



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 13017 of 2018,
W.P.(C) No.15082 of 2020,
W.P.(C) No.21256 of 2021
&
W.P.(C) No. 29309 of 2022

Applications under Articles 226 & 227 of Constitution of India.

AFR

W.P.(C) No. 13017 of 2018

Biswaranjan Panigrahi

.....

Petitioner

- Versus -

Govt. in Panchayati Raj &
Drinking Water Department & anr.

.....

Opp. Parties

W.P.(C) No.15082 of 2020

Laxman Sarbhang & ors.

.....

Petitioners

- Versus -

State of Odisha & anr.

.....

Opp. Parties

W.P.(C) No.21256 of 2021

Laxman Sarbhang & ors.

.....

Petitioners

- Versus -

State of Odisha & anr.

.....

Opp. Parties

W.P.(C) No. 29309 of 2022

Suratha Suna & ors.

.....

Petitioners

- Versus -

State of Odisha & anr.

.....

Opp. Parties

Advocate(s) appeared in these cases:-

For Petitioner(s) : M/s. Biswabihari Mohanty, J.N. Panda,
M. Harichandan, B. Tripathy &
B. Samantaray, Advocates.
[in W.P.(C) No. 13017 of 2018]



M/s. Jyotirmay Gupta, P.P. Rao &
S. Sahoo, Advocates,
[in W.P.(C) No. 15082 of 2020 &
W.P.(C) No.21256 of 2021]

M/s. S.K. Samal, S.P. Nath, S.D. Routray,
S. Sekhar & J. Biswal, Advocates.
[in W.P.(C) No. 29309 of 2022]

For Opp. Parties: Mr. S.N. Pattnaik,
Addl. Government Advocate

M/s. B.P. Tripathy, R. Achary, T. Barik,
N. Barik, B. Hidyatullah, A. Pati & S.R.
Ojha, [O.P. No.2 in W.P.(C) No. 13017 of 2018]

M/s. Jyotirmay Gupta, P.P. Rao &
S. Sahoo, Advocates
[for intervener in W.P.(C) No. 13017 of 2018]

Mr. Prasanjeet Mohapatra, Advocate
[O.P. No.3 in W.P.(C) No. 15082 of 2020].

Amicus Curiae : Mr. P.K. Rath, Sr. Advocate
Ms. Pami Rath, Sr. Advocate

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
6th February, 2025

SASHIKANTA MISHRA, J. All these writ applications involve a common question of fact and law and as such, they were heard together and are being disposed of by this common judgment.



FACTS

2. An advertisement was published by the Collector-cum-DPC, DRDA Subarnapur on 30.06.2018 inviting applications from intending candidates for their appointment as Gram Rozgar Sevaks (GRS) in different Gram Panchayats of Subarnapur District. 19 posts were notified, of which 5 were reserved for SC and 14 for ST candidates. Said advertisement, inter alia, mentioned that the 'post' of GRS under Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) is contractual and the engagement would be initially for a period of one year, which can be extended on the basis of satisfactory performance and recommendation by the concerned Block Development Officer. It also mentioned that the provisions of Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 (in short "ORV Act") and Rules formulated thereunder shall be strictly followed.

3. Prior to publication of the advertisement, the Government in the Department of Panchayati Raj and Drinking Water formulated comprehensive guidelines for selection and engagement of GRS under MGNREGS as per



Notification dated 06.04.2018. Among other things, it was provided that the provisions of ORV Act shall be strictly followed in the selection of GRS and that GRS will form a district cadre. Pursuant to the advertisement and upon submission of applications by the intending candidates, selection was made and on 03.12.2018, a final list was prepared. After verification of documents produced by the selected candidates, a revised final merit was published.

