
(2023) 11 OHC CK 0045
In the Orissa High Court
Case No : Writ Appeal No. 658, 744 Of 2023

State of Odisha

APPELLANT

Vs

Sreepati Ranjan Dash, Son Of Late Arjun Dash

RESPONDENT

Date of Decision : 07-11-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227, 304(a), 309
Odisha High Court Order, 1948 — Article 4

Citation : (2023) 11 OHC CK 0045

Hon'ble Judges : Dr. B. R. Sarangi, J; Murahari Sri Raman, J

Bench : Division Bench

Advocate : Pravakar Behera, Biswabihari Mohanty

Final Decision : Dismissed

Judgement

Murahari Sri Raman, J.—

THE CHALLENGE:

W.A. No.658 of 2023

1. This Appeal at the behest of the Commerce and Transport Department, Government of Odisha is directed against Judgment dated 24.02.2023 of the learned Single Judge of this Court passed in W.P.(C) No.35645 of 2021 (Sreepati Ranjan Dash) invoking Article 226/227 of the Constitution of India, whereby it has been concluded as follows:

"29. In view of the aforesaid analysis of fact as well as law and upon a conspectus of the materials placed before this Court and upon hearing the learned counsels appearing for the respective parties, this Court is of the considered view that the impugned order under Annexure-9 is unsustainable in law and the same is hereby quashed.

Further, the opposite party No.2, i.e., the Transport Commissioner-cum-Chairman, State Transport Authority, Odisha is directed to immediately convene

the Departmental Promotion Committee and consider the case of the petitioner along with two other persons found eligible by him vide his Letter dated 03.09.2021 under Annexure-7 in the light of executive instruction dated 17.11.1981 and take a decision within a period of four weeks from the date of production of the copy of this judgment.

It is further directed that in the event, the opposite parties are planning to fill up the vacant post of Assistant Regional Transport Officer in view of the new Rules, 2021, which was notified on 03.01.2022, they are free to do so, however, three posts of Assistant Regional Transport Officer as has been recommended under Annexure-7 by the Transport Commissioner shall not be filled up till a final decision is taken by the opposite party No.2 as has been directed hereinabove.

In the event, any advertisement has been published to fill up such posts, suitable modification be made in the said advertisement by way of corrigendum forthwith."

1.1. W.A. No.744 of 2023

The learned Single Judge disposed of W.P.(C) No. 41042 of 2021 (Aditya Bhanjan Sahoo), has passed the following Order on 28.02.2023, assailing which the appellants-authorities have filed this writ appeal:

"In view of Judgment passed in W.P.(C) No. 35645 of 2021 dated 24.02.2023, the present writ petition is disposed of accordingly."

1.2. The Appellants sought intervention of Division Bench of this Court by way of the present intra-Court appeal by setting aside the aforesaid Judgment dated 24.02.2023 of the learned Single Judge on the ground that the observation made supra runs counter to what has been spelt out vide Judgment dated 20.05.2022 of the Hon'ble Supreme Court of India rendered in the matters of State of Himachal Pradesh & Others Vrs. Raj Kumar & Others, (2023) 3 SCC 773 " (2022) 15 SCR 847, wherein the notion that "the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules" has been held to be incorrect proposition of law governing services under the Union and the States under Part-XIV of the Constitution.

THE PLEADINGS:

2. Sreepati Ranjan Dash, the respondent (the petitioner in the writ petition), was initially appointed under the Odisha Civil Services (Rehabilitation Assistance) Rules, 1990 in the post of Junior Assistant in the Office of the Transport Commissioner-cum-Chairman, State Transport Authority (appellant No.2) vide appointment Letter dated 16.03.2013. Pursuant to the said appointment letter, the Respondent had joined in duty on 18.03.2013.

2.1. While continuing as such in the said Office of the appellant No.2, the respondent was found suitable and was otherwise eligible for promotion, as per the extant Rules in force, by the Departmental Promotion Committee held for the purpose and accordingly, the petitioner was given promotion to the post of

Senior Assistant vide office order dated 10.06.2016. Pursuant to the promotion order, the respondent joined in the promotional post of Senior Assistant on 13.06.2016. Upon joining against the new post, on promotion, the pay scale of the respondent was fixed at Rs.9,300/- - Rs.34,800/- with Grade Pay of Rs.4,200/- with effect from 13.06.2016 vide Office Order dated 20.07.2016.

2.2. Similarly, Aditya Bhanjan Sahoo was appointed in the post of Junior Assistant in the Office of Transport Commissioner-cum-Chairman, State Transport Authority, Odisha, Cuttack vide Letter dated 16.03.2013 under the provisions of the Odisha Civil Services (Rehabilitation Assistance) Rules, 1990, pursuant to which he joined in the said post on 18.03.2013. While continuing as such upon being found suitable for promotion in the Departmental Promotion Committee Meeting, he was promoted to the post of Senior Assistant vide Officer Order dated 10.06.2016 and joined in said post on 13.06.2016. He was extended pay fixed at Rs.9,300/- - 34,800/- with Grade Pay Rs.4,200/- with effect from 13.06.2016 vide Office Order dated 20.07.2016.

2.3. The Government of Odisha in General Administration and Public Grievance Department restructured the Odisha Ministerial Services (Assistants and Section Officers) cadre in the Offices of the Heads of Departments and the Odisha Heads of Departments Establishment Officers cadre by Resolution bearing No. 2372-GAD-ASSO-0005/2017/Gen., dated 24.01.2019 (vide Extraordinary issue of the Odisha Gazette No. 228, dated 30.01.2019). As per the said Resolution, dated 24.01.2019, the post of Senior Assistant has been re-designated as Assistant Section Officer ("ASO", for short) with the existing scale of pay, i.e., Level-09 in pay matrix in terms of the Odisha Revised Scale of Pay Rules, 2017.

2.4. Accordingly, the respondents-Senior Assistants, being re-designated as Assistant Section Officers with effect from 24.01.2019 vide Office Order No. 22874IX-252/2019/TC, dated 16.02.2019 issued by the Transport Commissioner, Odisha, continued to discharge their duties on regular basis. Pertinent here to refer to Letter dated 19.06.2010 (Annexure-10 forming part of W.P.(C) No.41042 of 2021) which is to the following effect:

"Government of Odisha

Home Department

No. CC-G-32/104 26889

Dated, Bhubaneswar, 19.06.2010

From

Shri M.K Rath,

Joint Secretary to Government

To

The Joint Secretary to Government, H&U.D. Department.

Sub.: Posting of A.S.Os Executive Officer of ULBs4 Clarification on status of A.S.Os regarding.

Sir,

Inviting a reference to your Letter No. 11968/HUD dated 25.5.2010 on the subject captioned above, I am directed to say that with an objective to initiate structural and functional reforms in the Departments of Secretariat, a new Cadre of Assistant Section Officer has been introduced in the Secretariat with effect from dt.30.09.2008 in order to give an Officer oriented administration. Further, as per the Odisha Secretariat Services (Method of Recruitment and Conditions of Service of Assistant Section Officers) Rules, 2010 promulgated vide Home Deptt. Notification No.15678/CC dated 06.04.2010 that came into effect from dt.07.04.2010, the Assistant Section Officers of Secretariat are treated as Officers and can no more be considered as Ministerial.

This is for your information.

Yours faithfully

Sd/-

Joint Secretary to Government."

2.5. It is also relevant to mention here that as per the restructuring vide Resolution, dated 24.01.2019 the Ministerial Cadre in the Office of the Heads of Departments, the post of Section Officer, Establishment Officer, Administrative Officer and Senior Administrative Officers are the promotional posts in the cadre hierarchy which are available to be filled up by way of promotion from the post of Assistant Section Officer.

