



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 15819 of 2023

[CNR No.ODHC010376942023]

An application under Articles 226 and 227 of the Constitution of India

Ipsita Mohanty

..... *Petitioner.*

- Versus -

1. State of Orissa, represented through its
Principal Secretary, Law Department, Lok
Seva Bhawan, Bhubaneswar, District. – Khordha.
2. Registrar General, Orissa High Court, Cuttack.

..... *Opposite Parties.*

For Petitioner:	-	Mr. Manoj Kumar Khuntia, Advocate
For Opp. Party No.1:	-	Mr. Debaraj Mohanty, AGA
For Opp. Party No.2:	-	Mr. Gautam Misra, Sr. Advocate Assisted by Mr. Sangram Jena, Advocate

PRESENT:

THE HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
AND
THE HON'BLE MR. JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 18.08.2026

Date of Judgment: 10.09.2026

Manash Ranjan Pathak J.

1) Heard Mr Manoj Kumar Khuntia, learned counsel for the petitioner and
Mr Debaraj Mohanty, learned Additional Govt. Advocate for the State-Opposite



Party No.1. Also heard Mr Goutam Mishra, learned Senior Advocate assisted by Mr Sangram Keshari Jena, learned Advocate for the Opposite Party No.2.

2) Both the parties have submitted their respective written note of arguments. In addition to the above pursuant to our order dated 20.07.2026 The Opposite Party No.2 on 18.08.2026 has also submitted the records in original in a sealed cover pertaining to petitioner's application dated 21.12.2022 regarding withdrawal from her resignation from service submitted by her earlier on 29.11.2022

3) To regulate the recruitment, training, and service conditions for higher/ Superior Judicial officers' across the State, the Government of Odisha in exercise of the powers conferred by the proviso to Article 309 with Articles 233, 234 and 235 of the Constitution of India, in consultation with the Odisha Public Service Commission and with the High Court of Orissa framed "**The Odisha Superior Judicial Service Rules, 2007**" (*OSJS, 2007*, in short) for the higher / Superior Judicial Service of the State like in the Cadre District Judges etc. and also framed "**The Odisha Judicial Service Rules, 2007**" (*OJS, 2007*, in short) for the Lower Judicial Services of the State like in the Cadre Civil Judges etc.

4) Both the aforesaid two Rules namely, (i) The *OSJS 2007*" and (ii) "The *OJS 2007*" came into force with effect from 23rd August, 2007.

5) Rule 2 of said the said two 2007 Rules relates to definitions.

6) Rule 2(b) defines "Commission", which means the Odisha Public Service Commission; Rule 2(c) defines "Government" meaning the Government of Odisha; Rule 2(d) defines "Governor" that means the Governor of Odisha; Rule 2(e) defines "High Court" and it means the High Court of Orissa; Rule 2(g) defines "Recruiting authority" that means the Odisha High Court or the Odisha Public Service Commission as the case may be; Rule 2(j) defines "Service",



which means The Odisha Superior Judicial Service and Odisha Judicial Service and Rule 2(k) defines "State" and it means the State of Odisha.

7) Rule 3(1) of the said OSJS & OJS Rules 2007 provides for the Cadre of service under the said two Judicial Service Rules 2007 which consists of 3 (three) cadres namely, (i) District Judges; (ii) Senior Civil Judges; and (iii) Civil Judges.

8) Rule 3(2) of said the said OSJS & OJS Rules 2007 the cadre of District Judges belonging to the Odisha Superior Judicial Services comprises of (a) District Judges, (b) Selection Grade District Judges, (c) Super Time Scale District Judges, (d) Sessions Judges, (e) Additional District Judges, (f) Additional Sessions Judges, (g) all other posts in the erstwhile cadre of the Orissa Superior Judicial Service (Senior Branch) and (h) in the Registry of the High Court (i) on deputation to the Government and also (j) any other posts that may be decided by the High Court from time to time.

9) As per Rule 3(3) of said OSJS & OJS Rules 2007 the cadre of Senior Civil Judges belonging to Odisha Judicial Services comprising of **(i)** Senior Civil Judges (Entry Grade); **(ii)** Senior Civil Judges (Grade-II); and **(iii)** Senior Civil Judges (Grade-I) and which includes (a) Chief Judicial Magistrates, (b) Additional Chief Judicial Magistrates, (c) Civil Judges (Senior Division), (d) Additional Civil Judges (Senior Division), (e) Registrar of Civil Courts, (f) All other posts in the erstwhile cadre of the Odisha Superior Judicial (Junior Branch), and (g) in the cadre of the Odisha Judicial Service Class-I (Senior); (h) in the Registry of the High Court, (i) on deputation to the Government and (J) also any other posts that may be decided by the High Court from time to time.

10) Rule 3(4) of the OSJS & OJS Rules 2007 relating to the cadre of Civil Judges of the "Odisha Judicial Service comprises of (i) Civil Judges (Junior Division); (ii) Sub-Divisional Judicial Magistrates, (iii) Judicial Magistrates, and (iv) All other posts in the erstwhile cadres of Odisha Judicial Services Class-I



(Junior) and (v) Odisha Judicial Services Class-II (v) Officers in the Registry of High Court and (vi) Officers on deputation to the Government, and (vii) any other posts that may be decided by the High Court from time to time.

with an explanation — that for the purpose of Sub-Rule (3) and (4), the Entry Grade refers to the normal scales of pay and Grade-II and Grade-I refer to the Assured Career Progression Scales of pay at the first stage and Second Stage, respectively, as prescribed in the Resolution No. 23598/F dated 03.06.2003 of the Finance Department of the Government and as may be modified from time to time.

11) After being duly selected Petitioner on 07.02.2015, joined in the Orissa Judicial Services and was posted at Bargarh. Thereafter on 09.03.2017 the petitioner was posted as JMFC at Puri. Seven months thereafter the petitioner was posted as Civil Judge-cum-J.M.F.C. at Madanpur-Rampur in the district of Kalahandi. On 09.05.2019 the petitioner was posted as Civil Judge (Junior Division) -cum- JMFC at Chandikhol. On 26.10.2019 the petitioner was posted as J.M.F.C. at Bhubaneswar.

12) After her marriage the Petitioner is having a son who is about 15 years old now, who since the year 2016 is suffering from autistic spectrum disorder (ADHD), who is unable to speak and suffering from many health issues including neurological disorder and hyper activities of self-harming, self-biting, etc. For Such She submitted a representation requesting the committee concerned to consider her prayer to keep her at Bhubaneswar Headquarter for treatment of her Autistic son and considering the same the committee concerned on 19.02.2020 posted the petitioner again as a J.M.F.C. and posted her at Bhubaneswar (outskirt).

13) While the petitioner was serving at Bhubaneswar, as per the instruction of the doctors, treating her said son he was treated both at Bhubaneswar and also at Cuttack for proper treatment and rehabilitation of petitioner's autistic



son, and he was admitted at the Institute of Health Sciences well as in the Model Centre for Child with special needs at Chandaka. But four months thereafter due to COVID-19, the said institute got temporarily closed for about one & half years, due to which he could not be provided with the required treatment properly. As per the Doctors who treated petitioner's autistic son at Bhubaneswar the petitioner was informed that her said son requires a long-term treatment and rehabilitation along with continued therapy. While the petitioner was serving at Bhubaneswar the health condition of her son was improving because of such treatment, rehabilitation and therapies at home as well as private institutes, therefore the petitioner on 17.03.2022 submitted a representation before the committee concerned through the Hon'ble District & Sessions Judge, Khordha, requesting the authority concerned to allow her to remain at Bhubaneswar for two more years' time so that she can take proper treatment of her autistic son. But her said representation was not duly considered and thereafter the concerned Committee by order dated 16.07.2022 transferred the petitioner as Additional Civil Judge (Junior Division)-cum-S.D.J.M and posted her at Hindol in the Judgeship of Dhenkanal. On her such transfer, dated 16.07.2022 the petitioner on 22.07.2022 joined her service at Hindol.

