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**IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) Nos. 11103, 11325, 11704, & 15158 of 2024**

W.P.(C) No. 11103 of 2024

In the matter of an application under Articles 226 & 227 of the Constitution of India.

.....

Dr. Durgeshi Baral

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

For Petitioner : Mr. L.P. Dwivedy, Advocate

For Opp. Parties : Mr. C.K. Pradhan,
Addl. Govt. Advocate
Mr. A. Behera, Advocate
(Opp. Party No. 2)

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 06.03.2026 & Date of Judgment:22.05.2026

Biraja Prasanna Satapathy, J.

Since the issue involved in the present batch of writ petitions relates to selection and appointment to the post of Dental Surgeon in Group-'A' (Jr) of the Odisha Medical Service (Dental) pursuant to the advertisement issued by the Odisha Public Service



Commission (in short Commission) vide Advertisement No. 15 of 2017-18, all the writ petitions were heard analogously and disposed of by the present common order.

2. While W.P.(C) No. 11103 of 2024, 11325 of 2024 and 11704 of 2024 have been filed challenging order dtd.30.03.2024, wherein claim of the Petitioners to get the benefit of appointment against the available vacancies in the cadre of Dental Surgeon in Group-‘A’ (Junior) of the Odisha Medical Service (Dental) Cadre of the Health & Family Welfare Department has been rejected, W.P.(C) No. 15158 of 2024 has been filed challenging order dtd.06.05.2024 so passed by the Commission in rejecting the case of the Petitioner to get the benefit of appointment as against the post in question.

3. It is the case of the Petitioners that an advertisement was issued by the Commission vide Advertisement No. 15/2017-18 inviting applications to fill up 198 posts of Dental Surgeon in Group-A (Junior) of the aforesaid cadre. In the said advertisement, when no reservation was provided for candidates belonging to SEBC category, the matter was carried to the Tribunal in O.A. No. 1658(C) of 2018.



3.1 The Tribunal vide order dtd.11.03.2019, when directed to take a decision on the claim of the Petitioners in W.P.(C) No. 11103 of 2024 with regard to recommendation for their appointment as against the post in question, the same was rejected vide order dtd.17.04.2019. Similarly, Petitioner in W.P.(C) No. 11704 of 2024 had also approached the Tribunal challenging the non-provision of any reservation for candidates belonging to SEBC category in O.A. No. 1616(C) of 2018.

3.2. The Petitioners in W.P.(C) No. 11325 of 2024 were also before the Tribunal challenging the action of the Commission in not providing any reservation for SEBC category candidates in O.A. No. 913(C) of 2018. While claim of the Petitioner in W.P.(C) No. 11103 of 2024 was rejected pursuant to the order passed by the Tribunal on 11.03.2019 in O.A. No. 1658(C) of 2018, but the other two (2) Original Applications filed by the Petitioners in W.P.(C) No. 11704 & 11325 of 2024 remained pending before the Tribunal and subsequently transferred to this Court due to abolition of the Tribunal.

3.3. It is contended that this Court vide order dtd.18.01.2024 while disposing W.P.C.(OAC) No. Nos. 1616 of 2018 and 913 of 2018 along with W.P.C.(OAC) No. 1229 of 2019, so filed by the Petitioner



in W.P.(C) No. 11103 of 2024 challenging order dtd.17.04.2019, permitted the Petitioners therein to move the Commission for consideration of their claim to get the benefit of appointment as against the available vacancies. Such a direction was also issued, considering the submission made that vide notification dtd.11.07.2023 similarly situated candidate who participated in the selection process as SEBC category candidate, was provided with the appointment against the prospective vacancies pursuant to the order passed by this Court.

3.4. Learned counsel appearing for the Petitioners contended that without proper appreciation of the claim of the Petitioners and the fact that one Dr. Gargi Mohanty got the benefit of appointment vide notification dtd.11.07.2023, even though she had made her application as a SEBC category candidate, pursuant to the advertisement in question, such claim of the Petitioners was rejected vide the impugned order dtd.30.03.2024.

3.5. Similarly, claim of the Petitioner in W.P.(C) No. 15158 of 2024 was rejected vide order dtd.06.05.2024 pursuant to the order passed by this Court in W.P.(C) No. 8496 of 2023 on 18.01.2024. The said writ petition was disposed of vide order dtd.18.01.2024 taking into account



the submission made that one such candidate namely Dr. Gargi Mohanty even though participated in the selection process by making her application as a SEBC category candidate, but she was provided with the appointment against the prospective vacancy vide notification dtd.11.07.2023.