2.6. The final gradation list of Senior Assistant (re-designated as Assistant Section Officer) dated 02.03.2021 under State Transport Authority, Odisha and Heads of Departments, the respondents' names find place at Sl.Nos.5 and 6 respectively. Moreover, under the ministerial cadre, the posts of the Assistant Regional Transport Officer and the Additional Regional Transport Officer, which are non-ministerial and non-technical posts, were also available to be filled up by way of promotion. Furthermore, since those posts are not in ministerial cadre, no specific and separate recruitment Rules were framed under proviso to Article 309 of the Constitution of India in exercise of power conferred upon the Government for recruitment/filling up of those posts. The Government of Odisha in Commerce and Transport Department vide Office Letter dated 17.11.1981 had laid down criteria and procedure for filling up the post of Assistant Regional Transport Officer. As per the said executive instruction dated 17.11.1981, Grade-I Assistant (Senior Assistant) having five years of service as Grade-I Assistant were eligible for promotion to the post of the Assistant Regional Transport Officer.

2.7. In order to be eligible for promotion as indicated above, the ministerial officials working under both the Department of Commerce and Transport and the

Office of Transport Commissioner were also made eligible to be considered for such promotion. In view of the policy decision of the Government vide Letter dated 17.11.1981, the post of Assistant Regional Transport Officer was to be filled up by way of selection from different categories of posts in the feeder cadre for which, obviously, no common seniority list is available. In the writ application it has been asserted that the Letter dated 17.11.1981 was still holding the field with suitable modification from time to time, viz., Letter dated 23.08.1991 and Letter dated 04.07.1995.

2.8. For better appreciation, the contents of Letter dated 17.11.1981 as amended by Letter dated 23.08.1991 and Letter dated 04.07.1995 are reproduced hereunder:

"Government of Odisha

Commerce & Transport (Transport) Department

No. FE-I-Ge-44/814 17315/T.

Bhubaneswar, 17th November, 1981

From

Shri J.P. Pradhan, OAS (I),

Deputy Secretary to Government

To

The Transport Commissioner, Odisha, Cuttack.

Sub.: Filling up of the posts of Assistant Regional Transport Officer, criteria and procedure for.

Sir,

I am directed to say that four posts of Assistant Regional Transport Officer have been created in this Department G.O. No. 11608, dated 06.08.1981 for Sambalpur, Koraput, Sundargarh and Mayurbhanj regions to assist the concerned Regional Transport Officers in the matter of collection and assessment of Motor Vehicle Tax and Passenger Tax. The posts of Assistant Regional Transport Officer are specially declared Gazetted posts under clause (ii) of Rule 17 of the Orissa Service Code and you have been declared as the authority competent to make appointments to such posts vide General Administration Department Notification No. 20431/Gen. dated 16.08.1979.

The Government have pleased to decide that the following criteria and procedure should be followed for selecting ministerial officers of the Commerce & Transport (Transport) Department (Secretariat) and Transport Commissioner's officer for promotion to the posts of Assistant Regional Transport Officers by selection.

1. Grade-I Assistant (Senior Assistant) having five years of service as Grade-I

Assistant should be eligible for promotion by selection.

2. Merit-cum-efficiency with due regard to seniority should be taken into consideration for selection of Grade-I Assistant (Senior Assistant) for the posts of Assistant Regional Transport Officer. The selection shall be made on the basis of merit and suitability.

3. Maximum age limit for selection to the post of Assistant Regional Transport Officer should be forty-five years.

4. Pending finalisation of the cadre rules for recruitment to the posts of Assistant Regional Transport Officer, selections may be made according to the above principles through the Departmental Promotion Committee whose composition will be as follows:

Transport Commissioner	... Chairman
Deputy Transport Commissioner	... Member
Deputy Secretary, Transport	... Member
Secretary, State Transport Authority	... Member-Secretary

I am therefore to request you to take immediate steps for filling up of the above four posts of Assistant Regional Transport Officers.

The list of eligible candidates of this Department with complete and up-to-date C.C.Rs and service particulars is being furnished to you separately.

Yours faithfully

Sd/-

Deputy Secretary to Government."

"Government of Odisha

Commerce & Transport (Transport) Department

Misc. 22/91/13812/T.

Bhubaneswar, 23rd August, 1991

To

The Transport Commissioner, Odisha, Cuttack.

Sub.: Filling up of the post of Assistant Regional Transport Officer, criteria and the procedure therefor.

Sir,

I am directed to say that Government in this Department Circular Letter No.17315/T dated 17.11.1981 have stipulated criteria and procedure for filling up the vacancies in the post of Assistant Regional Transport Officer by selection.

The minimum age limit for selection to the post was fixed as forty five posts Government on a reconsideration of their aspect of the criteria, have now been pleased to amend the said stipulation and to fix the minimum age limit as 52 years.

It is requested that henceforth, the Senior Assistants both of this Department and your office and of the age and not exceeding 52 years may please be considered for promotion to the post of Assistant Regional Transport Officer.

Yours faithfully

Sd/-

Deputy Secretary to Government."

"Government of Odisha

Commerce & Transport (Transport) Department

No. FE-I-AE-3/94/3712/T.

Dated 4th July, 1995

From

Shri P.K. Routrai, OAS-(I)

Deputy Secretary to Government.

To

The Transport Commissioner, Odisha, Cuttack.

Sub.: Filling up of the post of Assistant Regional Transport Officer, criteria and the procedure for.

Sir,

I am directed to invite reference to your Letter No.12625/12625/TC, dated 13.07.1994 on the above subject and to say that after careful consideration Government have been pleased to decide that the Auditors of the office of the Transport Commissioner, Orissa, Cuttack are eligible to be considered for the post of Assistant R.T.O. subject to the stipulation made in this Deptt. Letter No. 17215/T dated 17.11.1981 and No.13812/T dt.23.08.1991.

Yours faithfully

Sd/-

Deputy Secretary to Government."

2.9. It was also specifically pleaded that the aforesaid policy with suitable modification was being followed by the Department and promotions were being effected until the year 2019.

2.10. The respondent in the writ petition narrated that since he completed five years of service as Grade-I Assistant (Senior Assistant, which was re-designated as Assistant Section Officer) and was 37 years of age, he was eligible to be considered for promotion by way of selection/induction against the post of Assistant Regional Transport Officer independent of his chance of promotion in the normal course in the ministerial cadre to the next post of Section Officer. Though Transport Commissioner was the competent authority to hold Departmental Promotion Committee, he referred names of eligible Assistant Section Officers including the name of the respondent for promotion against the post of Assistant Regional Transport Officer with request to hold Departmental Promotion Committee vide Letter No.9356, dated 30.09.2021.

2.11. As nothing turned out fruitful, the respondent in W.A. No.658 of 2023 having approached this Court in W.P.(C) No.19531 of 2021, vide Order dated 13.07.2021 the authority was directed to consider the representation. The Government of Odisha in Commerce and Transport (Transport) Department rejected the representation by Order dated 11.10.2021. Relevant portion of the said Order reads thus:

"Now, therefore, in obedience to the aforesaid orders of Hon9ble High Court Goverment have considered the representation of Sri Sreepati Ranjan Dash Assistant Section Officer as at Annexure-7 to the W.P.(C) No. 19531/2021. The facts regarding the points mentioned in his representation are detailed below:

1. It is claimed by the applicant that the post of Assistant Regional Transport Officer is his cadre post. This is not a fact. That the Assistant RTO post was a selection and ex-cadre post in the past.
2. That there is sufficient promotional scope in the cadre of the applicant (Assistant Section Officer) like Section Officer, Establishment officer, Administrative Officer and Senior Administrative Officer As such he will avail the same whenever there is vacancy and he is eligible for same.
3. That he cannot claim for holding the past of Assistant Regional Transport Officer which is not in the promotional hierarchy of his cadre and the promotion to the post of Assistant Regional Transport Officer is made by way of selection.
4. The post of Assistant Regional Transport Officer which is an Ex-cadre post was being filled up by way of selection from among different cadres such as Sr. Assts. of Transport Department, Sr. Asst. of Office of Transport Commissioner and other posts in STA and RTOs in pursuance to the instructions issued vide Letter No. 17135/T dated 17.11.1981 and subsequent instructions issued in this regard from time to time.
5. In the meantime the posts of Senior Assistants in Transport Department and O/o TC Odisha has been re-designated to that of Assistant Section Officer and, therefore, the instructions dated 17.11 1981 for filling up of the post of Assistant Regional Transport Officer are not be applicable for filling up of said post.