14) After her transfer, to Hindol during July 2022, since then being at her working place at Hindol as well as at Dhenkanal and its nearby areas due to lack of required/proper treatment facilities to a child suffering from Autism and due to non-availability of trained Therapists to provide therapy to the autistic child son the petitioner failed to provide required treatment and therapy to her only autistic son, due to such non-availability and lack of treatment facilities as well as qualified trained therapists to treat her son suffering from Autism at her working place at Hindol as well as at Dhenkanal and also in its nearby areas, the petitioner failed to provide the required treatment and therapy to her autistic son and therefore, his condition deteriorated.



15) The Petitioner also stated that her said autistic son is her only child and as he is suffering from autism since 2016 and related ailments therefore, he was not accepted by his family for the last four years due to his health issues, stating further that except her there is no one in her family to look after him and to provide treatment and therapy to her said son. Therefore the petitioner vide Letter No.1492 dated 05.09.2022 submitted a detailed representation before the Registrar (Administration) of this High Court through the District and Sessions Judge Dhenkanal submitting that if her said child could not be provided with the required treatment and therapy in time he will suffer irreparable loss. For the said purpose the petitioner requested the authority concerned to consider her case considerably and sympathetically allowing her to work at Headquarters Station at Bhubaneswar for a period of two and half (2 ½) years so that she can provide medical facilities and required therapy to her said autistic child. Along with her the said representation dated 05.09.2022 the Petitioner enclosed all the relevant medical documents of her autistic son and the required treatment as prescribed by the Doctor who use to treat her said son. Being at Hindol, i.e. in her working place including Dhenkanal and its nearby areas due to lack of proper treatment facilities to an autistic child and due to non-availability of trained Therapists to provide therapy to her autistic son the petitioner stated that she failed to provide him proper treatment and required therapy to her said autistic son in her working place at Hindol and therefore, requested the authority concerned to consider her case sympathetically and compassionately.

16) In the case of **Rajendra Roy -Vs- Union of India** and another, Reported in **(1993) 1 SCC 148** in a matter relating to transfer and posting in Government service, the Hon'ble supreme court have held that in case of personal difficulty, an employee can make representation to the authority concerned but simply on the score of personal hardship, an order of transfer relating to a transferable post cannot be held back. It is



true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down, Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions. While dismissing the said appeal by its order dated 17.11.1992, the Hon'ble Supreme Court categorically observed that —

"It is, however, made clear that the appellant will be free to make representation to the concerned department about personal hardship, if any, being suffered by the appellant in view of the impugned order. It is reasonably expected that if such representation is made, the same should be considered by the department as expeditiously as practicable."

17) The records placed before the Court by the O.P. No.2 reveals that the Office concerned received the said representation of the petitioner dated 05.09.2022, which she submitted before the Registrar (Administration), of the High Court of Orissa, Cuttack through the District and Sessions Judge, Dhenkanal praying for her change of place of work requesting the Authority concerned to transfer her in the Headquarters Station at Bhubaneswar in any post as per her eligibility for a period of two and half (2 ½) years for treatment of her said autistic child as there is a lack of treatment and medical facilities to the children suffering from autism at Hindol as well as Dhenkanal and its nearby



areas and also about non-availability of properly trained therapist to provide proper therapy to an autistic child. From the records we have seen that the petitioners' said representation dated 05.09.2022 was placed before the Committee concerned of the High Court (Standing Committee) on 20.10.2022 and the said committee on 20.12.2022 though discussed the said representation of the petitioner dated 05.09.2022 but on 20.12.2022 itself the said Committee deferred the representation of the petitioner dated 05.09.2022. However, we have noted that the opposite party No.2 in its counter affidavit filed in the matter is totally silent with regard to the outcome of said representation of the Petitioner dated 05.09.2022. Record shows that pertaining to petitioner's said representation dated 05.09.2022 that was deferred by the said committee on 20.10.2022, the decision of the committee concerned regarding to the petitioner's said deferred representation dated 05.09.2022 was never been communicated to the her. As such the Opposite Party No.2 failed to comply with the direction of the Hon'ble Supreme as directed in the case of *Rajendra Roy* (supra). It is also seen from the records that the said representation of the petitioner dated 05.09.2022 has never been placed before the said committee after the same was deferred on 20.10.2022, for its consideration and final decision It is seen from the record that on the other hand neither the Registry nor the Committee concerned communicated the petitioner about the decision of her said representation dated 05.09.2022 that was deferred on 20.10.2022.

18) As such on her failure to provide proper medical treatment and required therapy to her only autistic son the petitioner and her representation dated 05.09.2022 remained unconsidered and unanswered, therefore, the petitioner in the said back drop and for such reasons and, the petitioner being in misery and being in a distressed condition for her failure failed to provide proper medical treatment and required therapy to her only autistic son for which health condition of her autistic son deteriorated the petitioner vide Letter



No.2117 dated 29.11.2022, (four months after joining at Hindol) and after more than two months of her submission of said representation, the petitioner vide Letter No.2117 dated 29.11.2022, submitted all the noted above facts before the Registrar (Administration), High Court of Orissa at Cuttack through the District Judge, Dhenkanal along with the medical documents and reports of her autistic son, requesting the said authority to place the matter before the Hon'ble Court for favour of kind consideration and to allow her to resign from her service and the said resignation letter dated 29.11.2022 of the petitioner to the Registrar (Administration), High Court of Orissa, Cuttack and it was received by the Office concerned on 05.12.2022.

19) It is stated by the Opposite Party No.2 that Resignation of Judicial Officer is a matter to be considered by the Hon'ble Full Court.

20) On receipt of said resignation of the petitioner dated 29.11.2025 forwarded by the District and Sessions Judge, Dhenkanal on 01.12.2022 that was received by the Office concerned on 05.12.2022, Record reveals that the Registry on 05.12.2022 itself placed the said matter before the then Hon'ble Chief Justice of the High Court of Orissa. The record also reveals that when the matter was placed by the Registry before the then Hon'ble Chief Justice of the High Court of Orissa it was mentioned that, the petitioner is clear from the vigilance/Departmental angle as per the records available in the Office. Further, the Registry also submitted a detailed note dated 05.12.2022 before the then Hon'ble Chief Justice of the High Court of Orissa regarding health issues of petitioner's autistic son and also about Petitioner's detailed representation dated 05.09.2022 stating that in her said representation the petitioner submitted for her transfer from Hindol to the Headquarters Station of Bhubaneswar for a period of two & half (2½) years on the ground of treatment of her autistic son, wherein it was indicated that on 20.10.2022 the Committee concerned (Standing Committee) discussed and deferred the said representation of the Petitioner dated 05.09.2022 which, remained pending for final consideration.



21) On 05.12.2022 itself the authority, i.e., the then Hon'ble Chief Justice of the High Court of Orissa directed the Registry to place the said resignation of the petitioner dated 29.11.2022 before the Hon'ble Full Court. Accordingly on the matter pertaining to resignation of the petitioner dated 29.11.2022 on 20.10.2022 said matter of the petitioner was placed before the Hon'ble Full Court and on 20.12.2022 itself the said authority considered the resignation of the petitioner and resolved to accept her said resignation dated 29.11.2022 and accordingly, directed the Registry to move the State Government for approval of His Excellency the Governor of Odisha for its acceptance in spite of the fact that the representation of the Petitioner dated 05.09.2022 deferred earlier by the Standing Committee on 20.12.2022 remained pending. As such the authorities concerned and the Opposite Party No. 2 did not comply with the direction of the Hon'ble Supreme Court as decided in the case of *Rajendra Roy* (supra).