4. While the matter stood thus, one Biswaranjan Panigrahi, a person belonging to the general category, has filed W.P.(C) No.13017 of 2018 challenging the guidelines as well as advertisement mainly on the ground that the principles of reservation could not have been applied to all the 19 posts notified to be filled up. The following relief has been claimed in the said writ application:

“Under the above circumstances it is humbly prayed that this Hon'ble Court may graciously be pleased to issue a writ in appropriate nature to quash the Advertisement dated 30.6.2018 so far as the decision to reserve all 19 posts in favour of reserved category and direct the respondents to issue advertisement afresh maintaining the ceiling limit of 50% as per the settled position of law pertaining reservation or treating all the posts as unreserved being single posts in different gram Panchayats of Subarnapur district and consider the candidatures of all eligible candidates irrespective of category for such selection and this Hon'ble Court may further be pleased to quash the guidelines dated



06.04.2018 issued by Panchayatraj Department so far as the decision to apply the provisions of ORV Act and Rules to the selection of GRS and making the post of GRS is District Cadre concerned.

Any other order/ orders, direction/directions as would be deemed fit and proper be issued in the interest of justice and equity.”

5. On the other hand, the petitioners in the other two writ applications i.e., W.P.(C) No.15082 of 2020 and W.P.(C) No. 21256 of 2021 having been selected pursuant to the above advertisement, filed those writ applications because of the delay in issue of engagement orders in their favour.

6. Be it noted that the petitioners in W.P.(C) No. 15082 of 2020 had earlier approached this Court in W.P.(C) No. 21777 of 2019, which was disposed of by order dated 21.11.2019 by directing the Collector to take a decision on the representation filed by them. Pursuant to such order, the Collector vide order dated 27.12.2019 held that the engagement of GRS is not possible at present as this Court has passed an interim order in the writ application filed by Biswaranjan Panigrahi being W.P.(C) No. 13017 of 2018. As such, the petitioners have filed W.P.(C) No. 15082 of 2020 seeking the following relief:



“The petitioners therefore humbly (sic) pray that the Hon’ble Court may be graciously pleased to admit this case, issue notice to opposite parties for show cause and after hearing both the sides may be pleased to issue a writ in nature of mandamus/certiorari with a direction to the opposite parties particularly to O.P. No.- 2 i.e. Collector, Subarnapur to take immediate steps to issue appointment letters as per selection list published vide advertisement No.275 dated 17.01.2019 vide Annexure- 2 series for the post of Gram Rozgar Sevak (GRS) in Subarnapur district on the basis of the earlier order of this Hon’ble court vide Annexure-4 by modifying the order passed by Collector, Subarnapur vide Annexure- 5 within a stipulated period with cost.

And to pass such other order or direction as this Hon’ble Court deems just, fit, equitable and proper in the facts and circumstances of the present case.”

7. While the matter stood thus, the Collector, Subarnapur issued another advertisement on 24.03.2021 inviting applications for engagement of GRS in different GPs of the district Subarnapur. 25 posts were notified, of which, 10 were reserved for SC, 11 for ST and 4 for unreserved candidates. Challenging the aforesaid advertisement, the petitioners in W.P.(C) No. 15082 of 2020 have again approached this Court in W.P.(C) No. 21256 of 2021 seeking the following relief:

“The petitioners therefore humbly(sic) pray that the Hon’ble Court may be graciously pleased to admit this case, issue notice to opposite parties for show cause and after hearing both the sides may be pleased to issue a writ in nature of mandamus/certiorari with a direction to the opposite Parties particularly to O.P. No.- 2 to take immediate steps to give appointment as per selection list published in advertisement No. 275 dated



17.01.2019 vide Annexure- 2 series for the post of Gram Rozgar Sebhak (GRS) in Subarnapur district by quashing the present advertisement i.e. Advertisement dated 24.03.2021, vide Annexure-6 within a stipulated period with cost.

And to pass such other order or direction as this Hon'ble Court deems just, fit, equitable and proper in the facts and circumstances of the present case.

And for which act of kindness, the petitioners as in duty bound shall ever pray."