3.6. It is contended by the learned counsels appearing for the Parties that since in the advertisement in question no reservation was provided in respect of the candidates belonging to SEBC category, the very initiation of the selection process pursuant to the advertisement stands vitiated.

3.7. It is also contended that even though such action of the Commission was challenged before the Tribunal by filing different Original Applications and direction was issued to consider the case of the Petitioners, but without proper appreciation of the claim, the same was rejected initially in the case of Dr. Durgeshi Baral vide order dtd.17.04.2019 and in respect of the Petitioners in all the writ petitions, save and except W.P.(C) No. 15158 of 2024 vide order dtd.30.03.2024.



3.8. It is contended that in terms of the reservation principle followed in the State, 11.25% of the posts should have been reserved for SEBC category candidates and accordingly Petitioners would have been entitled to get the benefit of appointment as against such SEBC vacancies. It is also contended that this Court vide an interim order passed on 29.04.2025 in each of the cases, has directed to keep reserve 4 (four) nos. of posts of Dental Surgeon belonging to SEBC category, when requisition was made to fill up 9 posts of Dental Surgeon by the Govt. in the year 2025. It is contended that such interim order is continuing as on date.

3.9. However, it is contended that since because of the wrong committed by the Department-Opp. Party No. 1, Petitioners were deprived to participate in the selection process pursuant to the Advertisement No. 15/2017-18 as candidates belonging to SEBC category, Petitioners are eligible and entitled to get the benefit of appointment, taking into account the interim order passed by this Court on 29.04.2025 and the order passed by this Court on 18.01.2024 so available in all the four (4) writ petitions.

4. Mr. A. Behera, learned counsel appearing for the Commission on the other hand made his submission basing on the stand taken in the



counter affidavit so filed. It is contended that the advertisement in question was issued basing on the requisition made by the Govt. In the said requisition, since no reservation was reflected for candidates belonging to SEBC category, the advertisement was issued to fill up 198 candidates belonging to UR, SC & ST category. Since no vacancy was provided for SEBC category candidates in the advertisement, the applications made by the Petitioners in all the four (4) writ petitions while being entertained, Petitioners were allowed to participate as UR category candidates. Since Petitioners could not qualify the recruitment process, taking into account the cut-off mark fixed in respect of UR category candidates, the select list was published on 09.08.2018.

4.1. It is also contended that the advertisement was issued taking into account the letter issued by the Govt.-Opp. Party No. 1 on 18.01.2018, wherein it was indicated that as against the cadre of Dental Surgeon though 48 posts are reserved for SEBC category, but since 50 persons were there already in the cadre, which is more than the prescribed 11.25%, no vacancies were advertised in respect of SEBC category candidates.



4.2. It is also contended that reservation being post based and not vacancy based, in view of the decision of the Hon'ble Apex Court in the case of ***R.K. Sabharwal Vs. State of Punjab*** reported in (1995) 2 SCC 745, Petitioners are not eligible and entitled to get the benefit of the relief as prayed for.

4.3. It is also contended that since Petitioners without any objection participated in the selection process and challenged the same after being declared unsuccessful with publication of the result on 09.08.2018, in view of the decision of the Hon'ble Apex Court in the case of ***Ashok Kumar & Anr. vs. State of Bihar & Ors.***, (2017) 4 SCC 357 and ***Anupam Singh vs. State of Uttar Pradesh*** reported in (2020) 2 SCC 173, Petitioners cannot challenge the selection process any further.

4.4. Hon'ble Apex Court in Para 4 & 10 of the judgment in the case of ***R.K. Sabharwal*** has held as follows:-

“4. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can



compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the 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. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition. We,



therefore, see no force in the first contention raised by the learned counsel and reject the same.