22) After her said resignation dated 29.11.2022 the petitioner consulted with the doctor who use to treat her autistic son and the doctor advised the petitioner that her said son will require a long-term continuous treatment and therapy. As such the petitioner vide Letter No.4053 dated 21.12.2022 submitted a representation before the Registrar (Administration), High Court of Orissa, Cuttack through the District & Sessions Judge, Dhenkanal stating that though by her Office letter No. 2117 dated 29.11.2022 she earlier prayed before the authority to accept her resignation from service, but as per advice of the doctor who treats her autistic son she has been informed that her said autistic son will require a continuing long term treatment and therapy. She had already stated that except her there is none in her family to accept her autistic son and to provide him with necessary care and treatment. Thus for the said purpose and for future of her autistic son she requires to continue with her service. Therefore, the petitioner by her Letter No.4053 dated 21.12.2022 prayed before the Registrar (Administration), High Court of Orissa, Cuttack requesting the authority concerned to re-consider her case and not to accept her resignation



that she submitted earlier on 29.11.2022. the District & Sessions Judge, Dhenkanal on 21.12.2022 itself forwarded the said letter of the petitioner to the Registrar (Administration), High Court of Orissa, Cuttack

23) It is stated by the petitioner that the Special Officer (Administration) in-charge of the High Court of Orissa, Cuttack on 21.12.2022 made a communication to the District Judge, Dhenkanal requesting him to apprise the former (1) as to whether any Government dues, loans and interest accrued thereon are still outstanding against the petitioner as Civil Judge-cum-S.D.J.M., Hindol; (2) (a) whether license fee for her government accommodation, (b) balance of house-building advance, (c) conveyance and other advances, and the interest if any availed by her, (d) whether over-payment of pay and allowances including leave salary, if any against the petitioner, (e) Whether any other assessed government dues are pending against the petitioner or not. By the said communication dated 21.12.2022 Special Officer (Administration) in-charge of the High Court of Orissa, Cuttack on 21.12.2022 also enquired from the District Judge, Dhenkanal as to whether the petitioner is continuing in government service as such or as to whether she is on leave.

24) While the petitioner was serving as Addl. Civil Judge-cum-S.D.J.M. at, Hindol, Dhenkanal, she was served with the Notification No.VJ-102/2022-11/L, dated 02.01.2023, issued by the Principal Secretary to the Government in the Law Department stating that on the recommendation of the Hon'ble High Court of Orissa, Cuttack, the State Government has been pleased to accept the resignation tendered by the petitioner Additional Civil Judge-cum-S.D.J.M., Hindol in the judgeship of Dhenkanal from government service with immediate effect in spite of the fact that the District Judge, Dhenkanal on 21.12.2022 itself forwarded petitioners' application dated 21.12.2022 to the Registrar (Administration), High Court of Orissa, Cuttack by which the petitioner had withdrawn her resignation submitted on 29.11.2022. Upset with such acceptance of her resignation by the Opposite Parties, vide letter issued by the



State Government in the Law Department on 02.01.2023, the petitioner has filed this writ petition on 12.05.2023.

25) Record shows that the District Judge, Dhenkanal on 21.12.2022 itself forwarded the said letter of the petitioner dated 21.12.2022 pertaining to withdrawal of her resignation from service to the Registrar (Administration), High Court of Orissa, Cuttack that she had submitted earlier on 29.11.2022 and it that was received by the Office concerned on 21.12.2022 itself.

26) It is stated by the petitioner that as she on 21.12.2022 itself had withdrawn her resignation from service and that her representation dated 05.09.2022 remained unconsidered and unanswered and pending, therefore, she on compelling circumstances being in misery and distressed condition had to file her resignation on 29.11.2022. But her resignation dated 29.11.2022 was accepted by the employer and the appointing authority on 02.01.2023. Therefore, the petitioner stated that the authority concerned i.e. both the Opposite parties (i) State Government and (ii) the High Court should have accepted her application dated 21.12.2022 withdrawing her resignation that submitted on 29.11.2022 as much before it was accepted by the appointing / accepting authority. According to the petitioner both the Opposite parties should have considered those aspects before issuing the impugned Notification dated 02.01.2023 and before accepting her resignation dated 29.11.2022, which she had withdrawn on 21.12.2022 and before relieving her from government service with immediate effect.

27) The petitioner stated that the authority concerned without taking into account of her application dated 21.12.2022 withdrawing her resignation from service submitted on 29.11.2022 which was submitted much before acceptance of her resignation dated 29.11.2022 by the appointing/accepting authority the said act of opposite parties' amounts to the violation of the cardinal principles of Natural Justice. It is also stated by the petitioner that the principles of Natural



Justice Demands – before any punitive action is taken the incumbent concerned must be given an opportunity of being heard that was not done in the case in hand.

28) Upset with by such action of the Opposite Parties, the petitioner has filed this writ petition on 12.05.2023 with the following prayers:

- “(i) To quash the notification dated 02.01.2023 under Annexure-4;
- (ii) to reinstate the petitioner in her service with all service and consequential benefits;
- (iii) and pass such order/orders as may be deemed fit and proper for the interest of justice.”

29) Both the opposite parties Nos. 1 and 2 have submitted their respective counter affidavits.

30) According to the petitioner, she on 29.11.2022 submitted a detailed representation before the Registrar (administration) High Court of Orissa, Cuttack through the District Judge, Dhenkanal detailing her grievances stating the reasons as to why she had to decide to submit her resignation from service and requested the said authority to kindly place the matter before the Hon’ble Court for favor of kind consideration and to allow her to resign from service. Record shows that the said application dated 29.11.2022 was received by the office of the O.P. No. 2 on 05.12.2022 and on the same day, i.e., on 05.12.2022 it was placed before the then Hon’ble Chief Justice of the High Court of Orissa. on 05.12.2022 itself, the then Hon’ble Chief Justice of the High Court of Orissa directed to place the matter before the Full Court, as Resignation of Judicial Officer is a matter to be considered by the Hon’ble Full Court. The record also reveals that when the matter was placed by the Registry before the then Hon’ble Chief Justice of the High Court of Orissa on 05.12.2022 it was it was specifically mentioned that, the petitioner is clear from the vigilance / Departmental angle as per the records available in the Office. Further, the



Registry also submitted a detailed note dated 05.12.2022 before the then Hon'ble Chief Justice of the High Court of Orissa regarding health issues of petitioner's autistic son and also about Petitioner's detailed representation dated 05.09.2022 that she submitted from Hindol wherein she requested before the Hon'ble High Court for her transfer to Headquarters Station of Bhubaneswar on the ground of treatment of her autistic son, wherein it was indicated that on 20.10.2022 the concerned Committee discussed and deferred the said representation of the Petitioner dated 05.09.2022 that is still pending for final consideration.

31) The petitioner submitted that the opposite parties before issuing the impugned Notification dated 02.01.2023, relieving her from the post of Additional Civil Judge-cum-SDJM, Hindol (Government service) with immediate effect accepting her resignation submitted on 29.11.2022 on the recommendation of the Hon'ble High Court of Orissa the authorities did not consider her representation dated 05.09.2022 as well as her application dated 21.12.2022 withdrawing her said resignation that she submitted earlier on 29.11.2022. As such the petitioner on 04.01.2023 from Hindol filed an appeal with proper details before, His Excellency the Hon'ble Governor of the State through the proper channel. Record reveals that said appeal of the petitioner was received by the office of the Hon'ble Governor of the State on 07.01.2023.

32) Aggrieved with such action of the opposite Parties accepting her resignation dated 29.11.2022 by the authority concerned communicated vide Notification dated 02.01.2023 without considering her said application dated 21.12.2022 whereby she had withdrawn her resignation submitted on 29.11.2022. The petitioner through the District Judge, Dhenkanal also filed similar representations before the then Hon'ble the Chief Justice of the High Court of Orissa on 03.01.2023, 11.01.2023, 27.01.2023 and 08.02.2023. those were on receipt by the authority concerned were placed before the then Hon'ble the Chief Justice of the High Court of Orissa for consideration.



