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ORISSA HIGH COURT : CUTTACK

WP(C) No.9875 of 2016

An application under Articles 226 & 227 of the Constitution of India.

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Smt. Sabita Parida

...

Petitioner.

-VERSUS-

State of Orissa & Others

...

Opposite Parties.

Counsel appeared for the parties:

For the Petitioners : Mr. M.K. Khuntia, Advocate

For the Opposite Parties : Mr. G. Mohanty, Standing Counsel.
(For the State)

P R E S E N T:

**HONOURABLE
MR. JUSTICE ANANDA CHANDRA BEHERA**

Date of Hearing : 06.02.2026 :: Date of Judgment : 26.02.2026

JUDGMENT



ANANDA CHANDRA BEHERA, J.—

1. This writ petition under Articles 226 and 227 of the Constitution of India, 1950 has been filed by the petitioner praying for quashing the Office Order dated 06.05.2016 under Annexure-10, which was passed/issued by the Collector-cum-Chief Executive Officer, Zilla Parishad, Mayurbhanj (Opp. Party No.2) disengaging the petitioner from Shikshya Sahayak with effect from the forenoon of 19.04.2016.

2. The factual backgrounds of this writ petition, which prompted the petitioner for filing of the same is that, as per advertisement of the Government for the selection of Shikshya Sahayaks in Betnoti Block of Mayurbhanj District, the petitioner along with others applied for the same. After taking the application, mark sheets and other documents of the petitioner into account, the Opp. Parties selected to the petitioner as Shikshya Sahayak and then, as per the guidelines of the Government, on proper execution of an agreement on dated 22.03.2011 with the Collector-cum-Chief Executive Officer, Zilla Parishad, Mayurbhanj (Opp. Party No.2), she (petitioner) was appointed as Shikshya Sahayak in



Jalghera Primary School under Tarkani Gram Panchayat of Betnoti Block in the District of Mayurbhanj.

Thereafter, as per the Office Order dated 31.03.2011 vide Annexure-3, she (petitioner) worked as Shikshya Sahayak in N.U.P.S, Barasahi. While she (petitioner) serving there as Shikshya Sahayak, on dated 28.07.2011, she (petitioner) received a letter from the Opp. Party No.3 (District Project Coordinator, Sarba Sikhya Abhijan (SSA), District-Mayurbhanj) that,

“she (petitioner) has been selected as Shikshya Sahayak wrongly, because, there was wrong calculation of her marks during selection process, for which, in the proceeding dated 14.04.2011, it was resolved by the members of the selection committee to disengage her (petitioner), as, the marks of the petitioner was not coming under the zone of selection on merit and directed to the petitioner to reply on the same within 7 days.”

To which, the petitioner challenged by filing WP(C) No.21265 of 2011, in which, an interim status quo order was passed on dated 18.08.2011. For which, the petitioner continued in her service as Shikshya Sahayak.



The said WP(C) No.21265 of 2011 filed by the petitioner was disposed of finally on 16.02.2016 directing the Opp. Party No.3 (District Project Co-coordinator, Sarba Sikhya Abhijan (SSA District-Mayurbhanj) to take decision independently in that matter without being prejudiced by the decision of the selection committee relating to the disengagement of the petitioner by taking its own independent view.

Thereafter, an enquiry was conducted. In that enquiry, the Opp. Party No.3 took the decision as per Annexure-9 as follows:

“the petitioner was not eligible for selection and engagement as Shikshya Sahayak, as she had secured 90.798% of marks and the said mark of the petitioner was not coming within the zone of selection on merit. Hence her selection as Shikshya Sahayak was wrong and irregular. Therefore, I (Opp. Party No.3) am inclined to conclude that, her engagement was illegal, unlawful and against the law. Hence, she is liable for disengagement being appointed basing on wrong BED marks.”