8. The other writ petition, being W.P.(C) No. 29309 of 2022 has been filed by the candidates selected pursuant to the advertisement dated 30.06.2018 claiming the following relief:

"It is therefore, most humbly prayed that this Hon'ble Court be graciously pleased to

i) Admit the writ application.

ii) Call for the record.

iii) Issue a writ in the nature of Mandamus by directing the opp. parties to issue necessary engagement order for the post of GRS on the basis of their rank in the select list which was prepared pursuant to their advertisement dated 30.06.2018 and further direction may be issued to extend all financial and service benefits in favour of the petitioners within a reasonable time to the stipulated by this Hon'ble Court.

iv) And/or pass such other or der/orders, direction/directions as this Hon'ble Court may deems fit and proper for the ends of justice.

And for the said act of kindness, the petitioners as in duty bound shall ever pray."

9. Thus, out of the four writ applications so filed, three, being W.P.(C) No. 15082 of 2020, W.P.(C) No. 21256 of 2021 and W.P.(C) No.29309 of 2022 are filed by the candidates selected pursuant to the advertisement dated



30.06.2018, who are aggrieved by non-issuance of engagement orders in their favour. On the other hand, the petitioner in W.P.(C) No.13017 of 2018 is an outsider, who challenges the advertisement as well as comprehensive guidelines on the ground that all the posts notified could not have been reserved for SC and ST Category.

10. In view of the importance of the issue involved, this Court requested the assistance of two senior Counsel Ms. Pami Rath and Mr. P.K. Rath as Amicus Curiae.

11. Heard learned counsel, Mr. B.B. Mohanty for the petitioner in W.P.(C) No.13017 of 2018; Mr. J. Gupta for the petitioners in W.P.(C) No.15082 of 2020 and W.P.(C) No. 21256 of 2021; and Mr. S.K. Samal for the petitioners in W.P.(C) No. 29309 of 2022 and also Mr. S.N. Pattnaik, learned Addl. Government Advocate for the State in all the cases.

Submissions against the Advertisement dated 30.06.2018 and comprehensive guidelines dated 06.04.2018

12. Mr. B.B. Mohanty, learned counsel for the petitioner seeks to assail the guidelines dated 06.04.2018 in so far as the same provides for application of the provisions of the



ORV Act and making the GRS a district cadre post and consequently the advertisement dated 30.06.2018 in so far as it provides for reservation of all the 19 posts notified on the following grounds:

(i) GRS is not a civil post as per OCS (CCA) Rules, 1962 nor under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005.

(ii) Admittedly, GRS is a contractual engagement as per comprehensive guidelines as also the advertisement renewable from year to year.

(iii) Section 3(d) of the ORV Act specifically bars applicability of the said Act to contractual posts.

(iv) Section 19 of the ORV Act gives overriding effect to the Act as against any Rule, order, guidelines etc. Therefore, any guidelines issued by the Central Government or the State Government to the contrary has no force of law.

13. Admittedly, 109 'posts' of GRS were available in Subarnapur district, all of which being single 'posts' were



filled up without adhering to the principle of reservation at the relevant time. The impugned advertisement intends to retrospectively apply the principle of reservation to the said 'posts', which is not permissible in law. Moreover, the comprehensive guidelines dated 06.04.2018 itself provides for its prospective application only.

Submissions supporting the advertisement and comprehensive guidelines.

14. Mr. S.N. Pattnaik, learned Addl. Government Advocate, supported by Mr. J. Gupta, and Mr. S.K. Samal, learned counsel appearing for the petitioners in other three writ applications, has made the following submissions.

(i) GRSs are engaged on contractual basis in each Gram Panchayat for execution of work, which is co-terminus with MGNREG Scheme. Finance Department concurred in the creation of 6234 posts of GRS on 22.09.2014 and after reorganization of Gram Panchayats in 2017, it again concurred in the creation of 567 new posts, taking the total number of posts to 6801.