33) The State Government i.e., the opposite Party No.1 in its counter affidavit filed on 08.08.2023 specifically stated that the Special Officer (Administration) I/C , High Court of Orissa, Cuttack by its letter dated 21.12.2022 (Annexure A/1) informed the Principal Secretary to the Government in the Law Department that the Hon'ble High Court have been pleased to recommend for acceptance of resignation tendered by the petitioner, former Additional Civil Judge (Junior Division)-cum-SDJM Hindol in the Judgeship of Dhenkanal as per the resignation tendered by her vide letter dated 29.11.2022. Therefore, on the basis of said recommendation of the High Court dated 20.12.2022, the opposite party no. 1 the Principal Secretary to the Government in the Law Department placed the matter before the concerned appointing / accepting authority being His Excellency the Hon'ble Governor of the State for acceptance of the said recommendation of the High Court dated 20.12.2022 regarding resignation tendered by the petitioner on 29.11.2022. In the said counter affidavit the State, opposite party No. 1 specifically stated that that the Hon'ble Governor of the State have accepted the said proposal regarding resignation of the petitioner only on 31.12.2022 on the recommendation of the High Court dated 20.12.2022 pertaining to the resignation tendered by the petitioner on 29.11.2022, Whereas the petitioner had withdrawn her resignation dated 29.11.2022 by an application dated 21.12.2022 itself. It is only after such approval of the Hon'ble Governor dated 31.12.2022, the opposite party No. 1 had issued the impugned Notification dated 02.01.2023.

34) The opposite Party No.2, Registrar General, High Court of Orissa in its counter affidavit filed on 27.07.2023 stated that the writ petition is thoroughly misconceived and it being not maintainable in the eye of law and the same is liable to be dismissed. In the said counter affidavit, opposite party No.2 also stated that there is no illegality or impropriety in the impugned order dated 02.01.2023 of the Opposite Party No.1 that does not call for any interference under Article 226 and 227 of the Constitution of India. In its Counter affidavit



opposite party No.2 admitted that the petitioner on 29.11.2022 submitted her resignation and the Hon'ble Full Court of the High Court of Orissa in its Administrative side on 20.12.2022 considered her said resignation dated 29.11.2022 and resolved to accept petitioner's said resignation from service. Consequently, after obtaining the information regarding pendency of Government dues if any of the petitioner from the District and Sessions Judge, Dhenkanal on 21.12.2022 itself, the authorities of the High Court informed the Law Department in the State Government for acceptance of resignation tendered by the petitioner on 29.11.2022 in terms of the recommendation of the Hon'ble Full Court dated 20.12.2022.

35) Further, on perusal of the letter dated 21.12.2022 of the Special Officer (Administration) I/C, High Court of Orissa, Cuttack annexed to the Counter affidavit of Opposite Party No. 1 State, as (Annexure A/1), we have seen that the Special Officer (Administration) I/C, High Court of Orissa, Cuttack on 21.12.2022 communicated to the Principal Secretary in the Law Department, Government of Odisha that in pursuance of the letter No. 19876 dated 21.12.2022 of the Special Officer (Administration) I/C, High Court of Orissa, Cuttack the District and Sessions Judge Dhenkanal by its letter No. 4041 dated 21.12.2022 informed the said the Special Officer (Administration) I/C High Court of Orissa, Cuttack with regard to the petitioner as follows:-

- 1) No Departmental Proceeding or Vigilance case is either pending or contemplated against the petitioner and also informed that
- (2) (a) No Government dues, loans or interest accrued thereon are outstanding against her;
- (2) (b) No License Fee is outstanding against the petitioner for Government accommodation;
- (2) (c) There is no balance of House Building advance, conveyance or interest, outstanding against the petitioner;



- (2) (d) No overpayment of pay or allowance including leave salary has been made in her favour;
- (2) (e) No other Government dues are outstanding against her and
- (3) the petitioner is still continuing in Government Service as reported by the District and Sessions Judge, Dhenkanal.

36) In the same counter affidavit, opposite party No.2 also admitted that on 21.12.2022 itself, application dated 21.12.2022 of the petitioner withdrawing her resignation submitted on 29.11.2022 was received by the Office on 21.12.2022 itself. Even the record reveals that the said application dated 21.12.2022 of the petitioner regarding withdrawal of her resignation dated 29.11.2022 was placed before the then Hon'ble the Chief Justice of the High Court of Orissa on 22.12.2022 for his consideration. Since the Hon'ble Full Court on 20.12.2022 in its administrative side had already resolved to accept the resignation tendered by the petitioner on 29.11.2022, the then Hon'ble Chief Justice of the High Court of Orissa on 22.12.2022 itself directed meeting of the Full Court of the High Court of Orissa for consideration of withdrawal of resignation of the petitioner and directed the Registry to place the said matter in the meeting of the Full Court of the High Court of Orissa for consideration. But the record does not reveal that neither the Registry nor the authority concerned informed the Law Department of the State Government regarding said application dated 21.12.2022 of the petitioner withdrawing her resignation dated 29.11.2022 and also did not inform the Law Department in the State Government that the authority concerned, i.e. the then Hon'ble the then Chief Justice or the Registry of the High Court of Orissa informed either the petitioner or His Excellency, the Hon'ble Governor of Odisha that on 22.12.2022 the then Hon'ble the Chief Justice of the High Court of Orissa have directed the Registry to place the said matter in the meeting of the Full Court of the High Court of Orissa for consideration. The record also does not disclose that neither the Registry nor the authority concerned in view of the above changed



circumstances informed the Law Department in the State Government or His Excellency, the Hon'ble Governor of Odisha to defer the matter pertaining to the compliance of the Hon'ble Full Court's decision dated 20.12.2022 indicated earlier on 21.12.2022 by the Special Officer (Administration), I/C regarding acceptance of petitioner's resignation dated 29.11.2022 that was received by the Law Department on 22.12.2022 (Annexure A/1 of the counter affidavit of the Opposite Party No.1) as the then Hon'ble Chief Justice of the High Court of Orissa on 22.12.2022 directed meeting of the Full Court of the High Court of Orissa for consideration of withdrawal of resignation of the petitioner and directed the Registry to place the said matter in the meeting of the Full Court of the High Court of Orissa for consideration. And by this inaction, the then Hon'ble Chief Justice of the High Court of Orissa along with Opposite Party No.2, kept the Opposite Party No.1 the Principal Secretary to the Government in the Law Department of the State as well as the Hon'ble Governor of the State, in dark with regard to those subsequent developments.

37) Since the above subsequent facts were not made known to the Principal Secretary to the Government in the Law Department, Opposite Party No.1 as well as the Hon'ble Governor of the State, on the basis of said recommendation of the High Court dated 20.12.2022, said Principal Secretary the opposite party no. 1 to the Government in the Law Department placed the matter before the concerned appointing / accepting authority being His Excellency the Hon'ble Governor of the State for acceptance of the said recommendation of the High Court dated 20.12.2022 regarding resignation tendered by the petitioner on 29.11.2022. Pursuant to which the Hon'ble Governor of the State have accepted the said proposal regarding resignation of the petitioner only on 31.12.2022 on the recommendation of the High Court dated 20.12.2022 pertaining to the resignation tendered by the petitioner on 29.11.2022, and thereafter, the opposite party no.1 issued impugned



Notification dated 02.01.2023 relieving the petitioner from Government service with immediate effect.

