



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 2260 of 2024,
W.A. No. 2305 of 2024,
W.A. No. 2371 of 2024 &
W.A. No. 2386 of 2024

[Appeals under Article-4 of the Orissa High Court Rules, 1948 read with Clause-10 of the Letter Patent constituting the High Court of Judicature at Patna and Rule-6 of Chapter-III of the Rules of the High Court of Orissa, 1948.]

AFR

W.A. No. 2260 of 2024

Odisha Public Service Commission,
Cuttack

.....

Appellant

- Versus -

Satyabrata Samantasinghar &
another

.....

Respondents

W.A. No. 2305 of 2024

Prasanta Sethy & others

.....

Appellants

- Versus -

Satyabrata Samantasinghar
& others

.....

Respondents

W.A. No. 2371 of 2024

Diptiranjana Mohapatra & others

.....

Appellants

- Versus -

Satyabrata Samantasinghar
& others

.....

Respondents

W.A. No. 2386 of 2024

Satish Kanhar & others

.....

Appellants

- Versus -

Satyabrata Samantasinghar
& others

.....

Respondents



Advocate(s) appeared in these cases:-

For Appellant(s) : Mr. Arnav Behera, Adyasha Kar & Ritesh Patnaik, Advocates
[For OPSC]

Mr. Budhadev Routray, Sr. Advocate
with M/s. S. Routray, S.Sekhar,
A.K.Das, J.Biswal & M. Panda, Advocates
[In W.A. Nos. 2305 & 2386 of 2024]

Mr. P.K. Rath, Sr. Advocate
with M/s. Saibrata Rath,
A. Behera, S.K.Behera, S.Das,
P.K.Basantia, A. Rout, A.Mohanty
& T.N.Rout, Advocates
[In W.A. No. 2371 of 2024]

For Opp. Parties: M/s. Prasanta Kumar Mishra, K.L. Kar
& S. Mishra, Advocates.

CORAM:

**THE HON'BLE MR. JUSTICE ARINDAM SINHA,
ACTING CHIEF JUSTICE
AND
THE HON'BLE MR. JUSTICE SASHIKANTA MISHRA**

**JUDGMENT
13th March, 2025**

SASHIKANTA MISHRA, J. These appeals are directed against the judgment dated 10.07.2024 passed by a learned Single Judge of this Court in W.P.(C) No. 12065 of 2023.

FACTS

2. The Odisha Public Service Commission (OPSC) issued an advertisement bearing No.8 of 2022-23 for



recruitment to the post of Drugs Inspector (Group-B) under Health & Family Welfare Department. Total number of 47 posts were so notified. The present respondent No.1 applied pursuant to such advertisement and also participated in the written examination held on 19.03.2023 but was unsuccessful. He therefore, approached this Court in W.P.(C) No.12065 of 2023 contending that OPSC had violated Rule-6(4)(c) of Odisha Drugs Control Service [Drugs Control Administration] (Methods of Recruitment and Conditions of Service) Rules, 2020 (in short, the '2020 Rules') and Clause-6(c) of the advertisement. According to the writ petitioner, as per the aforesaid Rules, the OPSC was required to prepare Test Booklet of total 200 questions (200 marks) from 8 subjects comprising of 25 questions (25 marks) from each subject. OPSC had however, prepared the question papers/Test Booklet from 8 subjects without maintaining parity of 25 marks in each subject. The writ petitioner therefore, prayed for quashing the written examination held on 19.03.2023 with further direction to the OPSC to conduct written examination for the post of Drugs Inspector afresh by



preparing questions/Test Booklets in terms of Rule 6(4)(b) and (c) of the 2020 Rules.

3. Pursuant to notice, the OPSC appeared and filed its counter, inter alia, stating that the subjects given in the syllabus are by and large interrelated and interdisciplinary in nature, for which no subject-wise marking distribution was given in the advertisement but as per the concerned recruitment Rules, the questions setters were instructed to provide 25 questions from each subject mentioned in the syllabus. The question setters had supplied the required questions accordingly. Further, after perusing the contents of the writ application filed by the writ petitioner, OPSC constituted a committee of experts to examine the matter, which concluded that inter-subject overlapping is not uncommon and strict subject-wise segregation will be misleading and that it was a balanced question set covering the entire syllabus and chapters with by and large equal weightage to individual subjects. It was further stated in the counter that OPSC invited objections vide Notice No. 5600/PSC dated 13.08.2021 from the candidates on erroneous questions and answer options in objective type



examination within three days of completion of the examination so that the same could be placed before the subject experts for validation and preparation of answer keys before evaluation. However, no allegation/objection from the writ petitioner was received.

4. The writ petitioner filed a rejoinder reiterating the averments of the writ application vis-à-vis the Rules and added that OPSC had admitted in its counter that it had not maintained parity in preparing question papers for each subject. Further, the stand taken in the counter that the subjects given in the syllabus are by and large interrelated and interdisciplinary in nature, for which no subject-wise marking distribution was given in the advertisement is contrary to the statutory Rules. It was also stated that OPSC being the recruiting agency has no authority to go beyond the statutory rules. The question papers prepared through so-called experts of Medical Science and not Pharmacy, were in order to favour a group of candidates specialising in the particular subject. The expert committee report is prepared by experts other than experts of Pharmacy.