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10. We may examine the likely result if the roster is permitted to operate in respect of the vacancies arising after the total posts in a cadre are filled. In a 100-point roster, 14 posts at various roster points are filled from amongst the Scheduled Caste/Scheduled Tribe candidates, 2 posts are filled from amongst the Backward Classes and the remaining 84 posts are filled from amongst the general category. Suppose all the posts in a cadre consisting of 100 posts are filled in accordance with the roster by 31-12-1994. Thereafter in the year 1995, 25 general category persons (out of the 84) retire. Again in the year 1996, 25 more persons belonging to the general category retire. The position which would emerge would be that the Scheduled Castes and Backward Classes would claim 16% share out of the 50 vacancies. If 8 vacancies are given to them then in the cadre of 100 posts the reserve categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary if the roster is permitted to operate till the total posts in a cadre are filled and thereafter the vacancies falling in the cadre are to be filled by the same category of persons whose retirement etc. caused the vacancies then the balance between the reserve category and the general category shall always be maintained. We make it clear that in the event of non-availability of a reserve candidate at the roster point it would be open to the State Government to carry forward the point in a just and fair manner.”

4.5. Hon’ble Apex Court in Para 12 to 21 of the judgment in the case of **Ashok Kumar** has held as follows:-



“12. The appellants participated in the fresh process of selection. If the appellants were aggrieved by the decision to hold a fresh process, they did not espouse their remedy. Instead, they participated in the fresh process of selection and it was only upon being unsuccessful that they challenged the result in the writ petition. This was clearly not open to the appellants. The principle of estoppel would operate.

13. The law on the subject has been crystallised in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla [Chandra Prakash Tiwari v. Shakuntala Shukla, (2002) 6 SCC 127 : 2002 SCC (L&S) 830] , this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In Union of India v. S. Vinodh Kumar [Union of India v. S. Vinodh Kumar, (2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792] , this Court held that : (SCC p. 107, para 18)

“18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See Munindra Kumar v. Rajiv Govil [Munindra Kumar v. Rajiv Govil, (1991) 3 SCC 368 : 1991 SCC (L&S) 1052] and Rashmi Mishra v. M.P. Public Service Commission [Rashmi Mishra v. M.P. Public Service Commission, (2006) 12 SCC 724 : (2007) 2 SCC (L&S) 345] .)”

14. The same view was reiterated in Amlan Jyoti Borooah [Amlan Jyoti Borooah v. State of Assam, (2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627] wherein it was held to be well settled that the candidates who have taken part in a selection



process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful.

15. In Manish Kumar Shahi v. State of Bihar [Manish Kumar Shahi v. State of Bihar, (2010) 12 SCC 576 : (2011) 1 SCC (L&S) 256] , the same principle was reiterated in the following observations : (SCC p. 584, para 16)

“16. We also agree with the High Court [Manish Kumar Shahi v. State of Bihar, 2008 SCC OnLine Pat 321 : (2009) 4 SLR 272] that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgments in Madan Lal v. State of J&K [Madan Lal v. State of J&K, (1995) 3 SCC 486 : 1995 SCC (L&S) 712] , Marrispati Nagaraja v. State of A.P. [Marrispati Nagaraja v. State of A.P., (2007) 11 SCC 522 : (2008) 1 SCC (L&S) 68] , Dhananjay Malik v. State of Uttaranchal [Dhananjay Malik v. State of Uttaranchal, (2008) 4 SCC 171 : (2008) 1 SCC (L&S) 1005 : (2008) 3 PLJR 271] , Amlan Jyoti Borooah v. State of Assam [Amlan Jyoti Borooah v. State of Assam, (2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627] and K.A. Nagamani v. Indian Airlines [K.A. Nagamani v. Indian Airlines, (2009) 5 SCC 515 : (2009) 2 SCC (L&S) 57] .”



16. In Vijendra Kumar Verma v. Public Service Commission [Vijendra Kumar Verma v. Public Service Commission, (2011) 1 SCC 150 : (2011) 1 SCC (L&S) 21] , candidates who had participated in the selection process were aware that they were required to possess certain specific qualifications in computer operations. The appellants had appeared in the selection process and after participating in the interview sought to challenge the selection process as being without jurisdiction. This was held to be impermissible.

17. In Ramesh Chandra Shah v. Anil Joshi [Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309 : (2011) 3 SCC (L&S) 129] , candidates who were competing for the post of Physiotherapist in the State of Uttarakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that : (SCC p. 318, para 18)

“18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.”