38) From the records and from the counter affidavit of opposite party No.2, it is seen that as per said direction of the then Hon'ble Chief Justice of the High Court of Orissa dated 22.12.2022, when the Registry on 02.01.2023 placed the matter before the said authority regarding the application of the petitioner dated 21.12.2022 withdrawing her resignation dated 29.11.2022, the said authority on 02.01.2023 directed the Registry that as in the meanwhile, the Government in the Law Department of the State on the recommendation of the High Court dated 20.12.2022 had issued the Impugned Notification dated 02.01.2023 relieving the petitioner from Government service with immediate effect, therefore, the said authority unilaterally directed the Registry that the matter concerning the officer's request for withdrawal of her resignation need not be placed before the Full Court.

39) Record shows that in her said application dated 21.12.2022 the petitioner requested the authority to allow her to continue in service withdrawing her resignation submitted by her earlier on 29.11.2022 was placed before the then Hon'ble the Chief Justice of the High Court of Orissa for consideration on 22.12.2022 and on due consideration, the then Hon'ble the Chief Justice on 22.12.2022 itself directed the Registry to place the said matter before the meeting of the Full Court of the High Court of Orissa for consideration. Record reveals that accordingly the Registry on 02.1.2023 placed the matter before the then Hon'ble Chief Justice of the High Court of Orissa, for placing the matter before the Hon'ble Full Court for consideration of petitioner's withdrawal of resignation that she submitted on 29.11.2022 . But as in the meanwhile, the Government in the Law Department of the State on the recommendation of the High Court dated 20.12.2022 had issued the Impugned Notification dated 02.01.2023 relieving the petitioner from Government service with immediate effect and the then Hon'ble Chief Justice of the High Court of



Orissa directed that since the petitioner's resignation has already been accepted by the Government issuing the Notification dated 02.01.2023 with immediate effect, though the matter was pending before the Hon'ble Full Court for consideration the said authority, unilaterally, directed the Registry that the matter concerning the officer's request for withdrawal of her resignation need not be placed before the Full Court. According to the opposite party No.2, since the matter pertaining to resignation of the petitioner dated 29.11.2022 was accepted by the Hon'ble Full Court on 20.12.2022, followed by issuance of Government Notification dated 02.01.2023, virtually there were no scope for consideration of the subsequent representation of the petitioner regarding withdrawal of her resignation. Resignation of a Judicial Officer is a matter to be considered by the Hon'ble Full Court was accepted by the Hon'ble Full Court on 20.12.2022, followed by issuance of Government Notification dated 02.01.2023, virtually there were no scope for consideration of the subsequent representation of the petitioner regarding withdrawal of her resignation. According to opposite party No.2, it is settled principle of law that the resignation becomes effective when it is accepted by the accepting/appointing authority. In the case in hand the opposite party No.2's contention is that, it is the Full Court vide its resolution dated 20.12.2022 had accepted the resignation of the petitioner tendered on 29.11.2022 and the recommendation of the Hon'ble Full Court dated 20.12.2022 was forwarded to the State Government for obtaining a formal order and therefore, any subsequent request regarding withdrawal of the resignation could have been operative as it was not submitted before the acceptance of the resignation by the appropriate authority.

40) As per the Opposite Party No.2, resignation of a Judicial Officer is a matter to be considered by the Hon'ble Full Court and that the resignation becomes effective when it is accepted by the accepting/appointing authority. In the case in hand on perusal of record and the Counter affidavit of Opposite Party No,2, we have already noted above that that the then Hon'ble Chief



Justice of the High Court of Orissa along with Opposite Party No.2 kept the Opposite Party No.1 the Principal Secretary to the Government in the Law Department of the State as well as the Hon'ble Governor of the State kept both of them in dark with regard to those subsequent developments regarding application dated 21.12.2022 of the petitioner withdrawing her resignation dated 29.11.2022 and order of the then Hon'ble Chief Justice of the High Court of Orissa dated 22.12.2022 directing a meeting of the Full Court of the High Court of Orissa for consideration of withdrawal of resignation of the petitioner. In the absence of such information regarding those subsequent developments, the Opposite Party No.1 obtained approval of His Excellency, the Hon'ble Governor of Odisha on 31.12.2022, whereby His Excellency accepted the resignation of the petitioner tendered on 29.11.2022 on the recommendation of the Hon'ble Full Court dated 20.12.2022 and thereafter on 02.01.2023 the Opposite Party No.1 issued the said impinged Notification relieving the petitioner from service. Since the subsequent developments were not informed by the Opposite No.2 and the then Hon'ble Chief Justice of the Hon'ble High Court of Orissa, therefore, we are of the opinion on 02.01.2023 the then Hon'ble Chief Justice of the High Court of Orissa cannot take the plea that as in the meanwhile, the Government in the Law Department of the State on the recommendation of the High Court dated 20.12.2022 had issued the Impugned Notification dated 02.01.2023 relieving the petitioner from Government service with immediate effect and since the petitioner's resignation has already been accepted by the Government issuing the Notification dated 02.01.2023 with immediate effect, though the matter was pending before the Hon'ble Full Court for consideration the said authority, unilaterally, could not have directed the Registry that the matter concerning the officer's request for withdrawal of her resignation need not be placed before the Full Court, though on 22.12.2022, the then Hon'ble Chief Justice of the High Court of Orissa directed a meeting of the Full Court of the High Court of Orissa for consideration of withdrawal of resignation of the petitioner. Further, in the case in hand, His Excellency the



Hon'ble Governor of the State of Odisha on 31.12.2022 on the recommendation of the High Court dated 20.12.2022 accepting the recommendation regarding resignation of the petitioner that is much before application dated 21.12.2022 withdrawing her resignation submitted on 29.11.2022.

41) From the above it is clear that on the date of issuing the impugned Notification dated is 02.01.2023 issued by the by the Principal Secretary to the Government in the Law Department, Government of Odisha. the petitioner was in Government service under the provisions of the Odisha Judicial Service Rules, 2007 and was serving at Hindol under Judgeship of Dhenkanal and on the basis of the said impugned Notification dated 02.01.2023, the petitioner was relieved from Government service w.e.f. 03.01.2023.

42) Records also reveals that vide No. CN/06/2023/134/S.G. dated 13.01.2023 the Personal Secretary to the Governor of Odisha wrote to The Principal Secretary to Government of Odisha Law Department, Bhubaneswar forwarding the representation of the petitioner dated 04.01.2023 submitted with the enclosures submitted to the Hon'ble Governor, Odisha by the petitioner Ex-Additional Civil Judge (JD)-cum-Hindol regarding the matter of her resignation from service, which is self-explanatory for kind appropriate attention and needful action. Thereafter, the Law Department, Government of Odisha on receipt of said letter No. 134 dated 13.01.2023 from the Personal Secretary to His Excellency the Governor of Odisha, the Under Secretary to the Law Department in the Government of Odisha by its letters dated 06.02.2023 forwarded the copies of the same to the Special Officer (Administration) High Court of Orissa, Cuttack as well as to the petitioner.

43) Record also shows that the Registry accordingly placed the letter No. 134 dated 13.01.2023, communicated by the Personal Secretary to His Excellency the Governor of Odisha, to the Principal Secretary to Government of Odisha Law Department, Bhubaneswar that was forwarded by the Under



Secretary to the Law Department in the Government of Odisha by its letter dated 06.02.2023 as well as the representations of the petitioner dated 03.01.2023, 11.01.2023, 27.01.2023 and 08.02.2023. Though the Registry on 28.03.2023 placed the said letter No. 134 dated 13.01.2023, communicated by the Personal Secretary to His Excellency the Governor of Odisha before the then Hon'ble Chief Justice High Court of Orissa, along with the representations of the petitioner dated 03.01.2023, 11.01.2023, 27.01.2023 and 08.02.2023; But the then Hon'ble Chief Justice, High Court of Orissa, Cuttack on 28.03.2023 observed that — there is no scope for further considering the matter and the Registry in terms of the said observation of the Hon'ble Chief Justice dated 28.03.2023 vide its letter dated 12.04.2023 informed the same to the Government in the Law Department in response to their letter dated 06.02.2023, noted above and thereby the then Hon'ble Chief Justice, High Court of Orissa, Cuttack on 28.03.2023 also closed the appeal/representation of the petitioner dated 04.01.2023 that she submitted before the Hon'ble Governor of Odisha that was received by His Office on 07.01.2023 pursuant to which the Personal Secretary to the Governor of Odisha on 13.01.2023 vide letter No. 134 wrote to The Principal Secretary to Government of Odisha Law Department, Bhubaneswar and accordingly the Under Secretary to the Law Department in the Government of Odisha by its letters dated 06.02.2023 forwarded the copies of the same to the Special Officer (Administration) High Court of Orissa, Cuttack forwarding the said appeal/representation of the petitioner dated 04.01.2023 of the petitioner, Ex-Additional Civil Judge (Junior Division)-cum-Sub-Divisional Judicial Magistrate., Hindol regarding the matter of her resignation from service.