6. Further, the post of Assistant Regional Transport Officer which was Specially declared as a special gazetted post in Group-C has been upgraded to that of Group-B (Class-II) with effect from 17.10.2017 and as such the present instruction for filling up of the said posts will not be applicable in case of the applicant.

In view of the above facts, the representation of Sri Dash, Assistant Section Officer for promotion to the post of Assistant Regional Transport Officer merits no consideration and, therefore, rejected being devoid of merit.”

2.12. Similarly, the respondent in W.A. No.744 of 2023 filed W.P.(C) No. 23090 of 2021 seeking to quash the Order dated 26.07.2021, by which the Government rejected the proposal for holding the Departmental Promotion Committee Meeting for selection of Assistant Section Officer to the post of Assistant Regional Transport Officer as it deserves no merit for consideration. Said writ petition was disposed of by one of us (Dr. Justice Bidyut Ranjan Sarangi, Acting Chief Justice) on 23.08.2021 with the following observation:

“6. Having heard learned counsel for the parties, after going through the records, it appears that the claim of the petitioner has been recommended for holding DPC at government level to fill up the post of Asst. RTO and his name finds place at serial No.2. Thereby, it is not his claim that he should be allowed to get benefit of promotion to Asst. RTO, rather he claims that DPC should be held and his case should be considered for DPC from Sr.Asst. (ASO) to the post of Asst. RTO as per the Government in Commerce & Transport (Transport) Department Letter No.17315/T dated 17.11.1981. But instead of considering the case for promotion by holding DPC, the Government has passed an order that proposal for holding the DPC for selection of ASO to the post of Asst. RTOs deserves no merit for consideration. As such, no reasons have been assigned why selection of ASO to the post of Asst. RTOs deserves no merit for consideration. In absence of any reason the order so passed dated 26.07.2021 in Annexure-8 cannot sustain in the eye of law.

7. Reasons being a necessary concomitant to passing an order, the authority can thus discharge its duty in a meaningful manner either by furnishing the same expressly or by necessary reference to those given by the original authority.

8. In Union of India Vrs. Mohan Lal Capoor, AIR 1974 SC 87 it has been held:

“Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial and reveal a rational nexus between the facts considered and conclusions reached. The reasons assure an inbuilt support to the conclusion and decision reached. Recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is vital for the purpose of showing a person that he is receiving justice.”

The decisions, referred to above, have been followed in Sanjay Kumar Rout Vrs. State of Orissa, AIR 2018 Ori 162, rendered by a Division Bench of this Court, where Dr. B.R. Sarangi, J. is a member.

9. In view of the meaning of 8reasons9 and requirement for compliance of the principle of natural justice, as discussed above, and taking into consideration the factual and legal aspects, this Court is of the considered view that while passing the impugned order dated 26.07.2021 no reasons has been assigned. Hence, the order dated 26.07.2021 passed by the Government in Annexure-8 cannot sustain in the eye of law and the same is hereby quashed. The matter is remitted back to the Government, for reconsideration of the recommendation made under Annexure-6 dated 24.06.2021 for holding of DPC at Government level to fill up the 16 nos. of vacant posts of Asst. RTO afresh by passing a reasoned and speaking order in accordance with law, by affording opportunity of hearing to the parties, as expeditiously as possible, preferably within a period of four months from the date of communication of this order.”

2.13. In compliance of said direction of this Court, vide Order No.TRN-FE-CASE-0014-2014/10609/T., Bhubaneswar dated 10.12.2021 the Government of Odisha in Commerce and Transport (Transport) Department rejected the recommendation of the State Transport Authority to convene Departmental Promotion Committee Meeting in the similar fashion that was rejected in the case of Sreepati Ranjan Dash.

2.14. Challenging aforesaid Order dated 11.10.2021 and Order dated 10.12.2021, writ petitions being W.P.(C) No.35645 of 2021 and W.P.(C) No.41042 of 2021 had been filed by the respondents respectively.

3. Counter-affidavit was filed by the appellants herein in the writ petition by contending that the post of Assistant Regional Transport Officer was created earlier with the objective to post them at Border Check Gates for collection and assessment of Motor Vehicle Tax, Passenger Tax and issue of permit. In absence of any Rules, the post of Assistant Regional Transport Officer was earlier being filled up by way of selection from different feeder cadres under the administrative control of Transport Department and in pursuance of the executive instruction issued by the Government on 17.11.1981 with subsequent modifications to it. Further, all the Border Check Gates have been abolished for free passage of inter-State movement of vehicle on the advice of the Central Government since April, 2017. After abolition of check gates, the post of Assistant Regional Transport Officer was adjusted in different Regional Transport Offices. The post of Assistant Regional Transport Officer comes under Group-C/Class-III and after restructuring, the same has been upgraded to Group-B/Class-II with effect from 17.10.2017. Pending finalization of the cadre Rules, the post has been filled up by way of selection from different posts such as Senior Assistant of Secretariat in the Transport Department, Senior Assistant of the State Transport Authority and other non-ministerial posts under the State Transport Authority/Regional Transport Offices. After the post of Senior Assistant of Secretariat was re-

designated as Assistant Section Officer, it was not considered for selection to the post of Assistant Regional Transport Officer as per the above executive instruction.

3.1. In the meantime the post of Senior Assistant in the concerned Department including the State Transport Authority has been re-designated as the Assistant Section Officer and as such there is no justification to consider their names for selection to fill up the post of Assistant Regional Transport Officer in terms of the above noted instruction. It was stated in the counter-affidavit that there existed no justification on the part of the respondents to claim for promotion to the post of Assistant Regional Transport Officer, as the said post does not come under the promotional hierarchy of his parent cadre; rather the cadre, in which the respondents are posted and continued, is governed by the Odisha Ministerial Services (Assistants and Section Officers) cadre of Heads of Department. As per the restructuring cadre, which was issued in the year 2019, there are five promotional posts in the hierarchy after initial post of Junior Assistant. Those are Assistant Section Officer, Section Officer, Establishment Officer, Administrative Officer and Senior Administrative Officer.

3.2. The Odisha Transport Service (Method of Recruitment and Conditions of Services) Rules, 2021 has been framed in consultation with the Odisha Public Service Commission in exercise of powers conferred by proviso to Article 309 of the Constitution of India, whereby "all rules framed, instructions or orders issued in this respect" have been superseded "except as respect things done or omitted to be done before such supersession". Said Rules, published in the Extraordinary issue bearing No.22 of the Odisha Gazette on 05.01.2022, came into force with effect from said date of publication.

3.3. It has been provided under Rule 4(1) of the said Rules, 2021 that filling up of the post of Assistant Regional Transport Officer would be made by way of direct recruitment through combined competitive recruitment examination conducted by the Odisha Public Service Commission in accordance with the Odisha Civil Services (Combined Competitive Recruitment Examination) Rules, 1991. Therefore, it is pleaded by the appellants that since the new Rules have come into force, the claim of the respondents for promotion to the post of Assistant Regional Transport Officer by way of selection as per the executive instruction dated 17.11.1981 as amended in 1991 and 1995 is baseless and untenable in law.

4. The learned Single Judge upon hearing the respective counsel for the parties, came to hold as follows by delivery of Judgment dated 24.02.2023:

"29. In view of the aforesaid analysis of fact as well as law and upon a conspectus of the materials placed before this Court and upon hearing the learned counsels appearing for the respective parties, this Court is of the considered view that the impugned order under Annexure-9 is unsustainable in law and the same is hereby quashed. Further, the opposite party No.2, i.e., the

Transport Commissioner-cum-Chairman STA, Odisha is directed to immediately convene the DPC and consider the case of the petitioner along with two other persons found eligible by him vide his letter dated 03.09.2021 under Annexure-7 in the light of executive instruction dated 17.11.1981 and take a decision within a period of four weeks from the date of production of the copy of this judgment. It is further directed that in the event, the opposite parties are planning to fill up the vacant post of ARTO in view of the new Rule 2021, which was notified on 03.01.2022, they are free to do so, however, three posts of ARTO as has been recommended under Annexure-7 by the Transport Commissioner shall not be filled up till a final decision is taken by the opposite party No.2 as has been directed hereinabove. In the event, any advertisement has been published to fill up such posts, suitable modification be made in the said advertisement by way of corrigendum forthwith."