(ii) There are 96 Gram Panchayats in Subarnapur district prior to reorganization, which increased to 109 after reorganization. The circulars issued by the Government in 2006 and 2013 relating to GRS have lost their force in view of the issuance of the comprehensive guidelines dated 06.04.2018.

(iii) Out of the 109 GRS posts in Subarnapur District, only 9 SC, 29 UR and 50 SEBC category persons are in position. There is thus, a deficit of 9 SC and 25 ST candidates and surplus of 10 belonging to UR and SEBC taken together. Therefore, there is no question of filling up the vacancy of UR or SEBC category as only 19 posts of GRS were available. Thus, the claim of the petitioner regarding exceeding 50% ceiling of reservation and of making 100% reservation is factually incorrect.

(iii) At the relevant time, there being only one post of GRS in each Gram Panchayat, there was no application of reservation but after becoming a district cadre post it was found that there was no proper representation of the reserved category candidates, for which the



impugned advertisement was issued only to make good the shortfall so as to ensure proper representation of all communities.

(iv) Though initially, the GRS was a single post but now it has been clubbed up and a district cadre has been formed. Further, for appointment of the village level workers as per Orissa Village Level Workers (Recruitment and Conditions of Service) Rules, 2008, 30% of the vacancies are to be filled up by selection from amongst GRS.

Submissions by Amicus Curiae

15. Ms. Pami Rath, learned Senior Counsel submits that Article-16(4) and (4-A) of the Constitution are enabling provisions conferring power on the State to provide reservation. No one can claim reservation as a Fundamental Right by virtue of Article 16(4) of the Constitution of India. Ms. Rath, has referred to the judgment of the Supreme Court in the Case **Mukesh Kumar v. State of Uttarakhand**¹, in this regard. She further submits that exercising its legislative

¹ (2020) 3 SCC 1



power, the State of Odisha enacted ORV Act making it applicable to all posts under the State excluding certain categories of posts as laid down in Section 3 thereof. Section-3(d) excludes the applicability of the Act to contractual posts. That apart, Section 19 has an overriding effect over all other Rules, resolutions etc. GRS being a contractual engagement, the provisions of the ORV Act cannot be made applicable as the same would run contrary to its provisions. Ms. Rath further submits that there is no question of retrospectively applying reservation to a post which itself was not subject to reservation at the relevant time. Ms. Rath concludes her argument by submitting that reservation is always in respect of the post and not the employee and further, reservation does not mean that the reserved category candidate cannot compete for the unreserved seats.

16. Mr. P.K. Rath, learned Senior Counsel would submit that there is no provision in the Constitution or in any other law for retrospective application of the principles of reservation. Further, reservation is a benefit claimed by a candidate. The State cannot force reservation upon a candidate. Since in the instant case the concerned persons



were appointed admittedly when there was no reservation, the State cannot subsequently segregate them on the basis of the social categories to which they belong and apply the principle of reservation suo motu at this distance of time. In any case, the posts being contractual in nature, they stand automatically excluded from the purview of the ORV Act and in view of the overriding provision of Section 19, the State has no power to make the Act applicable by an executive/administrative decision.

Analysis and findings

17. The concept of reservation flows from Article-16 of the Constitution, Clause-4 of which confers power on the State to make provision for reservation of appointments or posts in favour of any backward class of citizens, which in the opinion of the State, is not adequately represented in the services under the State. As argued by Ms. Rath, learned Amicus Curiae, it is basically an enabling provision utilizing which the State can make laws to provide for reservation to the backward classes. For instance, the State of Odisha has enacted ORV Act to provide for reservation in appointment to members of the SC and ST communities. It is thus, a positive



benefit conferred by the legislature drawing power from the Constitutional provision but then, reservation is not automatic but a right to be claimed by persons belonging to the reserved categories. Unless a claim is laid it is not for the State to provide the benefit to a person only because he belongs to a particular social category. This is being said for the reason that it is open to persons of all social categories to compete on merits without claiming reservation. In the case of **Mukesh Kumar** (supra), the Supreme Court observed as follows:

“12. Articles 16(4) and 16(4-A) do not confer fundamental right to claim reservations in promotion [Ajit Singh (2) v. State of Punjab, (1999) 7 SCC 209 : 1999 SCC (L&S) 1239] . By relying upon earlier judgments of this Court, it was held in Ajit Singh (2) [Ajit Singh (2) v. State of Punjab, (1999) 7 SCC 209 : 1999 SCC (L&S) 1239] that Articles 16(4) and 16(4-A) are in the nature of enabling provisions, vesting a discretion on the State Government to consider providing reservations, if the circumstances so warrant. It is settled law that the State Government cannot be directed to provide reservations for appointment in public posts [C.A. Rajendran v. Union of India, (1968) 1 SCR 721 : AIR 1968 SC 507] . Similarly, the State is not bound to make reservation for Scheduled Castes and Scheduled Tribes in matters of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing inadequacy of representation of that class in public services. If the decision of the State Government to provide reservations in promotion is challenged, the State concerned shall have to place before the Court the requisite quantifiable data and satisfy the Court that such reservations became necessary on account of inadequacy of representation of Scheduled Castes and Scheduled Tribes in a particular class or classes of posts without affecting general efficiency of



administration as mandated by Article 335 of the Constitution. [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013]

13. Articles 16(4) and 16(4-A) empower the State to make reservation in matters of appointment and promotion in favour of the Scheduled Castes and Scheduled Tribes “if in the opinion of the State they are not adequately represented in the services of the State”. It is for the State Government to decide whether reservations are required in the matter of appointment and promotions to public posts. The language in clauses (4) and (4-A) of Article 16 is clear, according to which, the inadequacy of representation is a matter within the subjective satisfaction of the State. The State can form its own opinion on the basis of the material it has in its possession already or it may gather such material through a Commission/Committee, person or authority. All that is required is that there must be some material on the basis of which the opinion is formed. The Court should show due deference to the opinion of the State which does not, however, mean that the opinion formed is beyond judicial scrutiny altogether. The scope and reach of judicial scrutiny in matters within the subjective satisfaction of the executive are extensively stated in Barium Chemicals Ltd. v. Company Law Board [Barium Chemicals Ltd. v. Company Law Board, AIR 1967 SC 295] , which need not be reiterated. [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1]”

To reiterate, reservation is a claim and not an automatic conferment of right on a person.

18. Before proceeding to examine the applicability of the provisions of the ORV Act in the matter of engagement of GRS, it would be apt to keep in mind the fundamental principle underlying reservation that a single post cannot be reserved, as it would amount to 100% reservation, as was held by the Supreme Court in the case of **Post Graduate**



Institute of Medical Education & Research² v. Faculty

Assn. The following observations of the Supreme Court in the aforesaid case are noteworthy.

“34. In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such a single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of general members of the public and cent per cent reservation for the backward classes is not permissible within the constitutional framework. The decisions of this Court to this effect over the decades have been consistent.

35. Hence, until there is plurality of posts in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with the device of rotation of roster in a single post cadre is bound to create 100% reservation of such post whenever such reservation is to be implemented. The device of rotation of roster in respect of single post cadre will only mean that on some occasions there will be complete reservation and the appointment to such post is kept out of bounds to the members of a large segment of the community who do not belong to any reserved class, but on some other occasions the post will be available for open competition when in fact on all such occasions, a single post cadre should have been filled only by open competition amongst all segments of the society.”

19. To briefly advert to the facts of the case, it is admitted that there were 96 ‘posts’ of GRS in Subarnapur district, which were Gram Panchayat-based and as such, were single ‘posts’. Therefore, appointments were made to the said ‘posts’ without applying the principles of reservation. The number of ‘posts’ increased to 109 after reorganization.