44) It is to be noted here in that on perusal of the Holidays List of the year 2022 of the Hon'ble High Court of Orissa we found that Winter Holidays of the said High Court for the year 2022 was from 26.12.2022 (Monday) to 31.12.2022 (Saturday). Again on perusal of the Holidays List of the year 2022 of the Orissa



Civil and Criminal Courts we found that there was Winter Holidays for such Courts for the period from 28.12.2022 (Wednesday) to 31.12.2022 (Saturday).

45) From the counter affidavits of the opposite party Nos. 1 & 2 and the record made available before us it is clear that the under compelling situation and duress the petitioner had to submit her resignation on 29.11.2022. Firstly, the authority concerned of the opposite Party No. 2 did not finally disposed of the representation of the petitioner dated 05.09.2022. Secondly neither the Opposite Party No. 1 as well as 2 did not deny the fact that there is lack of provision to provide proper medical facilities and treatment and required therapy to a children suffering from Autism either at Dhenkanal or at Hindol or in their nearby areas. They also did not deny that there are no properly trained Therapists at Dhenkanal or at Hindol or in their nearby areas of to provide required therapy to a child suffering from Autism for which the petitioner could not provide the required treatment and therapy to her said autistic son, after her transfer to Hindol since July 2022 due to which health condition of the petitioner's son deteriorated. For the reasons above we are of the view that the resignation of the petitioner dated 29.11.2022 was not voluntary at all and it was under compelling situation and duress.

46) To regulate the grant of Pension, gratuity, and other retirement benefits to the persons on retirement from service in connection with the affairs of the State of Orissa, Government of Orissa, in the Finance Department in exercise of the power conferred by the proviso to Article 309 of the Constitution of India framed "*the Orissa Civil Services (Pension) Rules, 1992*" that was published in the Orissa Gazette on 09.03.1992 and it came into force w.e.f. 01.04.1992, as notified in the Orissa Gazette on 17.03.1992.

47) *However, said Rule 34(4) of the "Odisha Civil Services Pension Rules 1992"* of Government of Orissa, in the Finance Department has been recently amended vide Notification No. *FIN-CS3-PEN-0008-2024/15316/F, dated*



19.05.2025. As per the "Odisha Civil Services (Pension) Amendment Rules 2025" and the new 2025 amended Rule 34(4) of the "Odisha Civil Services (Pension) Amendment Rules 2025" reads As follows:-

"(4) The appointing authority may permit a person to withdraw his/her resignation in the public interest on the following conditions, namely:-

- (i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation ;*
- (ii) That during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;*
- (iii) That the period of absence from duty between the date on which the resignation became effective and the date on which the person applies for permission to withdraw the resignation is not more than 90 days; and*
- (iv) That the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.*

48) But Rule 34(4) of the "Odisha Civil Services (Pension) Amendment Rules 2025" will not be applicable in the present case as it was notified only on 19th May 2025 that is with prospective effect. Therefore, in the case in hand Rule 34 (4) of said "Odisha Civil Services Pension Rules 1992 will be applicable.



49) Rule 34 of said "Odisha Civil Services Pension Rules 1992" relates to "*Forfeiture of service on resignation*"— and Rule 34(4) of said 1992 Pension Rules reads as follows:

"34 (4) The appointing authority may permit a person to withdraw his/her resignation in the public interest where the officer wishes to withdraw it and that the resignation was tendered by the Government servant for some compelling reasons which did not involve in reflection on his/her integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of material change in the circumstances which originally compelled him/her to tender the resignation."

50) From the records of the case and notes placed before the then Hon'ble Chief Justice of Orissa High Court it is apparent that the petitioner is clear from the vigilance / Departmental angle as per the records available in the Office. Further from the letter of the Special Officer (Administration) I/C of this High Court dated 21.12.2022 received by the office of the Principal Secretary to the Government of Odisha in its Law Department received on 22.12.2022, noted above that it is clear that 1) No Departmental Proceeding or Vigilance case is either pending or contemplated against the petitioner and that (2) No dues of the Government or loans or interest accrued thereon are outstanding against her; (3) No License Fee is outstanding against the petitioner for Government accommodation; (4) There is no balance of House Building advance, conveyance or interest, outstanding against the petitioner; (5) No overpayment of pay or allowance including leave salary has been made in her favour; (6) No other Government dues are outstanding against her and (7) the petitioner was still continuing in Government Service as reported by the District and Sessions Judge, Dhenkanal on 21.12.2022. The opposite parties during the deliberation of the matter never at any point, place before the Court about any adverse



entry or against the petitioner or with her integrity or her efficiency. It is also not the case of the of the opposite parties that after submission of her resignation on 29.11.2022, she did not continue in the Government Service as Additional Civil Judge (Junior Division)-cum-S.D.J.M. at Hindol, under Judgeship of Dhenkanal nor that she remained absent from her duties on leave.

51) In the meanwhile, the learned Family Judge, Cuttack by its order dated 11.01.2023 dissolved the marriage of the petitioner. Now she is totally alone to look after her autistic son as there is no one in her family to provide care and treatment to him.

52) We are of the view that above are the material change in the circumstances which originally compelled the petitioner to tender her resignation on 29.11.2022 including the facts that the petitioner submitted a detailed representation before the Registrar (Administration) of this High Court through the District and Sessions Judge, Dhenkanal requesting the authority concerned to transfer her to the Headquarters station at Bhubaneswar for a required period of two and half (2 & ½) years for treatment of her autistic son, though in spite of her best efforts, she failed to provide proper medical treatment and required therapy to her only autistic son in her working place at Hindol due to lack of proper medical treatment facilities of a child suffering from autism and owing to non-availability of properly trained therapist to provide required therapy to an autistic child at Hindol or at Dhenkanal and its nearby areas since her transfer from Bhubaneswar in July 2022 for which his health condition deteriorated. For those reasons she requested the authority concerned to consider her case sympathetically and compassionately and to allow her to work in the Headquarters Station at Bhubaneswar in any post as per her eligibility for two and half (2 & ½) more years for treatment of her said autistic son. But the committee concerned did not give any heed to the petitioner's said representation dated 05.09.2022, nor considered it nor answered it or disposed of it finally.



53) To regulate the recruitment, training, and service conditions for higher / Superior Judicial officers' across the State, the Government of Odisha in exercise of the powers conferred by the proviso to Article 309 with Articles 233, 234 and 235 of the Constitution of India, in consultation with the Odisha Public Service Commission and with the High Court of Orissa framed the OSJS Rules, 2007 "for the higher / Superior Judicial Service of the State like in the Cadre District Judges etc. and also framed "The *OJS, Rules 2007*, for the Lower Judicial Services of the State like in the Cadre Civil Judges etc.

54) Article 233 of the Constitution of India provides for – Appointments of District Judges —

(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State,

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

55) Article 234 of the Constitution of India provides for – 'Recruitment of persons other than district judges to the judicial service, that provides' and reads as 'Appointment of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State'.