5. Vide Order dated 28.02.2023, the learned Single Judge disposed of W.P.(C) No.41042 of 2021 in view of Judgment dated 24.02.2023 passed in W.P.(C) No.35645 of 2021.

INTRA-COURT APPEAL PREFERRED BY THE TRANSPORT DEPARTMENT:

6. Being aggrieved by the aforesaid Judgment rendered by the learned Single Judge, the appellants attacked the same on the grounds inter alia that, grave error of law has been committed by holding that since rejection to hold Departmental Promotion Committee Meeting in connection with the recommendation of the State Transport Authority for consideration of promotion to the post of Assistant Regional Transport Officer by the Government being on 11.10.2021 in the case of Sri Sreepati Ranjan Dash and 10.12.2021 in the case of Sri Aditya Bhanjan Sahoo, the executive instruction dated 17.11.1981 as amended in 1991 and 1995 cannot have precedence over the Odisha Transport Service (Method of Recruitment and Conditions of Services) Rules, 2021, inasmuch as said executive instruction(s) got superseded by virtue of said Rules. Referring to ratio that "there is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose" as laid down in Judgment dated 20.05.2022 delivered in State of Himachal Pradesh Vrs. Raj Kumar & Others, Civil Appeal No.9746 of 2011 reported in (2023) 3 SCC 773, it has been urged that in view of policy decision of the Government to fill up the post of Assistant Regional Transport Officer by way of direct recruitment as provided under Rule 4 of the Odisha Transport Service (Method of Recruitment and Conditions of Services) Rules, 2021, there was little scope for this Court to show indulgence in the order of rejection of representation of the respondents in the garb of judicial review under Article 226/227 of the Constitution of India.

7. This Court having issued notice to the respondent(s) in W.A. No.658 of 2023 by Order dated 24.04.2023, and vide Order dated 02.05.2023 in W.A. No.744 of 2023, Sri Biswabihari Mohanty, Advocate filed reply to the contents of the Appeal.

7.1. While conceding the position of law as enunciated in Raj Kumar (supra), the respondent(s) has placed with vehemence that the case law stemming on which the present writ appeals are couched does not have application to the factual matrix of the present cases. The learned Single Judge after taking cognizance of the fact that in the case of other similarly situated person namely in the case of Aditya Bhanjan Sahoo working as Senior Assistant re-designated as Assistant Section Officer, vide Letter No.9356/TC/Estt. (RTA)-X-315/2021, dated 03.09.2021 of Transport Commissioner in the Office of the Transport Commissioner-cum-Chairman, State Transport Authority, eliciting intention to convene Departmental Promotion Committee, at paragraphs 26 and 27 of the Judgment impugned herein candidly discussed as follows:

"26. A bare reading of the aforesaid Letter dated 03.09.2021 under Annexure-7 reveals that the Transport Commissioner on scrutiny found three persons eligible including the petitioner for appointment as ARTO against 16 nos. of existing vacancies and accordingly a request was made to the Government to convene the DPC in view of the order passed by this court on 13.07.2021. Otherwise, the entire process would have been completed by the Transport Commissioner under the executive instruction dated 17.11.1981 earlier and in such view of the matter, this Court has no hesitation in coming to a conclusion that the Transport Commissioner should have considered the case of the petitioner by convening DPC keeping in view the executive instruction dated 17.11.1981 which was very much in force then. Moreover, there is no doubt with regard to eligibility and suitability of the petitioner and the other persons whose name has been recommended by the Transport Commissioner to the Government. Accordingly, the Transport Commissioner has committed an illegality by not convening the DPC meeting himself and not considering the case of promotion of the petitioner to the post of ARTO. However, in the facts and circumstances of the present case and keeping in view the order passed by this Court, the blame for such failure cannot be put on the Transport Commissioner alone, as he had acted pursuant to the order passed by this Court on 13.07.2021.

27. So far the rejection order under Annexure-9 is concerned, this Court on a careful analysis observed that the opposite party No.1 proceeded on the footing that since the post of Senior Assistant has been re-designated as ASO, the executive instruction dated 17.11.1981 is not applicable to the petitioner. At this juncture, this Court would like to observe that mere change of designation, everything else remaining the same including the pay structure and the nature or work, the same will not, by itself, disentitle the petitioner to claim the benefit under executive instruction dated 17.11.1981. Rather, in view of the change in designation by virtue of a Rule the post of Senior Assistant as mentioned in executive instruction dated 17.11.1981 is to be read as ASO inasmuch as the change in designation has not changed the nature and character of the job and there was no change in the pay structure. Therefore, this Court is of the considered view that the opposite party No.1 has committed grossly illegality by rejecting the representation of the petitioner under Annexure-9 and as such, the

order dated 11.10.2021 under Annexure-9 is unsustainable in law and accordingly, the same is liable to be quashed."

7.2. It is further contended by the respondent(s) that since the Odisha Transport Service (Method of Recruitment and Conditions of Services) Rules, 2021, came into force with effect from 05.01.2022 by virtue of Rule 1(2) of the said Rules, the process for convening Departmental Promotion Committee Meeting for consideration of promotion of Assistant Section Officer to the post of Assistant Regional Transport Officer being commenced much prior to said date, which decision was taken in order to comply with the direction of this Court in W.P.(C) No.23090 of 2021 (Aditya Bhanjan Sahoo Vrs. State of Odisha) vide Order dated 23.08.2021, it is unwholesome for the appellants herein to say that "the representation of Sri Dash, Assistant Section Officer for promotion to the post of Assistant Regional Transport Officer merits no consideration and, therefore, rejected being devoid of merit". Such an action of the Government not only smacks arbitrariness, but also attracts vice of Article 14 of the Constitution of India.

ARGUMENTS OF RESPECTIVE COUNSELS FOR THE PARTIES:

8. Pleadings in the matter being completed, this Court proceeded to hear the matter for final disposal on the consent of learned counsel for both the sides. This Court heard Sri Pravakar Behera, learned Standing Counsel (Transport) for appellants and Sri Biswabihari Mohanty, learned Advocate for the respondents.

9. Sri Pravakar Behera, learned Standing Counsel (Transport) stemming on the principles of law as propounded by the Hon'ble Supreme Court in the case of Raj Kumar (supra) submitted that the Judgment of learned Single Judge suffers from infirmity ex facie, inasmuch as the appellants were required to adhere to modality for promotion to the post of Assistant Regional Transport Officer as spelt out in Letter No.17315-FE-T-Gr-44/81/T, dated 17.11.1981 issued by the Government of Odisha in Commerce and Transport (Transport) Department, as amended in Letter No.13812-Misc.-22/91/T, dated 23.08.1991 and Letter No.3712-FE-I-AE-3/94/T, dated 04.07.1995.

9.1. Sri Pravakar Behera, Standing Counsel (Transport) has relied on the following paragraph(s) of the Judgment of Hon'ble Supreme Court in the case of Raj Kumar (supra):

"82. A review of the fifteen cases that have distinguished Y.V. Rangaiah Vrs. J. Sreenivasa Rao, (1983) 3 SCC 284 would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in Rangaiah (supra). The findings in these judgments, that have a direct bearing on the proposition formulated by Rangaiah (supra) are as under:

82.1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, Rangaiah's case must be understood in the context of the rules involved therein.

82.2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existed rules, which implies the 'rule in force' as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates.

82.3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government. *Deepak Agarwal Vrs. State of U.P.*, (2011) 6 SCC 725, Para 26; *Union of India Vrs. Krishna Kumar*, (2019) 4 SCC 319, Para 10. There is no obligation for the Government to make appointments as per the old rules in the event of restructuring of the cadre is intended for efficient working of the unit. *G. Venkateshara Rao Vrs. Union of India*, (1999) 8 SCC 455. The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14. *Rajasthan Public Service Commission Vrs. Charan Ram*, (1998) 4 SCC 202, Para 15; *K. Ramulu Vrs. Suryaprakash Rao*, (1997) 3 SCC 59, Para 15.

82.4. The principle in *Y.V. Rangaiah Vrs. J. Sreenivasa Rao*, (1983) 3 SCC 284 need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately. *Delhi Judicial Services Association Vrs. Delhi High Court*, (2001) 5 SCC 145, Para 5.