18. In Chandigarh Admn. v. Jasmine Kaur [Chandigarh Admn. v. Jasmine Kaur, (2014) 10 SCC 521 : 6 SCEC 745] , it was held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non-selection. In Pradeep Kumar Rai v. Dinesh Kumar Pandey [Pradeep Kumar Rai v. Dinesh Kumar Pandey, (2015) 11 SCC 493 : (2015) 3 SCC (L&S) 274] , this Court held that : (SCC p. 500, para 17)



“17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted.”

This principle has been reiterated in a recent judgment in Madras Institute of Development Studies v. K. Sivasubramaniyan [Madras Institute of Development Studies v. K. Sivasubramaniyan, (2016) 1 SCC 454 : (2016) 1 SCC (L&S) 164 : 7 SCEC 462] .

19. In the present case, regard must be had to the fact that the appellants were clearly on notice, when the fresh selection process took place that written examination would carry ninety marks and the interview, ten marks. The appellants participated in the selection process. Moreover, two other considerations weigh in balance. The High Court noted in the impugned judgment [Anurag Verma v. State of Bihar, 2011 SCC OnLine Pat 1289.] that the interpretation of Rule 6 was not free from vagueness. There was, in other words, no glaring or patent illegality in the process adopted by the High Court. There was an element of vagueness about whether Rule 6 which dealt with promotion merely incorporated the requirement of an examination provided in Rule 5 for direct recruitment to Class III posts or whether the marks and qualifying marks were also incorporated. Moreover, no prejudice was established to have been caused to the appellants by the 90 : 10 allocation.



20. The decision in *Raj Kumar v. Shakti Raj* [*Raj Kumar v. Shakti Raj*, (1997) 9 SCC 527 : 1997 SCC (L&S) 1029] (which was relied upon by the appellants) involved a case where the Government was found to have committed glaring illegalities in the procedure. Hence, it was held that the principle of estoppel by conduct or acquiescence had no application. The decision is distinguishable.

21. In this view of the matter, the Division Bench cannot be held to be in error in coming to the conclusion that it was not open to the appellants after participating in the selection process to question the result, once they were declared to be unsuccessful. During the course of the hearing, this Court is informed that four out of six candidates, who were ultimately selected, figured both in the first process of selection as well as in the subsequent selection. One candidate is stated to have retired.”

4.6. Hon’ble Apex Court in Para 60 of the judgment in the case of **Anupal Singh** has held as follows:-

“60. Before the declaration of the result of the written examination on 15-9-2014, the State Government by its Government Order dated 20-8-2014 revised the requisition thereby revising the number of vacancies in different categories. The U.P. Public Service Commission issued Office Memorandum dated 12-10-2014 specifically mentioning the number of vacancies to be filled up in various categories in accordance with the requisition sent by the State Government. The said Office Memorandum dated 12-10-2014 published by the U.P. Public Service Commission reads as under:

“UPPSC

INTERVIEW PROGRAMME

Month October/November/December, 2014 (24)

OFFICE MEMORANDUM

98	Post : Subordinate Agricultural Service Class III (Provisional Asstt. Group C) Agricultural Deptt. U.P. Reservation 2515 posts — Non-reserved 1882 posts — SC 201 posts — ST	October — 27, 28, 29, 30 November — 05, 07, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29 December — 01, 02, 03, 04, 05, 06, 08,
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<p>2030 posts — OBC Pay scale Rs 5200-20,200 Grade pay Rs 2400 Advertisement No. A-5/E-1/2013 Last date : 21-11-2013</p>	<p>09, 10, 11, 12, 15, 16, 17, 18, 19, 20, 22, 23, 24, 2014 Before 10.00 a.m.</p>
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Dated 12-10-2014.”

It is thus clear that the candidates who appeared in the interview were well aware about the modification/revision in number of vacancies of Technical Assistants in different categories. The private respondents/intervening applicants have appeared in the interview with their eyes wide open regarding the modified vacancies to be filled up in various categories of the posts. Having appeared in the interview without any demur or protest, it is not open to the candidates to challenge the selection process on the ground that there was modification in the number of vacancies in different categories and they are estopped by the principle of estoppel from challenging the same.”

4.7. It is also contended that the decision relied on by the learned counsel appearing for the Petitioners in the case of ***Dr. (Major) Meeta Sahai vs. State of Bihar*** (2019) 20 SCC 17, is quite distinguishable, as in the said matter there was no prayer to quash any provision of the advertisement, rather the question involved in the case of ***Dr. (Major) Meeta Sahai***, was with regard to interpretation of the provision of the advertisement.