3. On the basis of the said enquiry report of Opp. Party No.3 vide Annexure-9, the Opp. Party No.2 passed/issued office order vide Annexure-10 on dated 06.05.2016 and disengaged to the petitioner (Sabita Parida) from Shikshya Sahayak w.e.f. forenoon of 19.04.2016 stating that, her



engagement as Shikshya Sahayak was unlawful assigning reasons that,

“she (petitioner-Sabita Parida) has secured 506 marks out of 1200 in BA Examination. The percentage of marks of which comes to 42.167%. Similarly in B.Ed. examination she has secured 462 out of 950. The percentage of marks of which comes to 48.631%. Accordingly, her total percentage of marks comes to 90.798%. The cut of marks under BA B.Ed stream under SEBC category was 107.688%. Similarly, the cut of marks under BA B.Ed stream under SEBC (Women) category was 96.076%.

In view of the above position, the petitioner securing total 90.798% of marks was not coming to the zone of selection during the recruitment year 2010-11, but, somehow, she managed to place her name in the final merit list of BA B.Ed stream of SEBC category at SL. No.6 representing 662 marks against B.Ed. examination instead of 462 marks actually secured by her and got engagement as Shikshya Sahayak unlawfully.”

4. To which, the petitioner challenged by filing this writ petition praying for quashing the Annexure-10 i.e. to the order



of her disengagement as Shikshya Sahayak on the ground that, she (petitioner) had submitted all her documents relating to her educational qualifications and mark sheets before the selection authorities including the Opp. Party Nos.2 & 3 as per requirement and the Opp. Parties had verified her all documents and mark sheets in her all examinations including her B.Ed mark sheets and after proper verification, they (Opp. Parties) were satisfied with the genuineness of the marks and documents submitted by the petitioner and thereafter, they (Opp. Parties) selected to the petitioner as Shikshya Sahayak and then, they (Opp. Parties) appointed her as Shikshya Sahayak in the school with effect from 22.03.2011 and accordingly, she (petitioner) served as a Shikshya Sahayak for more than 5 years and during her incumbency as Shikshya Sahayak, there is no adverse remark against her. She (petitioner) has requisite qualifications to get appointment as a Shikshya Sahayak. As such, in the selection process, the petitioner neither had instigated the Opp. Parties i.e. selection authorities nor she had suppressed any certificate or mark sheet or had filed any false or manipulated mark sheets before the selection authorities, but after proper verification of her all



the documents, certificates and mark sheets, they (Opp. Parties) had selected her (petitioner) as Shikshya Sahayak and they had also appointed her as Sikhsya Sahayak by issuing appointment order.

After giving appointment to the petitioner as Shikshya Sahayak, the authorities i.e. Opp. Parties are estopped under law to disengage her from Shikshya Sahayak on the ground that, their selection to the petitioner as Shikshya Sahayak was wrong.

For which, the Annexure-10 issued by the Opp. Party No.2 for her disengagement from Shikshya Sahayak is liable to be quashed.

5. The Opp. Party No.3 submitted affidavit without disputing to the selection and appointment to the petitioner as Shikshya Sahayak taking his stands in support of the issuance of Annexure-10 that, during selection process, in course of preparation of the provisional merit list, B.Ed marks of the petitioner were wrongly entered and her total percentage of marks were wrongly computed and the said wrong computation of her B.Ed marks was detected subsequently after the appointment of the petitioner as



Shikshya Sahayak, for which, the petitioner was unlawfully appointed as Shikshya Sahayak. Therefore, she (petitioner) is liable to be disengaged to provide justice to the candidate legally and lawfully entitled to get the same. Therefore, the engagement of the petitioner as Shikshya Sahayak is contrary to the provisions of law and she (petitioner) has no right to challenge her disengagement. Therefore, the writ petition filed by the petitioner is liable to be dismissed.

6. I have already heard from the learned counsel for the petitioner and the learned Standing Counsel for the State.

7. As per the rival submissions of the learned counsels of both the sides and on the basis of the writ petition, counter and Annexures-9 & 10, the crux of this Writ Petition is that,

“Whether the disengagement of the petitioner from Shikshya Sahayak by the selection authorities after appointing her and allowing her to serve as Shikshya Sahayak for a considerable period on the ground of erroneous calculation of her B.Ed marks during selection process by the selection authorities is sustainable under law?”