56) Article 235 of the Constitution of India provides for – 'Control over subordinate courts.— stating that "The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any



post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.”

57) Amongst others Rule 2 of OSJS Rules 2007 and OJS Rules 2007 did not define Appointing Authority excepting “Recruiting authority” under 2(g of said 2007 Rule) that means the Odisha High Court or the Odisha Public Service Commission as the case may be;

58) Rule 15 of said 2007 Rules relates to **“Recruitment of Civil Judges”**: - and reads as “Direct recruitment to the cadre Civil Judges shall be made by the Commission through a competitive examination which shall consist of three parts viz-preliminary written examination, Main written examination and interview conducted in the manner provided in these rules/and in accordance with the syllabus as specified in Appendix 'D'”.

59) Rule 16 of said OSJS rules, 2007 and OJS Rules 2007 relates to **“determination of vacancies”** and it provides that “The number of vacancies required to be filled up in the Cadre of Civil Judges from time to time shall be decided by the Government in consultation with the High Court and requisition shall be sent to Commission accordingly; (2) The Commission shall after receipt of requisition from the Government notify the number of vacancies required to be filled up and invite applications form from eligible candidates for recruitment under Rule15; (3) The process of recruitment shall be completed within a period of ten months from the date of issuance of advertisement”.

60) Rule 27 of the OSJS and OJS Rules, 2007 relates to **Forwarding of the list to Government.—** which reads as “The commission shall then forward to the Government in the Law Department the list of candidates prepared by them under rule 26 which shall contain names of candidates found suitable, equal to



the number of vacancies advertised by the commission along with the applications and attestation forms of the concerned candidates indicating therein whether any candidate belongs to Scheduled Caste or Scheduled Tribe or SEBC”.

61) Rule 28 of the OSJS and OJS Rules, 2007 relates to **“Formation of the select lists”**. — which reads as follows:

- “(1) The list so received from the Commission shall then be placed before the Government in Law Department for approval and after receiving the approval the same shall form the select list.
- (2) Appointment to the cadre of Civil Judges shall be made from the select list in the order, the names appear therein.
- (3) The select list, unless the Governor in consultation with the High Court otherwise decides, shall remain ordinarily in force for one year from the date of its approval by the Government under sub-rule (1).
- (4) Mere inclusion of names in the select list shall confer no right of appointment unless the Governor is satisfied after making such inquiry as may be deemed necessary that the candidate is suitable in all respects for being appointed to the service.”

62) As such from the conjoint reading of the provisions of Rules 15,16, 27 and 28 of the OSJS and OJS Rules, 2007 along with the Articles 233, 234 and 235 of the Constitution of India, it can be ascertained that it is the Governor of the State (Odisha) is the appointing and accepting authority to the cadre of Civil Judges under the Odisha Judicial Service Rules, 2007 and the High Court of Orissa is not the appointing authority to the cadre of Civil Judges under OJS Rules 2007.



63) Mr. M.K. Khuntia, learned counsel in support of his contention for the petitioner and placed reliance on the judgment of the Hon'ble Supreme Court in the Case of **Ms. X -Vrs.- Registrar General, High Court of Madhya Pradesh and another, reported in 2022 (14) SCC 187.**

64) On the other hand, Mr. Goutam Mishra, learned Senior Counsel in support of his contention for the opposite party No.2 placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of **Shriram Manohar Bandev -Vrs.- Utkranti Mandal and others, reported in 2024 SCC OnLine SC 647.** (Para 22 and 23)

65) On the perusal of the case of **Shriram Manohar Bandev** (supra), placed by Mr. Mishra, learned Senior Counsel, we found that the facts of the said case is totally different to the present case.

66) Law is well settled that the control vested in the High Court in Article 235 of the Constitution of India is over the conduct and discipline of the members of the Judicial Service. The High Court further deals under Article 235 with members of the Judicial Service in accordance with the Rules and Conditions of Service and the word "deal" points to disciplinary and not merely administrative jurisdiction. The order terminating the appointment of a member of the service otherwise than upon he is reaching the age fixed for superannuation will be passed by the State Government on the recommendation of the High Court. This is because the High Court is not the authority for appointing, removing, reducing the rank or terminating the service.

67) Disciplinary control means not merely jurisdiction to award punishment for misconduct. It also embrace the power to determine whether the record of a member of the service is satisfactory or not so as to entitle him to continue in service for the full term till he attains the age of superannuation. Administrative, judicial and disciplinary control over members of the Judicial Service is vested solely in the High Court.



68) The vesting of complete control over the Subordinate Judiciary in the High Court, gives the High Court power to take decisions relating to the Subordinate Judiciary, which is binding on the State. The Government will act on the recommendations of the High Court. That is the broad basis of Article 235 [emphasis supplied; **the State of West Bengal -Vrs.- Nripendra Nath Bagchi, (1966 (1) SCR 771)**].

69) The present case is not relating to compulsory retirement of the petitioner or any disciplinary proceedings against her or her premature retirement in the public interest.

70) In the case in hand from the record as well as the counter affidavit of the opposite party No.2, we have already noticed that the son of the petitioner since the year 2016 is suffering from autism. While she was posted at Bhubaneswar, she could provide proper medical treatment and therapy to her sick son. Because of such treatment and therapy as the petitioner's son health condition improved, accordingly, she submitted a representation before the authority concerned to the District and Sessions Judge, Khurda to allow her to continue her service in Bhubaneswar for treatment of her autistic son. But said representation of the petitioner was rejected in July, 2022 and she was transferred to Hindol as Civil Judge (Jr. Division)-cum-S.D.J.M. in the judgeship of Dhenkanal.

71) However, due to lack of proper medical treatment at Hindol, Dhenkanal and its nearby areas to a child suffering from autism and due to non-availability of properly trained therapist to provide required therapy to her autistic son, the petitioner since joining at Hindol in July, 2022 failed to provide such medical treatment and required therapy to her said son for which his health condition gradually deteriorated. As such the petitioner on 05.09.2022 submitted a representation before the Registrar (Administration) through the District and Sessions Judge, Dhenkanal requesting the authority to allow her to work in the



headquarters of Bhubaneswar for two and half years so as to provide proper treatment of her autistic son. Since the authority concerned neither considered nor informed the petitioner about her said representation dated 05.09.2022 and as in the meanwhile because of such lack of medical treatment of a child suffering from autism at Hindol, Dhenkanal and its nearby areas, health condition of petitioner's autistic son deteriorated further. From the record, we have already seen and noted above that the said representation of the petitioner dated 05.09.2022 was placed before the Standing Committee on 20.10.2022 and after discussion, it was deferred. Record reveals that after such deferment on 20.10.2022, the petitioner's said representation dated 05.09.2022 was never placed before the said Committee for its consideration and final decision. As the health condition of the petitioner's autistic son deteriorated further for her failure to provide medical treatment and required therapy at Hindol, having no alternative, the petitioner under such compelling situation and being in distressed condition and duress by an application dated 29.11.2022 through the District and Sessions Judge, Dhenkanal submitted a representation stating all the facts praying for her resignation from service in such distressed condition. We have seen that the Hon'ble Full Court on 20.12.2022 accepted the said recommendation of the petitioner and directed the Registry to place the matter before His Excellency of the Hon'ble Governor of Odisha for accepting the recommendation being the appointing authority. It is settled position of law that it is not open to the public servant to withdraw his/her resignation after it was accepted by the appropriate authority.