² (1998) 4 SCC 1



There were 19 vacancies at the time of issuance of the impugned advertisement. As per the comprehensive guidelines dated 06.04.2018, the Government decided to make the GRS a district cadre 'post' meaning thereby, that all 109 'posts' formed a part of single cadre. Thus, 96 'posts', which were originally single 'posts', now purportedly became part of a cadre comprising 109 'posts'.

20. In its counter affidavit filed in W.P.(C) No.29309 of 2022, the State has enclosed the operational guidelines of MGNREG Act, 2005 of which, Clause-4.6.7 (ii) provides as follows:

“(ii) In the recruitment process, the reservation policy of the State for contractual employment should be followed. The MGNREGS staff should be adequately represented by women, SCs, STs. Disabled etc.”

The MGNREG Act, 2005 however, does not provide for any such provision regarding engagement of GRS. The State of Odisha has applied the provisions of the ORV Act to the engagement of GRS as per the comprehensive guidelines dated 06.04.2018. It is to be seen whether such application of the provisions of the Act is permissible in law or not.

21. The ORV Act was enacted to “provide for adequate representation of scheduled castes and scheduled tribes in



posts and services under the State”. The term ‘posts’ has not been defined in the Act. The Odisha Civil Services (Classification, Control and Appeal Rules, 1962 provides for classification of posts under Rule-8, and reads as under;

“8. Classification of post – [(1) Civil Posts under the State other than those ordinarily held by persons to whom these rules do not apply or included in any State Civil Service shall by a general or special order of the Governor, issued in this behalf, be classified as follows :-

- (i) State Civil Posts, Group-A
- (ii) State Civil Posts, Group-B
- (iii) State Civil Posts, Group-C
- (iv) State Civil Posts, Group-D

(2) Any order made by the competent authority and in force immediately before the commencement of these rules relating to classification of civil posts under the State shall continue to be in force until altered, rescinded or amended by an order of Governor under sub-rule (1).

(3) If any Civil post under the State has not been classified by an order of the Governor and a question as to its classification arises, the decision thereon of the appropriate department of Government after taking into account the class to which another Civil Post carrying a comparable scale of pay belongs, shall be final.”

22. Admittedly, GRS has not been classified as Civil Post as per Rule-8 of the 1962 Rules. There is also no post of GRS provided under MGNREG Act, 2005. On the contrary, the comprehensive guideline dated 06.04.2018, without saying that it is a civil post, specifically mentions that it is a contractual post. In fact, the introduction to the comprehensive guidelines read as follows:



“Multipurpose Assistants namely Gram Rozgar Sevaks (GRSs) are engaged on contractual basis in each Gram Panchayat for execution of work which is co-terminus with MGNREG Scheme. Government in Finance Department concurred in creation of 6234 nos. of posts of Gram Rozgar Sevaks (GRSs) on 22-09-2014. Consequent upon reorganization of Gram Panchayats, Finance Department have concurred in creation of 567 new posts of GRS increasing the total no. of posts of GRS to 6801.

The selection of GRSs on contractual basis should be done in a fair and transparent manner at the District level under the overall direction, control & supervision of Collector-cum-DPCs in the capacity of CEO, Zilla Parishad abiding by the following Guidelines:”

23. The following provisions of the comprehensive guidelines are also relevant and are quoted hereinbelow:

**EXECUTION OF AGREEMENT &
ISSUE OF ENGAGEMENT ORDER;**

UNDERTAKING:

- *Prior to execution of agreement, an undertaking should be obtained from the GRS as follows: -*
- ***"I am quite aware that the engagement offered is purely temporary and for a specific purpose of executing the work under MGNREGA and this is not a permanent job. Hence, I solemnly affirm that I would not claim my permanent absorption in the job under State Government/ Zilla Parishad/ Panchayat Samities/ Gram Panchayats etc.***