8. It is the undisputed case of the parties that,

“the petitioner was selected by the Opp. Parties on dated 22.03.2011 as per Annexure-1, on verification of her educational certificates and mark sheets and



she (petitioner) has served as Shikshya Sahayak since 22.03.2011 to 05.05.2016 and she has been disengaged as per Annexure-10 issued/passed by the Opp. Party No.2 on dated 06.05.2016 on the ground of wrong calculation of her B.Ed. marks by the selection authorities, which was detected after her appointment and during the continuation of her service.”

9. When undisputedly, neither the petitioner was present at the time of computation of her marks by the selection authorities, nor she (petitioner) was a party to the computation of her B.Ed. marks by the selection authorities, rather she (petitioner) was appointed after the issuance of joining letter by the Opp. Parties to her.

No allegation has been alleged by the Opp. Parties against the petitioner about the suppression, non-disclosure or manipulation of her marks sheets. The petitioner has no contribution to the computation of the percentage of her marks by the selection authorities.

10. When she (petitioner) was selected by the Opp. Parties after proper verification of her all genuine documents, certificates and mark sheets submitted by her (petitioner) as per the requirements and when the Opp. Parties had prepared



the merit list without any sort of involvement of the petitioner for the preparation of the same, then, at this juncture, the Opp. Parties are estopped under law to disengage her (petitioner) subsequently after giving appointment to the petitioner and after allowing her to serve as Shikshya Sahayak on the plea that, their selection to the petitioner as Shikshya Sahayak was wrong.

Because, they (Opp. Parties) are estopped under law to approbate and reprobate at the same time, i.e. they (Opp. Parties) cannot express at one hand that, their selection to the petitioner as Shikshya Sahayak was proper and, on the other hand that, their selection to the petitioner as Shikshya Sahayak was wrong/improper.

As such, approbation and reprobation is not permissible under law. So, the Opp. Parties cannot take advantage of their own wrong.

11. On this aspect the propositions of law has already been clarified by the Hon'ble Courts and Apex Court in the ratio of the following decisions:

(A) In the cases between **Radhey Shyam Yadav & Another Etc. Vs. State of U.P. & Others** reported in **[2024] 1 S.C.R. 21** &



Awadhesh Kumar Chaudhary and Others vs. State of U.P. and Others reported in 2025 SCC OnLine All 8077 that, when the petitioners cannot not be held responsible for an irregularity committed by the authorities in computation of marks that too after the petitioners were appointed following detailed scrutiny of the records, then, their engagement cannot be disengaged.

(B) In a case between **Pratima Sahoo Vs. State of Orissa & Others decided in WPC No.14057 of 2012 on 09.11.2020** that, the marks of the petitioner were miscalculated by the authorities-in-charge of the selection procedure. As a result of the miscalculation, the petitioner was held to be eligible to be appointed as Sikhya Sahayak. The appointment letter was issued in favour of the petitioner for engagement as Sikhya Sahayak. The petitioner had not misrepresented about the marks.

But, as per order dated 26.08.2008, the petitioner was disengaged from the post of Sikhya Sahayak. Once the State Government has allowed the petitioner to believe that she has qualified in the selection process and is being appointed as Sikhya Sahayak, the district administration/ State Government cannot deny that she does not qualify for the post of Sikhya Sahayak.

(C) In the cases between **Rajanikanta Priyadarshy vs Utkal University Rep. Through Its Registrar and Others reported in AIR 2015 (NOC) 346 (ORI.)** that, the result of +3 regular examination 2010 of the petitioner having been published and on that basis, the petitioner undergone higher studies and passed in different courses, subsequently his initial result cannot be cancelled on the ground that, he has failed in the said examination.

(D) In a case between **Bikash Mahalik Vs. State of Odisha & Others reported in 2022 (I) ILR Cuttack 108** that, the petitioner, while continuing as Jr. Clerk, having completed about one year and four months of service



under opposite party no.3, all on a sudden, opposite party no.3 issued show-cause notice on dated 31.03.2015 that, as to why he shall not be terminated from Government Service stating that, practical skill test shall be qualifying in nature and the marks awarded in practical skill test should not be added to the marks secured by the candidates in the written test examination. The said show cause quashed.