82.5. When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases. *Deepak Agarwal Vrs. State of U.P.*, (2011) 6 SCC 725, Para 25.

83. The above-referred observations made in the fifteen decisions that have distinguished *Y.V. Rangaiah Vrs. J. Sreenivasa Rao*, (1983) 3 SCC 284 demonstrate that the wide principle enunciated therein is substantially watered-down. Almost all the decisions that distinguished *Rangaiah* (supra) hold that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of law that existed on the date when they arose. This only implies that decision in *Rangaiah* (supra) is confined to the facts of that case.

84. The decision in *Deepak Agarwal* (supra) is a complete departure from the principle in *Rangaiah* (supra), inasmuch as the Court has held that a candidate has a right to be considered in the light of the existing rule. That is the rule in force on the date the consideration takes place. This enunciation is followed in many subsequent decisions including that of *Union of India Vrs. Krishna Kumar* (2019) 4 SCC 319. In fact, in *Krishna Kumar* (supra) Court held that there is only a right to be considered for promotion in accordance with rules which prevail on the date on which consideration for promotion take place⁹.

85. The consistent findings in these fifteen decisions that *Rangaiah*^{9s} case

(supra) must be seen in the context of its own facts, coupled with the declarations therein that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of rules which existed on the date which they arose, compels us to conclude that the decision in Rangaiah (supra) is impliedly overruled. However, as there is no declaration of law to this effect, it continues to be cited as a precedent and this Court has been distinguishing it on some ground or the other, as we have indicated hereinabove. For clarity and certainty, it is, therefore, necessary for us to hold:

85.1. The statement in Y.V. Rangaiah Vrs. J. Sreenivasa Rao, (1983) 3 SCC 284 that, 8the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules⁹, does not reflect the correct proposition of law governing services under the Union and the States under Part XIV of the Constitution. It is hereby overruled.

85.2. The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services.”

9.2. It is, thus, contended by Sri Pravakar Behera that since new set of rules, being the Odisha Transport Service (Method of Recruitment and Conditions of Services) Rules, 2021 framed in exercise of powers conferred under proviso to Article 309 of the Constitution of India, has already been put in place with effect from 05.01.2022 in supersession of aforesaid circulars/ executive instructions, the direction of the learned Single Judge in exercise of powers under Article 226/227 of the Constitution of India is contrary to what is enunciated in Raj Kumar (supra).

10. Sri Biswabihari Mohanty, learned advocate for the respondent(s) strongly opposing the contention of the learned Standing Counsel (Transport), advanced argument that the Judgment under challenge is in conformity with the pious provisions contained in Article 14 of the Constitution of India, inasmuch as process for promotion to the post of Assistant Regional Transport Officer from Senior Assistant, as re-designated as Assistant Section Officer, commenced by issue of Letter dated 03.09.2021 by the Transport Commissioner in order to comply with direction vide Order dated 23.08.2021 in W.P.(C) No.23090 of 2021, requesting the Government to “convene DPC at Government level” for filling up “from among three eligible Senior Assistants re-designated as Assistant Section Officers of this Office namely Sri Sreepati Ranjan Dash, ASO, Sri Aditya Bhanjan Sahoo, ASO and Smt. Ritushree Baral, ASO”.

10.1. Sri Biswabihari Mohanty, learned advocate argued that the distinctive feature in facts contained in Raj Kumar (supra) is that for promotion to the post of Labour Officer by virtue of the Himachal Pradesh Recruitment and Promotion Rules, 1966, it was provided for filling up by promotion from Factory Inspectors, Labour Inspectors and Secretariat Superintendents, being the feeder category; whereas by dint of amendment to said Rules in 2006, the recruitment to the post of Labour Officer was to be made by promotion as also direct recruitment in the

ratio of 75% and 25%. Be that as it may, Sri Mohanty went on to urge that since the subject-matter of present cases is rejection of representation by the Government on 11.10.2021 in connection with direction of this Court in W.P.(C) No.19531 of 2021, disposed of on 13.07.2021 and refusal to reconsider by Order dated 10.12.2021 the recommendation of the State Transport Authority for holding Departmental Promotion Committee Meeting at Government level to fill up 16 numbers of vacant posts of the Assistant Regional Transport Officer in connection with direction of this Court vide Order dated 23.08.2021 in W.P.(C) No.23090 of 2021, by said dates the Odisha Transport Service (Method of Recruitment and Conditions of Services) Rules, 2021 did not come into operation; thereby, he essentially made submission that the modalities followed as per executive instructions in vogue were required to be followed by the Government in the present context.

10.2. Amplifying such stand, Sri Biswabihari Mohanty advanced argument, by refuting what has been submitted by Sri Pravakar Behera, that the Transport Commissioner having appraised the Government regarding vacancy position, suggested to fill up the post(s) of Assistant Regional Transport Officer and Assistant Motor Vehicle Inspector vide Letter No.388-XI-193/21/TC/ESTT(MV), dated 08.01.2021, the Additional Commissioner Transport (Administration), State Transport Authority, Odisha in Letter No.6269-X-127/2021/TC/ESTT (RTA), dated 24.06.2021 requested Government of Odisha in Commerce and Transport (Transport) Department to make it convenient to hold Departmental Promotion Committee Meeting for consideration of promotion to the post of Assistant Regional Transport Officer read with Letter No.9356/TC/ESTT/(RTA)/X-315/2021, dated 03.09.2021 of the Transport Commissioner, Odisha suggesting as follows:

"At present there are 16 numbers of vacancies in the rank of Assistant Regional Transport Officer. Out of which three posts may be filled up from among three eligible Senior Assistants re-designated as Assistant Section Officers of this Office namely Sri Sreepati Ranjan Dash, ASO, Sri Aditya Bhanjan Sahoo, ASO and Smt. Ritushree Baral, ASO."

10.3. Under such premise, Sri Biswabihari Mohanty, learned advocate for the petitioner submitted that no infirmity can be imputed to the Judgment dated 24.02.2023 delivered by the learned Single Judge.

DISCUSSIONS AND ANALYSIS:

11. Letter No.388-XI-193/21/TC/ESTT(MV), dated 08.01.2021 of the Transport Commissioner and Letter No.6269-X-127/2021/TC/ESTT (RTA), dated 24.06.2021 of the Additional Commissioner Transport (Administration), State Transport Authority, Odisha clearly suggested intention to fill up the post of Assistant Regional Transport Officer and to convene Departmental Promotion Committee Meeting for promotion to the said post much prior to promulgation of the Odisha Transport Service (Method of Recruitment and Conditions of Services) Rules, 2021, with effect from 05.01.2022.

11.1. It is also noteworthy that the respondent in W.A. No.658 of 2023 having filed W.P.(C) No.19531 of 2021, as his representation was not given due attention, this Court passed the following Order on 13.07.2021:

"The petitioner has filed this writ petition seeking direction to opposite parties to consider the application of the petitioner vide Annexure-7 for promotion to the post of Asst. RTO through DPC within a stipulated time.

In course of hearing, learned counsel for the petitioner states that highlighting the grievances, the petitioner has made representation to the opposite party No.1 vide Annexure-7 and the same may be directed to be disposed of within a stipulated time.

Considering the limited grievance of the petitioner, this Court, without expressing any opinion on the merits of the case, disposes of the writ petition directing the opposite party No.1 to consider the representation filed by the petitioner vide Annexure-7 and pass appropriate order in accordance with law within a period of three months from the date of production of authenticated/certified copy of this order."

11.2. It may be stated that had the Department convened the Departmental Promotion Committee Meeting within the period stipulated in the Order dated 13.07.2021 passed in W.P.(C) No.19531 of 2021, the case of the respondent would have been considered prior to 05.01.2022. Under such perspective, having refused to convene the Departmental Promotion Committee Meeting for consideration of request made by the Transport Commissioner, Odisha, the Department could not have and should not have pleaded that pursuant to the Odisha Transport Service (Method of Recruitment and Conditions of Services) Rules, 2021, which came into force with effect from 05.01.2022, there was no occasion left for consideration of promotion of respondent(s) to the post of Assistant Regional Transport Officer.