Further, I undertake not to approach any Court of Law for engaging me on permanent basis under the State Government or any other organization merely on the ground of my engagement as Gram Rozgar Sevak". (Ref: Letter No. 5664 dated 07-02-2008)

- *The Collector-cum-CEO, Zilla Parishad will execute an agreement with the GRS in Non-judicial stamp paper and issue engagement order (**contractual and coterminous with the Scheme**).*
- *If any fraudulent testimonial is detected in future or if he/she has been criminally prosecuted, the engagement shall be cancelled without notice and*



action as deemed proper will be taken against him/her as per the provision of Law.

NATURE OF ENGAGEMENT:

The GRS will be engaged on contractual basis for a period of one year. The selected candidates who join may be engaged in any Gram Panchayat of the concerned District by the Collector-cum-CEO, Zilla Parishad.

RENEWAL OF CONTRACT:

The BOG will assess the performance of GRS of each Gram Panchayat every year as per their Job Chart. On the basis of the satisfactory performance and recommendation by the EDO, the contract of GRS may be renewed for another one year by the Collector-cum-CEO, Zilla Parishad; and so on.

REMUNERATION:

*The GRS may be paid a consolidated monthly remuneration of **Rs.5000/- (Rupees Five Thousand)** which may be revised with the approval of Government. The remuneration may be paid from the Administrative Contingency of MGNREGS parked at District level. Payment of remuneration may be made through e-FMS. [Ref: Letter No. 7240 dated 27-04-2016]*

Thus, from a conjoint reading of all the aforequoted provisions there can be no manner of doubt that engagement of a GRS is not against any civil post in the State of Odisha but is a purely contractual engagement, initially for a period of one year and renewable from time to time depending on performance.

24. Having held that GRS is a purely contractual engagement, the question is, whether the provisions of ORV Act would be applicable, as has been sought to be done in



the comprehensive guidelines as well as the advertisement dated 30.06.2018. Firstly, GRS not being a 'post' or 'service' under the State, the provisions of the ORV Act would ordinarily not be applicable. Secondly, Section-3 of the ORV Act reads as follows:

“3. *Applicability-* This Act shall apply to all appointments to the Posts and Services under the State except-

(a) Class I posts which are above the lowest rank thereof and meant for conducting or guiding or directing Scientific and Technical research;

(b) Class I posts which are above the lowest rank thereof and classified as scientific posts;]

(c) tenure posts;

(d) those filled up on the basis of any contract;

(e) ex-cadre posts;

(f) those which are filled up by transfer within the cadre or on deputation;

(g) the appointment of such staff the duration of whose appointment does not extend beyond the term of office of the person making the appointment and the work charged staff which are required for emergencies like flood relief work, accident restoration and relief etc.;

(h) temporary appointments of less than forty-five days duration;

(h-1) those which are required to be filled up by appointment of persons under the rehabilitation assistance given to the members of the family of the deceased of permanent disabled employee who suffers from the disability while in service;

(i) those in respect of which recruitment is made in accordance with any provision contained in the Constitution.”

Thus, as per Clause-(d) of Section 3, the applicability of the provisions of the Act stands excluded to those to be filled up on the basis of any contract



25. The question is, can the State acting administratively decide to apply the provisions of the Act on its own. Given the Scheme of the Act as reflected in its provisions, the answer would be an emphatic 'no'. Reference in this regard may be had to Section-19 of the ORV Act, which reads as follows:

“19. Overriding effect of the Act.- The provisions of this Act shall have effect notwithstanding anything to the contrary in any other law or in any rule, order or resolution made by the State Government.”