(E)In a case between **Ambika Prasad Mohanty And Etc. vs Orissa Engineering College And Anr.** reported in **(1989) (1) OLR 440** that, a student admitted after satisfying all the qualifications. Subsequently, his admission is cancelled and he cannot prosecute his studies elsewhere. In that case, rule of estoppel is applicable.

(F)In a case between **Dina Nath Pandey & Others Vs. Adya Pandey** reported in **(2017) (Supp.) Civ.C.C 307 (Delhi)** that, no one can take benefit of his own wrong.

(G)In a case between **G. Vikram Kumar Vs. State Bank of Hyderabad and Ors.** reported **2023 (3) CCC 84 (SC)** that, no one can be permitted to get the benefit of his own wrong.

(H)In a case between **Sandip Routray Vs. Airport authority of India & another** reported **2010 (Supp.-I) OLR — 707** that, a wrong doer is not entitled to take advantage of his own wrong. (Para - 11)

(I)In a case between **State of Orissa & Others Vs. Mangalam Timber Products Limited** reported in **2003 (9) SCALE 578** that, State cannot take advantage of his own omission or fault.

(J)In a case between **Salem Muslim Burial Ground Protection Committee Vs. State of Tamil Nadu and Ors.** reported **2023 (2) CCC 215** that, law does not permit a person to both approbate and reprobate, as no party can accept and reject the same instrument.



12. Here in this matter at hand, when without alleging any allegations by the Opp. Parties against the petitioner about the practicing of any fraud, suppression of fact, misrepresentation, instigation or manipulation for her selection and appointment as Shikhsya Sahayak, the Opp. Parties disengaged her (petitioner) as per Annexure-10, on the ground that, she (petitioner) was wrongly selected and appointed by them (Opp. Parties) as Shikshya Sahayak, then, at this juncture, in view of the principles of law enunciated in the ratio of the above decisions of the Hon'ble Courts and Apex Court, they (Opp. Parties) including the Opp. Party No.2 are estopped/precluded under law to take any advantage of their own wrong, as the law does not permit the Opp. Parties to approbate and reprobate at the same time i.e. at one hand to say that, their selection and appoint to the petitioner as Shikshya Sahayak was proper at the same time on the other hand, to say that, their selection and appointment to the petitioner as Shikshya Sahayak was wrong.

13. Therefore, by applying the principles of law enunciated in the ratio of the aforesaid decisions to this matter at hand, it is



held that, the disengagement of the petitioner as per Annexures-9 & 10 from Shikshya Sahayak by the Opp. Parties including Opp. Party No.2 is not sustainable under law. The same are liable to be quashed.

14. As such, there is merit in the writ petition filed by the petitioner. The same is to be allowed.

15. In result, the writ petition filed by the petitioner is allowed.

16. The Annexures-9 & 10 issued by the Opp. Party Nos.3 & 2 to the petitioner for her disengagement from Shikshya Sahayak are quashed.

When the Annexures-9 & 10 are quashed holding that, the issuances of Annexures-9 & 10 relating to the disengagement of the petitioner from Shikshya Sahayak were not legal, then, it is deemed as per law about the continuation of the petitioner as Shikshya Sahayak since her appointment i.e. since 22.03.2011 without any disengagement for all practical purposes for consideration of her regular employment in the Department as per law and the guidelines of the Government without any payment to her during the



period since 06.05.2016 till this date of Judgment, during which she (petitioner) has not worked.

The Opp. Parties are directed to allow her (petitioner) to work since 27.02.2026 either as Sikshya Sahayaka or any other post in respect of which, the Sikshya Sahayakas like the petitioner have been allowed to work.

Free copies of this Judgment be supplied to the parties as well as the learned counsels of both the sides immediately for their information and necessary compliances.

17. As such, this writ petition filed by the petitioner is disposed of finally.

(ANANDA CHANDRA BEHERA)
JUDGE

High Court of Orissa, Cuttack
The 26.02.2026// Rati Ranjan Nayak
Sr. Stenographer