5. On such facts and pleadings, the learned Single Judge heard the parties and by the judgment impugned, allowed the writ application by granting the relief claimed by the petitioner.

6. Being aggrieved, the OPSC and other successful candidates of the examination have individually preferred these intra-Court appeals. For the sake of brevity, the appeal preferred by the OPSC is taken up as the lead matter, wherein, the following substantial questions of law have been pleaded.

“i. Whether the learned Single Judge was legally justified in quashing the written examination as held on 19.03.2023 for recruitment to the post of Drugs Inspector (Group-B) pursuant to the Advertisement No. 8 of 2022-37

ii. Whether the learned Single Judge was legally justified in ignoring the lawful pleas of the OPSC that the examination was conducted as per the Advertisement and the Respondent No. 1 never challenged the said Advertisement at any point of time and participated in the examination process?

iii. Whether the learned Single Judge was legally correct by invoking the procedural legitimate exception in the present case in hand?

iv. Whether the learned Single Judge was correct in not taking into consideration of the Expert opinion that in the examination in Drugs Inspector inter subject over lapping is not uncommon and subject-wise segregation would be misleading?”



7. Heard Mr. Arnab Behera, learned counsel appearing for the OPSC and Mr. P.K. Mishra, learned counsel appearing for the respondent-writ petitioner. Mr. B. Routray, learned Senior Counsel led arguments for the other appellants along with Mr. P.K. Rath, learned Senior Counsel. Also heard Mr. S.K. Swain, learned Addl. Government Advocate for the State.

8. Learned Senior Counsel, Mr. B. Routray would argue that learned Single Judge overlooked the fact that the writ petitioner had never challenged the advertisement in question at any point of time and had wilfully participated in the examination process. Moreover, the writ petitioner had never submitted objection pursuant to the notice issued by the OPSC specifically relating to the erroneous questions and answers. Therefore, according to Mr. Routray, having taken a calculated chance in the examination and being unsuccessful therein as also not having submitted objection when called for within the stipulated period, it was not open to the writ petitioner to subsequently challenge the examination before this Court.



9. Mr. P.K. Rath, learned Senior Counsel also makes similar arguments as Mr. Routray and adds that as per the settled position of law a person participating in a recruitment examination and coming out unsuccessful is estopped to challenge the same subsequently.

10. Mr. A. Behera, learned counsel appearing for OPSC would argue that as per the opinion submitted by the committee of experts inter-subject overlapping is not uncommon and strict subject-wise segregation would be misleading. This aspect was not considered by the learned Single Judge in the proper perspective.

11. We have carefully considered the rival contentions noted above and have also perused the materials on record besides the impugned judgment. The question of *locus standi* of the writ petitioner to question the process of examination after participating therein was specifically raised on behalf of OPSC by referring to judgments of the Supreme Court in the case of ***Madan Lai and Others Vrs. State of J & K and***



Others¹, Dhananjay Malik Vrs. State of Uttaranchal²,
and **Ramesh Chandra Shah Vrs. Anil Joshi³, ,**

12. On such basis it was contended before the learned Single Judge that the petitioner having taken a calculated chance and realising that the result of the examination would not be palatable to him, cannot turn around to question that the questions set in the Test Booklet were not in conformity with Rule 6(4) of the Rules. This preliminary objection was considered by the learned Single Judge and answered in the following manner.

“10. Valiant attempt has been made by Sri Bibhu Prasad Tripathy, learned counsel by arguing in favour of sustenance of examination conducted by the OPSC, but lacked merit inasmuch as it is the petitioner examinee who after writing the examination only can and could know that the questions appearing in the Test Booklet were not containing twenty-five (25) marks in each subject. The learned counsel for the opposite party No.2 has pressed into service the following principle laid down in Madan Lal Vrs. State of J&K, (1995) 3 SCC 486, stated to have been reiterated in Dhananjay Malik Vrs. State of Uttaranchal, (2008) 4 SCC 171 and Ramesh Chandra Shah Vrs. Anil Joshi, (2013) 11 SCC 309:

“It is now well settled that if a candidate takes a calculated chance then only because the result of the interview is not palatable to him, he cannot turn around and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.”

¹ (1995) 3 SCC 486

² (2008) 4 SCC 171

³ (2013) 11 SCC 309



10.1. *Said principle has no application in the present fact-situation for the simple reason that on getting the questions as set in the Test Booklet and after writing the examination when the examinee assessed his performance could ascertain that the same were not in conformity with the conditions laid down in the Rules.*

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12. *This Court finds force in the submission of Sri Prasanta Kumar Mishra, learned counsel for the petitioner that it is upon the questions set in the Test Booklet is given for answering in the examination hall and after appearing and participating in the examination, while the candidate-participant self-assesses the performance, at that stage only it can be realised that the manner prescribed under the Rule has not been followed. At the stage of self-evaluation the petitioner could notice that each subject had not been set with twenty-five questions of one mark each as required under Rule 6(4) of the ODCS Rules, 2020. The petitioner having approached his Court within reasonable time, protection as interim measure has been granted and, thereby the results of the examination have not been published. Therefore, it is not a case where the petitioner having participating in the written examination, questioned the process of recruitment. Contrary contention made by the counsel for the OPSC is, hence, rejected.”*