26. Thus, on the face of Section 3(d), read with Section 19 of the ORV Act, the operational guidelines issued under the MGNREG Act and the comprehensive guidelines dated 06.04.2018 can have no sanction of law in so far as applying the principles of reservation to the engagement of GRS is concerned. Of course, had there been any enabling provision in the ORV Act conferring power on the State to act in a manner contrary to Section 3 or had the Act provided any exception, the matter would have been different. But in the absence of any such provision and on the face of the provision under Section 19, the State is denuded of its power to do so. In other words, the State has no power to suo motu apply the provisions of the ORV Act in the matter of selection and engagement of GRS on its own.



27. It would be profitable at this stage to refer to a judgment passed by a Division Bench of this Court in the case of **Susanta Kumar Sethi vs. State of Odisha**³, wherein, referring to the provision under Section 3(d) of the ORV Act, it was held as follows:

30. Section 3 makes it clear that the Act will apply to all appointments to the posts and services under the State. Section 3 of the ORV Act lists out the posts to which the ORV Act will not apply. What is relevant here is that under Section 3 (d) the ORV Act will not apply to posts "filled up on the basis of any contract." Admittedly, the post of SS is a contractual post and therefore, the ORV Act does not apply to it.

36. With the ORV Act itself making it clear that it will not apply to the recruitment for the post of SS, the question of applying Section 6 of the ORV Act and thereby insisting that the unfilled vacancies of STs should be filled up by SCs alone and nobody else, cannot be sustained in law. It was rightly rejected by the learned Single Judge.

28. The State has made a feeble attempt to justify its decision by citing two grounds, firstly that GRS has become a district cadre post and secondly, appointment to the post of village level worker as per the 2008 Rules can be made from amongst GRS to the extent of 30 %. For the reasons to be indicated below this Court finds both the arguments fallacious and absurd. As has already been held, GRS is not

³ MANU/OR/0330/2021 : (W.A. No. 86 of 2018 decided on 03.09.2021)



a civil post under the State nor is it a service within the meaning of the OCS(CCA) Rules. It is an engagement coterminous with the MGNREG Scheme with the engagees being given consolidated remuneration and on executing agreement with undertaking that they shall not claim regular employment under the State. So, even if the State makes a fiction of creating a district cadre, the same will not confer a status akin to a civil post or service in the State to the said district cadre. In fact, it would be a namesake cadre without the trappings of a civil post or service under the State. Secondly, reference to the 2008 Rules is also fallacious for the reason that only because the State has provided an avenue of appointment to the said service from amongst the GRSs would not change their status as contractual appointees. Of course, once they are appointed under the said Rules, their status would change but prior to that their status as contractual appointees would remain intact.

29. In view of the clear finding of this Court that GRS being a contractual appointment the principles of reservation would have no application, the alternative argument advanced to the effect that the comprehensive guidelines



would be effective only prospectively, is not necessary to be gone into.

Conclusion

30. Thus, from a conspectus of analysis of facts, statutory provisions and the case laws referred, this Court is of the considered view that the impugned comprehensive guidelines dated 06.04.2018 in so far as it relates to making the provisions of the ORV Act strictly applicable, cannot be sustained in the eye of law. Consequently, the advertisement dated 30.06.2018 providing for reservation in respect of all the 19 vacancies also cannot be sustained.

31. In the result, W.P.(C) No. 13017 of 2018 is allowed. The comprehensive guidelines dated 06.04.2018 in so far as it provides that the provisions of ORV Act and Rules framed thereunder would be strictly followed is hereby quashed. Further, the advertisement dated 30.06.2018 is also quashed.

32. Consequently, W.P.(C) Nos. 15082 of 2020, W.P.(C) No. 21256 of 2021 and W.P.(C) No. 29309 of 2022 are hereby dismissed.



33. In view of the above findings, the advertisement dated 24.03.2021 shall be modified/revised accordingly to invite applications from candidates without applying the principles of reservation.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack.
The 6th February, 2025/ A.K. Rana, P.A.

Signature Not Verified

Digitally Signed
Signed by: AJAYA KUMAR RANA
Designation: Personal Assistant
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 07-Feb-2025 19:35:00

