Now we are presented with a situation as we have opened the sealed cover, the respondent having roll no.201089 after adding two marks has secured 120.563 marks which is yet to be communicated to him. The marks shall be communicated by the OPSC to the opp. party after this Court passes orders in the Review Petition.

9. It is submitted by the respondent appearing in person that his marks would be 120.594, which he states in his objection to the Review Petition (at Paragraph-7). The objection to the RVWPET is taken on record.

In response, learned counsel appearing for the review petitioner-OPSC submits that the respondent appearing in person has added both two grace marks as well as pro-rata marks to make it 120.594 which is not permissible inasmuch as after adding two marks, pro rata marks cannot be added making a difference of 0.031 in marks from the calculation of the OPSC and the calculation of the respondent.

10. We have heard the respondent appearing in person at length. He submits that he is aware of the entire selection and knows the marks of the last candidate, who would be selected after drawing the revised select list by giving two marks each to all the candidates as directed by the appellate order.

In response to his such submission, we have pointed out that since the matter is kept in a sealed cover after the direction issued by the Coordinate Bench in the Writ Appeal, what can be the sources of the respondent-opposite party to be aware of the revised result, he submits that he has obtained the details from the website of the OPSC.

11. In response, learned counsel for the review petitioner OPSC submits that even he is not aware of the contents of the sealed cover much less the said

details could have been disclosed in the official website. The learned counsel for OPSC asserts that OPSC can not publish the details without seeking leave in a pending litigation as it has approached this Court by filing RVWPET.

12. From the records contained in the sealed cover we find that pursuant to the direction of the Coordinate Bench in the Writ Appeal to give two marks each to all the eligible candidates, exercise has been undertaken, though, after the results were published the candidates were selected, recommended and they have joined in service. Therefore, there is no occasion for the OPSC to publish the results after adding two marks as directed by this Court and publish it in the website.

13. To cross-check and test the submission of the respondent appearing in person we have asked him whether actually he is aware of the mark that would be obtained by the last selected candidate who may be selected after two marks are added; he candidly submits that he cannot say what is the cut off mark that would be after two marks are added to all the eligible candidates as directed by the Coordinate Bench in Writ Appeal. We thought it appropriate to show the statement contained in the sealed cover to the opp. party appearing in person; after perusing the same he returned and the statement is kept back in the sealed cover.

14. We also note the submission of the respondent appearing in person that he would seek further two weeks adjournment. However, we do not feel it appropriate to grant any further adjournment in view of the fact that the materials those are necessary for our consideration have already been produced by the review petitioner in context of the order dated 18. 09.2023 passed by us in W.A. No.1349 of 2023 and the order dated 13.10.2025 passed by us in RVWPET No.435 of 2023.

15. The reasons for the respondent still not being able to qualify as an unreserved category candidate as he is unable to secure the minimum mark if a revised merit list is drawn are obvious as would be discussed here.

16. Evidently, two marks can be given to all the candidates but not to the candidates who have answered the question nos.18 & 58 and have already been awarded marks. Further, two marks cannot be given selectively to few candidates in view of the directions issued in the W.A.

17. The total marks secured by the candidates have gone to the extent of third digit towards the right of decimal e.g. the opposite party would secure 120.563. Apparently addition of two marks to the total marks of all the eligible candidates would bring substantial changes in the merit list if it is prepared again.

18. Now this Court is satisfied that as per the scheme of examination after implementation of the orders passed by the Coordinate Bench dated 18.09.2023 passed in W.A. No. 1349 of 2023 which has not been challenged by the respondent. After adding two marks further addition cannot be made by giving

pro rata marks. However, for the sake of argument accepting that the respondent will get 120.594 marks we find the said mark is less than the marks that would be secured by the last candidate in his category (unreserved) as per list(s) produced before us in sealed cover.

19. In view of the factual aspect that by carrying out and implementing the order passed by the Coordinate Bench as directed by order dated 18.09.2023 in W.A. No.1349 of 2023 and adding two marks to the marks of the petitioner-respondent-opposite party he will still not qualify as marks secured by him is less than the cut off mark that would be secured by the last candidate in UR category while adding two marks to all the candidates and we partially review the order.

20. We hold that the decision by the coordinate Bench to award two marks to all the candidates is correct and there are no reasons to review that part of the said order.

21. Accordingly, we review and clarify the order passed by the Coordinate Bench dated 18.09.2023 in W.A. No.1349 of 2023 by directing that the opposite party-appellant-review petitioner shall communicate to the respondent-opposite party his result by adding two marks as directed by said order dated 18.09.2023 and also disclose the new cut off mark that would emerge if all candidates are given two marks each, if they have not answered questions 18 and 58 and not given pro-rata marks.

22. Apart from reviewing the order dated 18.09.2023, it is further clarified with regard to the said order that since the respondent is not getting the benefit of being selected by implementation of the observation made by the Coordinate Bench in the Writ Appeal by adding two marks, the further exercise of notifying the revised marks need not be undertaken. We observe thus after verifying from the learned counsel for the opposite party-appellant-review petitioner as well as the petitioner respondent opposite appearing in person that no other candidate had approached the Tribunal or this Court seeking any relief regarding selection/non-selection of any candidate.

23. Further, we take note of the fact that the selection to the post of Assistant Public Prosecutor was conducted in the year 2016-17 and recommended by OPSC 01.12.2017, while passing the order earlier, the Coordinate Bench has predicted and observed "...We believe that no topsy turvy will happen, in view of this direction..."

24. However, by going through the documents produced by review petitioner in sealed cover before this Court, we find that the benefit of the order as far as selection is concerned would not be available for the respondent/writ petitioner by adding the two marks. By giving two marks to all the candidates selection list will go topsy turvy. If such topsy turvy is allowed that would result in passing orders against the persons who are not the parties before this Court and also granting relief to the persons who never approached Tribunal or this Court.

25. Having found that the respondent could not get the benefit of being selected after adding two marks as directed, the further exercise adding two marks to all the candidates would be of no consequence as far as the selection of the year 2016-2017 is concerned. Therefore, the matter is put to rest.

The RVWPET is accordingly disposed of.

26. The sealed cover which was produced before us is resealed. We direct the learned counsel for the review petitioner to produce copies be retained with Court records i.e. RVWPET, Writ Appeal and WPC(OAC).

27. The details of the marks calculation and addition of two marks shall be communicated to the respondent within two weeks from today.

The records produced in sealed cover was handed over to the learned counsel appearing for the OPSC.