11.3. It is pertinent to cull out the fact as reflected in the Judgment dated 24.02.2023 of the learned Single Judge that it is not the case of the appellants that the respondents were not eligible and suitable for appointment to the post of Assistant Regional Transport Officer. The Department also wished to fill up said post by way of promotion from the Assistant Section Officer(s) by convening Meeting by constituting Departmental Promotion Committee.

11.4. The Letter No.9356-X-315/2021/TC/ESTT (RTA), dated 03.09.2021 which formed part of the writ petition and noted by the learned Single Judge in his Judgment dated 24.02.2023 revealed the following fact:

"Office of the Transport Commissioner-cum-Chairman

State Transport Authority, Odisha, Cuttack

No. 9356/TC/ESTT (RTA) X-315/2021

Dated 26.03.2014

To

The Principal Secretary to Government, Commerce & Transport Department,
Odisha, Bhubaneswar.

Sub.: Holding of DPC at Govt. Level to fill up the vacant post of Asst. RTO regarding.

Sir,

In inviting a reference of order dated 23.08.2021 passed by the Hon'ble High Court of Orissa in W.P.(C) No.23090

of 2021 filed by Sri Aditya Bhanjan Sahoo-vrs-State of Odisha and others, it is to state that proposal was submitted to Govt. vide this Office Letter No.6269/TC dated 24.06.2021 to hold the DPC at Government Level from among the eligible Senior Assistants re-designated as Assistant Section Officers of this office to fill up the vacant posts of Assistant RTO. But the said proposal was not considered by the Govt. as communicated to this office vide Govt. Letter No.6539/T dated 26.07.2021 intimating that selection of ASO to the post of Assistant RTO deserve no merit for consideration.

Subsequently, Sri Aditya Bhanjan Sahoo, ASO of this office has filed a Writ Petition vide W.P.(C) No.23090 of 2021 before the Hon'ble High Court of Orissa. The Hon'ble Court has disposed of the matter with a direction to quash the impugned order dated 26.07.2021 passed by the Government and has remitted the matter back to Government for reconsideration of the recommendation made under Annexure-6 dated 24.06.2021 for holding of DPC at Government level to fill up the 16 nos. of vacant post of Assistant RTO afresh by passing reasoned and speaking order in accordance with law by affording opportunity of hearing to the parties as expeditiously as possible preferably within a period of 04 months from the date of communication of this order (copy enclosed).

It is to mention here that the post of Senior Assistant in HODs including this office was re-designated as Assistant Section Officer with the existing level of pay i.e. Level-09 in the pay Matrix of ORSP, Rule 2017 and without any financial benefit, as Senior Assistant post also stood in the same pay matrix.

At present there are 16 nos. of vacancies in the rank of Assistant RTO. Out of which three posts may be filled up from among three eligible Senior Assistants re-designated as Assistant Section Officers of this office namely Sri Sreepati Ranjan Dash, ASO Sri Aditya Bhanjan Sahoo, ASO and Smt. Ritushree Baral, ASO.

In view of the order passed by the Hon'ble High Court, it is therefore requested to convene DPC at Govt. Level. The detailed particulars, vigilance clearance report, final gradation list and up-to-date CCRs for last five years of the above three Senior Assistants re-designated as Assistant Section Officers of this Office is sent herewith so that the process of convening DPC will be expedited.

Yours faithfully

Sd/-

Transport Commissioner

Odisha”

11.5. It is manifest from the aforesaid Letter dated 03.09.2021 that the Transport Commissioner on scrutiny found three persons eligible including the petitioner for appointment as Assistant Regional Transport Officer against 16 numbers of existing vacancies and accordingly request was made to the Government to convene the DPC in view of the order passed by this Court on 13.07.2021 in W.P.(C) No. 19531 of 2021 as also Order dated 23.08.2021 in W.P. (C) No.23090 of 2021. Had the Department complied with the direction of this Court with positive approach, the entire process would have been completed as per modality laid down in the executive instruction dated 17.11.1981 as amended in 1991 and 1995. Therefore, the learned Single Judge on appreciation of factual position as available on record came to conclusion that “the Transport Commissioner should have considered the case of the petitioner by convening DPC keeping in view the executive instruction dated 17.11.1981 which was very much in force then”. It was further concluded that there is no doubt with regard to eligibility and suitability of the respondent(s) whose names have been recommended by the Transport Commissioner to the Government for consideration of promotion to the post of Assistant Regional Transport Officer. Accordingly, the Government has committed an illegality by not acceding to the proposal of the Transport Commissioner to convene the Departmental Promotion Committee Meeting. Thus, prejudice has caused to the respondent(s) by not considering their case for promotion.

11.6. The well-founded reasons on the analysis of facts do not warrant intervention by this Court in the instant intra-Court appeals.

12. So far as applicability of legal position as enunciated by the Hon’ble Supreme Court in Raj Kumar (supra) to the factual scenario as culled out from the impugned Judgment, at the outset this Court noticed guidelines as contained in Union of India Vrs. Arulmozhi Iniarasu, (2011) 7 SCC 397 “ (2011) 9 SCR 1. It has been stated by the Supreme Court of India in the said case as follows:

“12. Before examining the first limb of the question, formulated above, it would be instructive to note, as a preface, the well-settled principle of law in the matter of applying precedents that the Court should not place reliance on decisions without discussing as to how the fact situation of the case before it fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid’s theorems nor as provisions of Statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Disposal of cases by blindly placing reliance on a decision is not proper because one additional or different

fact may make a world of difference between conclusions in two cases. [Ref.: Bharat Petroleum Corpn. Ltd. & Anr. Vrs. N.R. Vairamani & Anr., (2004) 8 SCC 579; Sarva Shramik Sanghatana (KV), Mumbai Vrs. State of Maharashtra & Ors., (2008) 1 SCC 494 and Bhuwalka Steel Industries Limited Vrs. Bombay Iron & Steel Labour Board & Anr., (2010) 2 SCC 273].”

12.1. The Hon’ble Supreme Court of India in the case of N. Ramachandra Reddy Vrs. State of Telengana, (2019) 11 SCR 792 delineated the scope of intra-Court appeals by making following observation:

“43. Further, in the case of Management of Narendra & Company Pvt. Ltd. Vrs. Workmen of Narendra & Company, (2016) 3 SCC 340, while considering the scope of the intra court appeal, this Court has held that, unless Appellate Bench concludes that findings of the learned Single Judge are perverse, it shall not disturb the same.”

12.2. In Management of Narendra & Company Pvt. Ltd. Vrs. Workmen of Narendra & Company, (2016) 3 SCC 340 it has been observed as follows:

“Be that as it may, in an intra-court appeal, on a finding of fact, unless the appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief.”

12.3. Having cursory glance at the writ appeal along with the grounds set forth therein to question the Judgment dated 24.02.2023, nothing transpires to suggest that the learned Single Judge has considered the merit of the writ application on erroneous factual premise de hors material on record. Rather at Ground No. E forming part of writ appeal it has been asserted by the appellants-functionaries of Government of Odisha that:

“For that the learned Single Judge has misguided in holding that the case of the petitioner would be governed under the old Rule, i.e., executive instruction dated 17.11.1981 since the Government has rejected his representation prior to coming into effect the Rules, 2021. But however it is settled law that the rights of the petitioner are to be sourced from the Rules governing the service, i.e., the existing rules.”

12.4. In the humble opinion of this Court such a stance is contrary to legal position which is discussed in the paragraphs infra.

12.5. It is pertinent to take cognizance of the fact that the Odisha Transport Service (Method of Recruitment and Conditions of Services) Rules, 2021, promulgated vide Notification No. 45-TRN-FE-MISC/T-0044-2017, dated 03.01.2022, has been published in the Extraordinary issue of the Odisha Gazette bearing No.22 on 05.01.2022. Rule 1(2) of said rules specifically lays down as follows:

"They shall come into force on the date of their publication in the Odisha Gazette."