4.8. With regard to the stand taken by the Petitioners that one Dr. Gargi Mohanty, even though she made an application to get the benefit of appointment as SEBC category candidate, but in fact she was issued with the order of appointment vide notification dtd.11.07.2023 pursuant to the letter issued by the Govt., it is contended that Dr. Gargi Mohanty was never appointed as a SEBC



candidate and in fact she was appointed as an UR category candidate, pursuant to the order passed by this Court in W.P.(C) No. 2542 of 2018 and further order passed on 22.04.2022 in CONTC No. 1633 of 2022. Pursuant to such order passed by this Court. While preparing a revised select list of 171 candidates after revision of answer key, Dr. Gargi Mohanty along with 8 (eight) candidates were found eligible to get the benefit of selection and appointment as per the report of the expert committee dt.05.10.2018.

4.9. It is also contended that the aforesaid Dr. Gargi Mohanty never participated in the selection process as a SEBC category candidate by availing any age relaxation and she got the benefit against the prospective vacancy pursuant to the order of this Court vide notification dtd.11.07.2023. It is accordingly contended that since Dr. Gargi Mohanty was appointed as a UR category candidate against the prospective vacancy, the plea taken by the Petitioners that they are similarly situated as like Dr. Gargi Mohanty cannot be accepted. It is accordingly contended that since there was no such provision to entertain the application made by the candidates belonging to SEBC category and Petitioners participated in the selection process as UR category candidates, and they having not secured the required cut-off



mark so fixed for UR category, they are not eligible and entitled to get the benefit of the appointment in respect of the advertisement issued vide Advertisement No. 15/2017-18. It is further contended that Petitioner in W.P.(C) No. 15158 of 2024 though has secured the cut-off mark so fixed for UR candidate, but she having been allowed age relaxation to participate in the selection process, her candidature cannot be considered as against UR vacancy.

4.10. It is however not disputed that pursuant to the interim order passed by this Court on 29.04.2025, four (4) posts of Dental Surgeon have been kept reserved.

5. Mr. C.K. Pradhan, learned Addl. Govt. Advocate on the other hand made his submission basing on the stand taken in the counter affidavit so filed. It is contended that in the advertisement issued vide Advertisement No. 15/2017-18, Govt. made the requisition to recruit 198 posts of Dental Surgeon vide letter dtd.18.01.2018. In the said requisition no post was reserved for SEBC category, because out of the total sanctioned strength of Dental Surgeon in Group-A (JB) in the SEBC category, 2 (two) Doctors were more than the sanctioned posts meant for SEBC. However, it is contended that as against 198 posts so advertised, the Commission recommended the names of 171



candidates in different categories for their appointment to the post of Dental Surgeon. Accordingly, all the 171 recommended candidates were provided with the orders of appointment.

5.1. It is further contended that while complying the order passed by this Court in W.P.(C) No. 2542 of 2018, the merit list of Dental Surgeon was revised and basing on the Expert Committee report dtd.05.10.2018, Dr. Gargi Mohanty (SEBC (F)) bearing Roll No. 101300 was selected under UR category and recommended for her appointment vide Department notification dtd.11.07.2023. It is accordingly contended that since Dr. Gargi Mohanty was recommended and selected as an UR category candidate, stand taken by the Petitioner that, she was selected and appointed as SEBC category candidate, is not acceptable.

5.2. It is further contended that since Petitioners participated in the selection process as UR category candidate and could not qualify, their names were rightly not recommended by the Commission. However, pursuant to the order passed by this Court on different occasion, claim of the Petitioners though were considered against the available vacancies, but the Commission since never recommended



their names after such consideration, there was no occasion to provide appointment to the Petitioners.

6. To the submission made by the learned counsel appearing for the Commission as well as learned Addl. Govt. Advocate, learned counsel appearing for the Petitioners made further submission contending inter alia that in the requisition made by the Govt. on 18.01.2018, no reservation was made for SEBC category candidates on the ground that in the cadre since two posts in excess has already been filled up, no reservation can be made for SEBC category candidates. However, it is contended that in the advertisement issued earlier by the Commission vide Advertisement No. 23 of 2013-14, though 24 posts were reserved for SEBC category candidates, but 26 SEBC category candidates were selected under UR Category in response to the said advertisement in addition to 24 candidates under SEBC category.

