

Orissa High Court

Litu Behera & Another vs State Of Odisha & Others Opp. ... on 4 September, 2025

IN THE HIGH COURT OF ORISSA AT CUTTACK W.P.
(C) NO. 24636 OF 2024 In the matter of an application under Articles 226
& 227 of the Constitution of India Litu Behera &
Another Petitioners
-Versus- State of Odisha &
others Opp. Parties
Advocates appeared in this case: For Petitioners : M/s. S.
Mallik, P.C. Das, M. Mallik and S.
Mallick, Advocates For Opp. Parties: Mr. J. K. Ray,
Addl. Standing Counsel [OP Nos.1 & 2]
M/s P.K. Mahapatra, S.C. Dev Dash, S.
Samal & R.P. Das, Advocates
[OP Nos.3 to 5 & 7]
M/s J.R. Dash, A. Pattajoshi & K.L.
Dash, Advocates [OP Nos.6, 8 & 9] CORAM:
THE HON'BLE MR. JUSTICE DIXIT KRISHNA SHRIPAD
JUDGMENT

----- Date of hearing:
03.09.2025 :: Date of judgment: 04.09.2025

----- PER DIXIT KRISHNA
SHRIPAD,J.

Two Lecturers in Mechanical Engineering in Odisha Technical Education & Training Service (OTE&TS) Cadre (Group-B), both belonging to Scheduled Caste, have presented this petition with the following two prayers:

"I) Quash the impugned order vide Notification dtd. 12.8.2024 under annexure-5 promoting of the juniors/ opposite parties Nos.3 to 9 to the rank of Lecturer Stage-II Mechanical Engineering ignoring the seniority of the petitioners.

II) Direct/order that the petitioners shall be promoted to the rank/post of Lecturer Stage-II Mechanical Engineering w.e.f. 12.8.2024 the date of promotion of juniors/ opposite parties Nos.3 to 9 with all consequential service and monetary benefits."
(sic)

2. After service of notice, the official OPs appear through the learned AGA and the private OPs are represented by their advocates. Counter affidavit is also filed resisting the petition, which other OPs, who have not filed one, have adopted. Learned AGA and the counsel representing the private OPs resist the petition making submission in justification of the impugned orders, essential contending that there is no error apparent on the face of the record, petitioners having been initially appointed not on their merits, but on their social status. Counsel appearing for private parties very strenuously contended that whatever relief may be granted to the petitioners, but it should not

upset the appeal cart of their clients, be it in relation to their promotion or their ranking in the Gradation List.

3. Having heard learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter as under and for the following reasons.

3.1. Petitioners inter alia, along with private OPs herein, were in the fray of the very same recruitment vide Advertisement No.13 of 2017-18 issued by Odisha Public Service Commission. Petitioners figured at Sl. Nos.12 & 13 in the final select list dated 31.10.2018, whereas all the private OPs figured down below, as is reflected in OPSC Notice No.7966 dated 31.10.2018 at Annexure-1. It is true that petitioners staked their claim for appointment under reserved category, since admittedly they belong to Scheduled Caste. It is obvious that they figured above the private OPs not because of their social status, but their comparative merits in the entry level examination. On the basis of final select list they came to be appointed as Lecturers, with M.Tech. degree vide Notification No.5850/SDTE dated 28.12.2018, as it happened with the private OPs also.

3.2. Petitioners were denied promotion to the next higher level, whereas private OPs, who are obviously junior to them, have been promoted vide Notification dated 12.08.2024, though they were entitled to, in terms of Odisha Government Polytechnics Teachers' Service (Methods of Recruitment & Conditions of Service) Rules, 2024, which does not exclude the general norm of "Seniority-cum-Merit" for the purpose. In fact, in the final Gradation List of Lecturers Stage-I, dated 29.06.2024 petitioners figured at Sl. Nos.36 & 37, whereas all private OPs figure immediately below them. There is absolutely no reasons or rhyme for not considering the case of petitioners, who are apparently seniors to the private OPs, and that they were fully entitled to such consideration, even if they had secured initial appointment under the reserved category or because of their comparative higher merits. It hardly needs to be stated that merely because a reserved category candidate is given initial appointment under the unreserved category, he does not cease to be a candidate belonging to reserved quota and therefore, whatever is due under the policy of reservation, rightly belongs to him. 3.3. The Apex Court in R.K. Sabharwal v. State of Punjab, (1995) 2 SCC 745 observed at para-5 as under:

"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 reserve 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 citizen which, in the opinion of the State is not adequately represented in the Services under the State."

The Odisha Civil Services (Criteria for Promotion) Rules, 1992, as amended vide Notification dated 12.10.2022, reads as under:

"3-A Notwithstanding anything contained in the relevant recruitment rules, where the promotion is to be considered as per the post based reservation (by way of replacement theory), the separate zone of consideration shall be applicable:

Provided that the Scheduled Caste or Scheduled Tribe candidates appointed on their own merit either by direct recruitment or by promotion and placed above the unreserved candidates in the merit list shall be considered and adjusted against the unreserved vacancies and such candidates are not to be counted within the percentage earmarked for reservation of their category."

A Coordinate Bench of this Court in WP(C) No.12516 of 2020 between Lalit Kumar Nayak v. State of Orissa & Others disposed of on 24.07.2024, having examined all aspects of the matter, has accorded relief to a reserved category candidate, in a substantially similar fact matrix. 3.4. Learned counsel for the petitioner has graciously filed a memo dated 03.09.2025, which reads as under:

"The petitioners are restricting to the Prayer No.II and not pressing the Prayer No.I." (sic) On that basis, the promotion granted to private OPs herein can be saved, is true. However, the same cannot be read as giving up the seniority of the petitioners, once they are to be promoted with effect from the date their immediate juniors have been given promotion. An argument to the contrary amounts to illegally depriving the benefit of reservation that has been enacted in terms Article 16 of the Constitution of India. Even otherwise, a meritorious candidate cannot be prejudiced merely because he belongs to reserved category. The very object of reservation is to achieve affirmative equality in the matter of public employment.

In the above circumstances, this petition succeeds. A Writ of Mandamus issues to the official OPs to consider candidature of the petitioners for promotion and grant such promotion with retrospective effect sans monetary benefits from the date their immediate juniors have been promoted to the next higher level and further to place them in the higher ranking qua the said private OPs. All this to be accomplished within an outer limit of eight (8) weeks.

Costs reluctantly made easy.

Web copy of this judgment to be acted upon by all concerned.

Dixit Krishna Shripad Judge Orissa High Court, Cuttack The 4th September, 2025/GDS Designation: JOINT REGISTRAR-CUM-PRINCIPAL Location: HIGH COURT OF ORISSA : CUTTACK Date: 04-Sep-2025 18:20:25

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