12.6. In *Pratap Chandra Mishra and Others Vrs. State of Odisha and Another*, O.J.C. No.6113 of 1992, vide Judgment dated 23.08.1993, this Court has laid down as follows:

"3. The petitioners' case is that they had no occasion to know about the Resolution dated 23rd March, 1992 until its publication in the Official Gazette dated 10th April, 1992. The only question that needs adjudication is whether the date on which the Resolution was passed or the date on which the same was published in the Orissa Gazette would be the effective date. The difficulty arises in respect of units which made fixed capital investment between the period from 23.3.1992 to 10.4.1992. Obviously a person who has made investment after 23.3.1992, but before 10.4.1992 would be affected if the Resolution is made operative from 23.3.1992. If the same is so made operative, it would cause prejudice to the person who is unaware of the Resolution and makes fixed capital investment upto 10.4.1992. It is seen from the Resolution dated 23.3.1992 itself that the same was ordered to be published in the next issue of the Official Gazette. Section 3 (39) of the General Clauses Act, 1897 defines "Official Gazette" or "Gazette" to mean Gazette of India or Official Gazette of a State. Section 2(16) of the Orissa General Clauses Act, 1937 defines "Gazette" as the Official Gazette of the State. The publication in the Official Gazette is made for the purpose of making it known to the public. Even if a Resolution is adopted, from a particular date it cannot be made operative without necessary publication, when it affects any person by withdrawal of any benefit or incentive already granted. We are, therefore, inclined to accept the submission on behalf of the petitioners that the Resolution cannot be operative prior to 10.4.1992. The Resolution dated 17.6.1992 published in the Orissa Gazette Supplement dated 26.6.1992 is nullified to that extent. The Finance Department Notification No. SRO 629/92 dated 28.4.1992 was published in the Official Gazette on 29.4.1992, and therefore, the same would be operative from 29.4.1992."

12.7. Minute scrutiny of the Odisha Transport Service (Method of Recruitment and Conditions of Services) Rules, 2021, as published in the Extraordinary issue of the Odisha Gazette, would reveal the following intent of the Government:

"In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and in supersession of all rules framed, instructions or orders issued in this respect except as respect things done or omitted to be done before such supersession, the Governor of Odisha hereby makes the following rules to regulate the method of recruitment and conditions of service of persons appointed to the Odisha Transport Services ***"

12.8. While the Odisha Transport Service (Method of Recruitment and Conditions of Services) Rules, 2021 came into force with effect from 05.01.2022 to have prospective in its operation, the same saved the "things done or omitted

to be done before such supersession”.

12.9. The word “supersede” in law, vide Black’s Law Dictionary, 5th Edition, as referred to in *Calcutta Municipal Corporation Vrs. Pawan Kumar Saraf*, (1999) 2 SCC 400 “ 1999 (1) SCR 74, means “obliterate, set aside, annul, replace, make void or inefficacious or useless, repeal”. The purport of “supersession” has been succinctly explained in *Union of India Vrs. Glaxo India Ltd.*, (2011) 6 SCC 668 “ (2011) 4 SCR 50:

“39. The impugned notification uses the expression “supersession” of the earlier notification. Therefore, the first question that requires to be considered and answered by us is, what is the meaning of the expression ‘supersession’ and what is its effect.

Webster’s Third New International Dictionary defines the word ‘supersession’ to mean ‘the state of being superseded’, ‘removal’ and ‘replacement’. P. Ramanatha Aiyar’s *Advanced Law Lexicon* defines ‘superseded’ as ‘set aside’ and ‘replaced by’. The view of this Court in some of the decisions is that the expression ‘supersession’ has to be understood to amount ‘to repeal’ and when notification is repealed, the provisions of Section 6 of the General Clauses Act would not apply to notifications.

42. In *State of Orissa Vs. Titaghur Paper Mills Company Ltd.*, 1985 Supp. SCC 280 “ AIR 1985 SC 1293, the specific question whether on supersession of a notification, the liability to tax for a period prior to the supersession was wiped out or not, directly arose and was considered. This Court came to the conclusion that the previous liability to tax for a period prior to the supersession was not wiped out.

In our view, the results that flow from changes in the law by way of amendment, ‘repeal’, ‘substitution’ or ‘supersession’ on the earlier rights and obligations cannot be decided on any set formulae. It is essentially a matter of construction and depends on the intendment of the law as could be gathered from the provisions in accordance with accepted canons of construction.

45. In *Syed Mustafa Mohamed Ghouse Vrs. State of Mysore*, (1963) 1 Cri LJ 372 (Mys), the Sugar (Movement Control) Order, 1959 of 06.11.1959 was passed in supersession of the Sugar (Movement Control) Order, 1959, dated 27.07.1959. It was held that in law supersession has not the same effect as repeal and proceedings of a superseded order can be commenced. In *R.S. Anand Behari Lal Vrs. United Provinces Govt.*, AIR 1955 NUC 2769 (All), it was held that in case of supersession of a notification, the objections and liabilities accrued and incurred under the earlier notification remain unaffected, since the supersession will be effected from the date of second notification and not retrospectively, so as to abrogate the earlier notification from the date of its commencement.”

12.10. The distinction between the word “substitution” and the term

"supersession" can well be deduced from the following dicta of the Hon'ble Supreme Court of India in the case of State of Maharashtra Vrs. Central Provinces Manganese Ore Co. Ltd., (1977) 1 SCC 643 " (1977) 39 STC 340 (SC):

"The following passage was also cited from Koteswar Koteswar Vittal Kamath Vrs. K. Rangappa Balica & Co., AIR 1969 SC 504 (at page 509) " (1969) 3 SCR 40 (at p. 47) :

'Learned counsel for the respondent, however, urged that the Prohibition Order of 1119 cannot, in any case, be held to have continued after 8th March, 1950, if the principle laid down by this Court in Firm A.T.B. Mehtab Majid & Co. Vrs. State of Madras, (1963) Supp. 2 SCR 435 " AIR 1963 SC 928 is applied. In that case, Rule 16 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, was impugned. A new Rule 16 was substituted for the old Rule 16 by publication on September 7, 1955, and this new rule was to be effective from 1st April, 1955. The Court held that the new Rule 16(2) was invalid because the provisions of that rule contravened the provisions of Article 304(a) of the Constitution. Thereupon, it was urged before the Court that, if the impugned rule be held to be invalid, the old Rule 16 gets revived, so that the tax assessed on the basis of that rule will be good. The Court rejected this submission by holding that:

'Once the old rule has been substituted by the new rule, it ceases to exist and it does not automatically get revived when the new rule is held to be invalid'.

On that analogy, it was argued that, if we hold that the Prohibition Order of 1950 was invalid, the previous Prohibition Order of 1119 cannot be held to be revived. This argument ignores the distinction between supersession of a rule, and substitution of a rule. In the case of (1963) Supp. 2 SCR 435 " AIR 1963 SC 928 (supra), the new Rule 16 was substituted for the old Rule 16. The process of substitution consists of two steps. First, the old rule is made to cease to exist, and, next, the new rule is brought into existence in its place. Even if the new rule be invalid, the first step of the old rule ceasing to exist comes into effect and it was for this reason that the Court held that, on declaration of the new rule as invalid, the old rule could not be held to be revived'.

In the above mentioned passage, this Court merely explained the argument which was accepted in the case of firm A.T.B. Mehtab Majid & Co. Vrs. State of Madras (1963) Supp. 2 SCR 435 " AIR 1963 SC 928). After doing so, it distinguished the facts in Koteswar's case (supra), relating to an alleged substitution of one Prohibition Order by a subsequent order which was found to be invalid. It recorded its conclusion as follows (at p. 509) :

'In the case before us, there was no substitution of the Prohibition Order of 1950 for the Prohibition Order of 1119. The Prohibition Order of 1950 was promulgated independently of the Prohibition Order of 1119, and because of the provisions of law it would have had the effect of making the Prohibition Order of 1119 inoperative if it had been a valid order. If the Prohibition Order of 1950 is

found to be void ab initio, it could never make the Prohibition Order of 1119 inoperative'.

The argument before us is that since the word 'substituted' is used in the amending Act of 1949, it necessarily follows that the process embraces two steps. One of repeal and another of the new enactment. But, this argument is basically different from the argument which prevailed in Koteswar's case (supra) where a distinction was drawn between a 'substitution' and 'supersession'.