6.1. However, with the plea that 50 posts in SEBC category have already been filled up pursuant to such selection process initiated in the year 2013-14, no reservation was made for SEBC category candidates in the requisition made by the Govt. on 18.01.2018 with issuance of the advertisement by the Commission vide Advertisement No. 15/2017-18.



6.2. It is contended that since in terms of the Advertisement issued in the year 2013, 26 SEBC candidates were selected under UR category, those posts cannot be treated to have been filled up by SEBC category candidates as they were selected because of their securing mark more than UR candidates. It is accordingly contended that because of the wrong committed by the State-Opp. Party No. 1 in calculating the filling up of the posts by SEBC category candidates pursuant to the selection process initiated in the year 2013-14, no reservation was made for SEBC category candidates in the impugned advertisement of 2017-18. For such fault of the Opp. Party-State, Petitioners cannot be deprived to get the benefit of selection and appointment as SEBC category candidates.

6.3. It is contended that taking into account the reservation meant for SEBC category candidates at 11.25%, 22 posts should have been reserved for SEBC category candidates. If 22 posts should have been kept reserved for SEBC category candidates, Petitioners would have been entitled to get the benefit of appointment as against those vacancies.

6.4. However, since for the wrong committed by Opp. Party No. 1, Petitioners have been deprived to get the benefit of appointment as



SEBC category candidate, the impugned orders passed in all the four (4) cases are liable for interference of this Court. It is further contended that since claim of Dr. Gargi Mohanty has been considered as against the prospective vacancies basing on the letter issued by the Govt. and consequential notification issued on 11.07.2023, taking into account the fact that 4 (four) posts have been kept reserved in terms of the interim order passed by this Court on 29.04.2025, against the requisition made in the year 2025, Petitioners can very well be appointed as against those four (4) posts.

6.5. Mr. S.K. Das, learned counsel appearing for the Petitioner in W.P.(C) No. 15158 of 2024, made further submission contending inter alia that the Petitioner pursuant to the interim order passed by the Tribunal was not only allowed to participate in the selection process, but also as admitted, Petitioner has secured more mark than the cut-off mark so fixed for UR candidates. It is accordingly contended that since Petitioner in W.P.(C) No. 15158 of 2024, admittedly has secured more mark than the cut-off mark fixed in UR category, Petitioner is eligible and entitled to get the benefit of appointment.

6.6. However, Petitioner's name was not reflected in the revised merit list, only on the ground that Petitioner since participated in the



selection process by availing the benefit of age relaxation being a SEBC candidate, pursuant to the order passed by the Tribunal, she cannot get the benefit of appointment as against UR vacancy. However, it is contended that since no such selection was ever held for around 4 years prior to issuance of the advertisement in question, Petitioner be allowed age relaxation, taking into account the fact that Petitioner is over aged by around 1 year at the time of her making the application.

6.7. Learned counsel appearing for the Petitioners in other writ petitions also contended that Petitioners have not secured the cut-off mark so fixed for UR category candidate. However, since no reservation was provided to SEBC category candidates, on the ground that Petitioners have not secured the cut-off mark so fixed for UR category candidates, their claim cannot be overlooked.

6.8. It is further contended that since the Commission committed a wrong in not providing reservation in favour of SEBC category candidates, basing on a wrong requisition made by the Govt., for such admitted laches on the part of the Govt. as well as the commission, Petitioners cannot be deprived to get the benefit of appointment. It is further contended that since Petitioners are prosecuting the lis from



the year 2018, as per the settled position of law, Petitioners are eligible to get the benefit of appointment and no such plea can be taken that some other persons are more suitable than the Petitioners.

7. Having heard learned counsel appearing for the Parties and considering the submission made, it is found that the dispute arose with issuance of Advertisement No. 15/2017-18 by the Commission, when in the advertisement while issuing the same to fill up 198 posts of Dental Surgeon, no reservation was meant for SEBC category candidates. As per the reservation principle in vague 11.25% posts is required to be filled up from amongst eligible candidates belonging to SEBC category. However, no such reservation was made for SEBC category candidates, basing on the requisition made by the Govt. in its letter dtd.18.01.2018, inter alia on the ground that as against the cadre strength of 48 posts in the rank of Dental Surgeon, already 50 candidates are in the roll.