13. We do not wish to comment on the above observations of the learned Single Judge for the reason that another specific stand was taken by the OPSC in its counter affidavit that a notice was issued by it bearing No. 5600/PSC dated 13.08.2021 inviting objections from candidates within three days of completion of the examination. Said notice, copy of which was enclosed as Annexure-A/2 to the counter



affidavit filed by the OPSC in the writ petition and forms part of Annexure-3 of the writ appeal, is reproduced below:

**“ODISHA PUBLIC SERVICE COMMISSION CUTTACK
NOTICE
No.5600/PSC, dt. 13.08.2021**

*It is for the information of all concerned that the Commission welcomes inviting objections from candidates on **erroneous questions** and answer options in objective type examinations within **three days** of completion of the said examination, so that the same can be placed before the subject experts/question setters for validation and preparation of answer keys before evaluation. The candidates may e-mail at opsc@nic.in mentioning the name of examination, date of conduct of the examination with brief of information.*

Secretary”

14. If the reasoning adopted by the learned Single Judge in paragraph-10.1 of the judgment quoted above is accepted to hold that without appearing in the examination a candidate could not have known the mistakes in the questions then also, fact remains that a specific opportunity was provided by OPSC in the form of the aforementioned notice inviting objections from the candidates for being placed before the subject experts/question setters for validation and preparation of the answer keys before evaluation. It is not disputed that the petitioner never availed



this opportunity and instead thought it proper to approach this Court by filing the writ application in question.

15. Reading of the impugned judgment reveals that this particular aspect of the matter has not been dealt with by the learned Single Judge. From perusal of the copy of the writ application, enclosed to the writ appeal as Annexure-2, it is seen that no explanation whatsoever is offered by the writ petitioner as to why he did not avail of such opportunity. Therefore, once it is held that the writ petitioner had not availed the opportunity specifically provided to raise objection, he would be estopped to do so at a subsequent time and that too, by filing a writ application before this Court. It must be kept in mind that while the writ petitioner was himself unsuccessful, several candidates were successful which gives them a legitimate expectation of being selected for the post. Under such circumstances, the writ petitioner must be held to have waived his right to raise objection at the relevant time and not having done so, he must be deemed to have acquiesced to the position. As such, he cannot be permitted to raise the same at a belated stage as the same would result in unsettling the settled position obtaining by



then. Reference in this regard may be had to the judgment of the Supreme Court in the case of **Bichitrananda Behera v. State of Orissa**,⁴, the relevant portion of which is reproduced below:

“Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis.”

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Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.”

[Emphasis added]

⁴ 2023 SCC OnLine SC 1307



16. The following observations in the case of **State of Jharkhand v. Ashok Kumar Dangi**⁵ are also noteworthy:

“26. It is in the present appeals that the writ petitioners, for the first time, have attempted to contend that amendment to Rule 2(b)(iii) made on 6-3-2003, which inter alia provided that candidates having CPED or DPED shall be eligible for the posts of physical trained teachers only cannot be applied retrospectively and their cases shall be governed by the unamended Rules. It has been pointed out that the amendment has not been made with retrospective effect. We are not inclined to go into this question in the present appeal for the reason that in the light of the amendment in the Rules, the Commission issued a corrigendum and confined the candidature of persons holding qualification of CPED or DPED, like the writ petitioners, to the posts of physical trained teachers only. It conducted the examination on that basis and the writ petitioners without making any challenge to the same, participated in the selection process and appeared in the examination without any murmur. It is only after the result was published and their candidature not considered against the entire vacancy of the primary school teachers that they have chosen to file the writ petition with the relief aforesaid. Any direction to consider the candidature of the writ petitioners against the entire vacancy of primary school teachers would unsettle settled matter and shall result into chain reaction, affecting the appointment of a large number of persons.”

[Emphasis added]

17. Thus, we find that the petitioner lacked *locus standi* to seek the relief claimed in the writ petition. It is too well-settled a principle of law to reiterate that the question of *locus standi* goes to the root of the matter and if the same is

⁵ (2011) 13 SCC 383



not satisfied it is not necessary to delve into the merits of the case.

18. In view of the foregoing analysis, we find sufficient force in the contentions raised by learned counsel appearing for all the appellants to question the correctness of the impugned judgment and thus hold that the same warrants interference.

19. In the result, the appeals are allowed. The impugned judgment passed by learned Single Judge is hereby set aside. Consequently, the writ application filed by the respondent-petitioner in W.P.(C) No. 12065 of 2023 is dismissed as not maintainable. There shall be no order as to costs.

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(Arindam Sinha)
Acting Chief Justice

.....
Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 13th March, 2025/A.K. Rana, P.A.

Signature Not Verified

Digitally Signed
Signed by: AJAYA KUMAR RANA
Designation: Personal Assistant
Reason: Authentication
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Date: 13-Mar-2025 16:14:51