It is true that, as the term substitution was not used there, the old rule was not held to have been repealed. Nevertheless, the real basis of that decision was that what was called supersession was void ab initio so that the law remained what it would have been if no such legislative process had taken place at all. It was held that the void and inoperative legislative process did not affect the validity of the pre-existing rule. And, this is precisely what is contended on by the State before us."

12.11. The word "supersession", as finds place in the Odisha Transport Service (Method of Recruitment and Conditions of Services) Rules, 2021, framed in exercise of proviso to Article 309 of the Constitution, is construed to be used in the sense as the word "repeal" or the words "repeal and replacement". By using "supersession" in said notification the expression "in supersession of all Rules framed, instructions or orders issued" all that was done was to repeal and replace the previous executive instruction's/circulars by this new notification, namely aforesaid Rules of 2021. Thus understood, the Odisha Transport Service (Method of Recruitment and Conditions of Services) Rules, 2021, repealed and replaced executive instructions of 17.11.1981 as amended in 1991 and 1995 with prospective effect from 05.01.2022. The succeeding words "except as respect things done or omitted to be done before such supersession" contained in said Rules, 2021 are significant, which would be construed to mean the earlier action/process undertaken on the basis of executive instructions was not wiped out.

12.12. In view of the settled legal position the stand of the Standing Counsel (Transport) that the earlier actions of authorities concerned for convening Departmental Promotion Committee Meeting to consider the cases of three Senior Assistants (re-designated as Assistant Section Officers) in terms of extant executive instructions gets obliterated once the Odisha Transport Service (Method of Recruitment and Conditions of Services) Rules, 2021, came into force with effect from 05.01.2022, runs counter to the interpretation of the word "supersession" as put forth by the Hon'ble Supreme Court as discussed above.

13. It is further argued by Sri Pravakar Behera, learned Standing Counsel (Transport) that the learned Single Judge ignored to refer to the Judgment rendered in Raj Kumar (supra) while rendering Judgment dated 24.02.2023. Perusal of impugned Judgment does not reveal that such decision has been cited during the course of hearing. The impugned Judgment of the learned Single

Judge is also silent about advancing any argument by the Standing Counsel (Transport) based on said Judgment. This Court is not oblivious of the proposition by Co-ordinate Bench of this Court in the case of Sri Debarchan Mahanandia Vrs. State of Odisha, W.A. No.306 of 2014 vide Judgment dated 25.09.2015, which is to the following effect:

"5. Now coming to the contentions for the appellant with regard to non-consideration of the case of the appellant as recorded in point Nos.2 and 3, on scrutiny of the judgment of the learned Single Judge, it is observed that the appellant failed in raising any such point during hearing of his case. For the lapse of the appellant in canvassing the points to be considered by the learned Single Judge, the decision of the learned Single Judge cannot be faulted. Further, law is fairly well settled in Dr. S.L. Agarwal Vrs. The General Manager, Hindustan Steels Ltd. (AIR 1970 SC 1150) that, in the event any such point is pleaded but not canvassed during course of argument, the remedy lies with the appellant to apply for review of the judgment before the same Court and there is absolutely no scope for entertaining such issues in a writ appeal."

13.1. This Court is, therefore, of the considered opinion that the present writ appeal does not lie in the teeth of aforesaid dicta of this Court.

CONCLUSION:

14. Taking into consideration the position that the Division Bench does not sit in re-appreciating the Judgment of the learned Single Judge in an intra-Court appeal on finding of fact, unless it is demonstrated by the appellants that the conclusion on set of facts based on material on record arrived at by the learned Single Judge is perverse. Thus, this Court does not feel it expedient to disturb the findings settled by the learned Single Judge. Furthermore, the ratio of Raj Kumar (supra) is not applicable on the factual matrix discussed by the learned Single Judge.

14.1. In view of enunciation of law with respect to "supersession", it is but evident from the caption contained in the Odisha Transport Service (Method of Recruitment and Conditions of Services) Rules, 2021, that said Rules have no effect on the "things done or omitted to be done before such supersession".

14.2. A writ appeal is an appeal on principle where the legality and validity of the Judgment and/or Order of the Single Judge is tested and it can be interfered with only when there is a patent error on the face of the record or the judgment is against established or settled principle of law. If two views are possible and a view, which is reasonable and logical, has been adopted by a Single Judge, the other view, howsoever appealing may be to the Division Bench; it is the view adopted by the Single Judge, which would, normally be allowed to prevail. If the discretion has been exercised by the Single Judge in good faith and after giving due weight to relevant matters and without being swayed away by irrelevant matters and if two views are possible on the question, then also the Division

Bench in writ appeal should not interfere, even though it would have exercised its discretion in a different manner, were the case come initially before it. The exercise of discretion by the Single Judge should manifestly be wrong, which would then give scope for interference by the Division Bench. (Ref.: Anindita Mohanty Vrs. Senior Regional Manager, H.P. Co. Ltd., Bhubaneswar, 2020 (II) ILR-CUT 398).

15. This Court also takes into consideration the admitted position as mentioned by the Government of Odisha in Commerce and Transport (Transport) Department, vide Order dated 11.10.2021, which was subject matter of challenge in the writ petition. Without any ambiguity, said Order stated that "The post of Assistant Regional Transport Officer which is an Ex-cadre post was being filled up by way of selection from among different cadres such as Senior Assistants of Transport Department, Senior Assistant of Office of Transport Commissioner and other posts in State Transport Authority and Regional Transport Officers in pursuance to the instructions issued vide Letter No. 17135/T dated 17.11.1981 and subsequent instructions issued in this regard from time to time." Though it is stated in the said Order that the posts of Senior Assistants in Transport Department and Office of Transport Commissioner, Odisha has been re-designated to that of the Assistant Section Officer, there is no denial of fact narrated by the learned Single Judge that "in view of the change in designation in executive instruction dated 17.11.1981 is to be read as Assistant Section Officer inasmuch as the change in designation has not changed the nature and character of the job and there was no change in the pay structure".

15.1. Seeking to challenge the Order dated 11.10.2021 and Order dated 10.12.2021 of the Government of Odisha, the respondents had knocked the doors of this Court on 16.11.2021 by way of filing petition, registered as W.P.(C) No.35645 of 2021 (Sreepati Ranjan Dash), and on 24.12.2021 registered as W.P.(C) No.41042 of 2021 (Aditya Bhanjan Sahoo), which are much prior to supersession of executive instruction/circular dated 17.11.1981 as amended vide Letter dated 23.08.1991 and Letter dated 04.07.1995, by virtue of promulgation of the Odisha Transport Service (Method of Recruitment and Conditions of Services) Rules, 2021, which came into force with effect from 05.01.2022 pursuant to Rule 1(2) *ibid*. This Court also notes that such Orders of the Government came to being pursuant to disposal of W.P.(C) No. 19531 of 2021 by Order dated 13.07.2021 and W.P.(C) No. 23090 of 2021 by Order dated 23.08.2021 of this Court. The action for consideration of promotion to the post of Assistant Regional Transport Officer from the post of Assistant Section Officer, thus, commenced even prior to 05.01.2022.

15.2. Since the learned Single Judge has elaborately discussed the factual matrix with well-reasoned order placing reliance on the evidence available on record, the Judgment dated 24.02.2023 does not suffer from infirmity in law so as to warrant interference in exercise of powers under Article 4 of the Odisha High Court Order, 1948 read with Clause 10 of the Letters Patent constituting the High

Court of Judicature at Patna and Rule 6 of Chapter-III of the Rules of the High Court of Odisha, 1948.

16. Keeping abreast of the scope of intra-Court of appeal as propounded by the Hon'ble Supreme Court as well as this Court, for the reasons stated above and the discussions made in the foregoing paragraphs, no infirmity in the decision of learned Single Judge vide Judgment dated 24.02.2023 is perceived and, therefore, this Court declines to show indulgence in the said Judgment in this writ appeal.

16.1. In the result, the writ appeals bearing W.A. No.658 of 2023 (State of Odisha & Others Vrs. Sreepati Ranjan Dash) and W.A. No.744 of 2023 (State of Odisha Vrs. Aditya Bhanjan Sahoo) stand dismissed, but in the circumstances, there shall be no order as to costs.