7.1. However, it is found that all those 50 posts were filled up pursuant to the earlier advertisement issued by the Commission in the year 2013. The stand taken by the Petitioners that in the said recruitment of the year 2013-14, 26 candidates belonging to SEBC category were selected against UR category, it is the view of this



Court that those 26 posts could not have been taken to have been filled up by SEBC category candidates, while calculating the actual strength of SEBC category candidates at 50 as against the cadre strength of 48.

7.2. In view of the reservation principle so applicable, 11.25% of the posts is required to be meant for SEBC category candidates. Therefore, it is the view of this Court that, the very issuance of the advertisement vide Advertisement No. 15/2017-18 so issued by the Commission basing on the requisition made by the Govt. vide letter dtd.18.01.2018 without providing reservation for SEBC category candidates is not just and proper.

7.3. It is found from the record that Dr. Gargi Mohanty who was appointed vide notification dtd.11.07.2023 against the prospective vacancies, pursuant to the order passed by this Court in W.P.(C) No. 2542 of 2018. Though a stand has been taken that she was appointed as UR (Female) candidate, but considering the submission made by the Petitioners that she was appointed as a SEBC category candidate, this Court though passed various orders directing the learned counsel appearing for the Commission as well as learned Addl. Govt. Advocate to provide the application made by Dr. Gargi Mohanty bearing Roll No. 101300 vide order dtd.07.11.2025, 09.12.2025,



15.01.2026, 29.01.2026, 13.02.2026 in order to verify the status of the application made by Dr. Gargi Mohanty, but the application so made by Dr. Gargi Mohanty was never produced. However, it is not disputed that Dr. Gargi Mohanty got the benefit of appointment, whether as a SEBC or UR category, as against the prospective vacancies vide notification dtd.11.07.2023.

7.4. Since this Court has already come to a conclusion that action of the Govt.-Opp. Party No. 1 in making the requisition dtd.18.01.2018, without providing reservation for SEBC category candidates to the extent of 11.25% as not just and proper and taking into account the fact that Dr. Gargi Mohanty even though made her application as a SEBC category candidate, but was provided with the appointment vide notification dtd.11.07.2023 against a prospective vacancy, taking into account the challenge made by the Petitioners starting from the year 2018, it is the view of this Court that Petitioners are eligible and entitled to get the benefit of appointment, as against the posts kept reserved as against the vacancies of the year 2024-25, vide the interim order dtd.29.04.2025.

7.5. It is also the view of this Court that since the recruitment process has not been conducted in accordance with law and admittedly the



Petitioner in W.P.(C) No. 15158 of 2024 has secured more mark than the cut-off mark so fixed for UR category candidate, even though by the time Petitioner while making the application was over aged, but taking into account the fact that no such recruitment was held for around 4 years, this Court is of the view that by extending age relaxation in favour of the Petitioner, her claim be considered.

7.6. Not only that the other Petitioners though have not secured the required cut-off mark, but taking into account the fact that no such reservation was provided for SEBC category candidates and as against the prospective vacancy, basing on a revised select list, which has been deprecated by this Court, benefit of appointment has been given in the year 2023, this Court is of the view that the other Petitioners are also eligible and entitled to get the benefit of appointment.

7.7. Since the recruitment in question has been conducted by the Commission pursuant to the requisition made by the Govt., which is not in accordance with law, and against a prospective vacancy, Dr. Gargi Mohanty has got the benefit of appointment vide notification dtd.11.07.2023, this Court while disposing all the writ petitions with quashing of order dtd.30.03.2024 and 06.05.2024 respectively, so impugned in all the four (4) writ petitions, directs the Commission to



recommend the names of the Petitioners to the Govt.-Opp. Party No. 1 for their appointment against the 4 (four) posts so kept reserved for them in terms of the interim order passed by this Court on 29.04.2025.

7.8. This Court directs the Commission to make the recommendation against such posts kept reserved within a period of three (3) weeks from the date of receipt of this order. On receipt of such recommendation, Opp. Party No. 1 shall take appropriate step to provide appointment to the Petitioners within a period of four (4) weeks thereafter.

8. All the writ petitions accordingly stand disposed of.

Photo copy of the order be placed in the connected case records.

(BIRAJA PRASANNA SATAPATHY)
Judge

Orissa High Court, Cuttack
Dated the 22nd May, 2026/Sneha