72) As noted above from the records, we have seen that the petitioner by filing application on 21.12.2022 had withdrawn her resignation submitted on 29.11.2022 and the said application of the petitioner dated 21.12.2022 withdrawing her resignation dated 29.11.2022 was placed before the then Hon'ble Chief Justice of the High Court of Orissa on 22.12.2022 and the said authority by its order dated 22.12.2022 directed the Registry to place the



matter before the Full Court for consideration of withdrawal of resignation by the petitioner. Such subsequent development was not placed before the Law Department of the State (opposite party No.1), the Principal Secretary to Government, Law Department of Odisha therefore the opposite party No.1 placed the matter before His Excellency of the Hon'ble Governor of Odisha for approval of the recommendation dated 20.12.2022 of the Hon'ble Full Court. Since the opposite party No.1 and His Excellency, the Hon'ble Governor of Odisha were kept in dark about the subsequent development noted above the said Hon'ble Authority on 31.12.2022 gave the approval of the recommendation of the Hon'ble Full Court dated 20.12.2022 by which the said Authority accepted the resignation of the petitioner tendered on 29.11.2022.

73) On the basis of such approval of His Excellency, the Governor of Odisha on 31.12.2022, the Principal Secretary to Government in the Law Department on 02.01.2023 relieved the petitioner from Government service with immediate effect, i.e. from 03.01.2023.

74) As the then Hon'ble Chief Justice of the High Court of Orissa on 22.12.2022 directed the Registry to place the matter before the Full Court for consideration of regarding withdrawal of resignation by the petitioner dated 21.12.2022.

75) Pursuant to the order of the then Hon'ble Chief Justice of High Court of Orissa dated 22.12.2022 the Registry on 02.01.2023 placed the matter before the said Authority for placing the matter before the Hon'ble Full Court relating to the application dated 21.12.2022 withdrawing her resignation submitted by the petitioner on 29.11.2022. But the then Hon'ble Chief Justice of High Court of Orissa considering that in the meanwhile the opposite party No.1 Principal Secretary to the Government of Odisha in the Law Department issued the said impugned notification dated 02.01.2023 was relieving the petitioner from her service on the recommendation of the Full Court dated 20.12.2022, the then



Hon'ble Chief Justice unilaterally came to a conclusion and directed the Registry not to place the matter before the Full Court as the petitioner is no longer in service.

76) From the records, we have seen that after 20.10.2022 the representation of the petitioner i.e. 05.09.2022 that was deferred by the said Committee was never been placed and left it without being unconsidered and unanswered by passing final decision on it. The record also reveals that said fact was not placed before the Hon'ble Full Court in its meeting held on 20.12.2022.

77) We have already held that the resignation of the petitioner submitted on 29.11.2022 was not voluntarily in nature but it was submitted under compelling situations and in duress involved. In the case of **Ms. X** (supra), the Hon'ble Supreme Court has held that the petitioner (mother) had to draw a balance between her duties as a judicial officer and as a mother. Here in this case, the petitioner was the lone person to look after her autistic son, who failed to provide proper medical treatment and therapy due to lack of such medical facilities at Hindol, Dhenkanal and nearby areas to treat a child suffering from autism. The petitioner's representation dated 05.09.2022 was never responded by the authority concerned (Standing Committee of the High Court), which was deferred by the said Committee on 20.10.2022 and was not considered even before the Full Court's recommendation dated 20.12.2022.

78) As the petitioner under compelling situation had to tender her resignation on 29.11.2022 and without placing the matter regarding her withdrawal before the Full Court, the then Hon'ble Chief Justice on 02.01.2023 unilaterally decided not to place the matter before the Full Court as in the meanwhile the petitioner by the impugned notification dated 02.01.2023 issued by opposite party No.1 has been relieved from Government Service i.e. with effect from 03.01.2023.



79) We have seen from the counter affidavit of the opposite party No.2 as well as the record placed before us, the impugned notification dated 02.01.2023 was issued by the opposite party No.1 as the said Authority, i.e. the Principal Secretary to State Government in the Law Department as well as His Excellency, the Hon'ble Governor of Odisha was not informed with the subsequent events that took place from 21.12.2022 i.e. the application of the petitioner withdrawing her resignation dated 29.11.2022, till the order of the then Hon'ble Chief Justice of High Court of Orissa dated 22.12.2022 by which His Lordship directed to place the matter before the Hon'ble Full Court for consideration of said application of the petitioner dated 21.12.2022 regarding withdrawal of her resignation dated 29.11.2022. Both the opposite party No.1 and His Excellency, the Hon'ble Governor of Odisha were not aware of those subsequent developments, for which, His Excellency, the Hon'ble Governor of Odisha on 31.12.2022, without being informed and without having any such knowledge of subsequent developments gave his approval on 31.12.2022 on the recommendation dated 20.12.2022 of the Hon'ble Full Court approving the acceptance of the resignation of the petitioner tendered on 29.11.2022, pursuant to which the opposite party No.1 issued impugned notification dated 02.01.2023 relieving the petitioner from service with immediate effect.

80) On the basis of the records placed before the Court by the opposite party No.2 and on our discussions made hereinabove, we hold and declare that the petitioner's resignation dated 29.11.2022 from the post of Additional Civil Judge (Junior Division)-cum-Sub-Divisional Judicial Magistrate, Hindol in the Judgeship of Dhenkanal submitted on 29.11.2022 cannot be construed as voluntary and further on the basis of our above discussions as well as records placed before us, we found that the said impugned notification issued by the opposite party No.1, Principal Secretary to the Government, Law Department vide No.VJ-102/2022-11/L dated 02.01.2023 relieving the petitioner from her



service with immediate effect, i.e. 03.01.2023 is bad in law and therefore, we set aside and quash the said notification.

81) On being enquired to Mr. Khuntia about no work no pay, the petitioner on 25.08.2026 submitted an affidavit stating that if she is allowed to join in her service, she will not claim any financial benefit for the period she did not render her service.

82) Consequently, the opposite parties are directed to reinstate the petitioner forthwith as Additional Civil Judge (Junior Division)-cum-S.D.J.M. however the petitioner shall not be entitled to any back wages. But the petitioner will be entitled for continuity of her service since 03.01.2023 with all other consequential service benefits w.e.f. 03.01.2023.

83) With the above observations and directions, this writ petition stands allowed. No order as to cost.

84) Original records produced in seal cover be re-sealed and be handed over to the Registrar General of this Court (opposite party No.2) for its needed custody and obtaining necessary acknowledgement from the said authority in that regard.

.....
Manash Ranjan Pathak, J.

Sibo Sankar Mishra, J. I agree.

.....
Sibo Sankar Mishra, J.



W.P.(C). No. 15819 of 2023

(An application under Articles 226 and 227 of the Constitution of India)

Ipsita Mohanty

.....

Petitioner

- Versus -

State of Orissa and another

.....

Opposite Parties

Additional reasoning given by Hon'ble Mr. Justice Sibbo Sankar Mishra

Sibbo Sankar Mishra, J. While respectfully concurring with the view expressed by my learned brother, I am allowing myself the liberty to supplement the verdict by adding the supporting reasons to justify the conclusion arrived in allowing the writ petition. The factual matrix of the case has been succinctly elaborated in the concurring judgment, hence for the sake of brevity and to avoid unnecessary repetition, I am not elaborating the same. However, in continuation of the concurring judgment, I intend to add the following points:

1) There is a distinct constitutional scheme governing resignation and withdrawal of resignation of Constitutional Judges and other judicial Officers. Supreme Court Judges resign under writing in their hand addressed to the President under Art 124 (2)(a) of the Constitution of India. High Court Judges do so addressed to the President under Art 217(1). In their cases resignation is an unilateral constitutional act which does not require acceptance. Once communicated to the President, operates *ex proprio vigore* (by its own force). The process is a self-terminating mechanism. But for the District Judges appointed under Article 233, other Judges appointed under Article 234 of the Constitution of India, subordinate Judicial service rules, the matter of resignation and withdrawal is governed by the Service Rules. As per service Rules Resignation letters are addressed to High Court through proper channel. In the absence of a constitutional, legal or contractual bar, a prospective



resignation can be withdrawn at any time it becomes effective and terminates the employment/office on formal acceptance by the Governor.

2) The Judicial officer is governed by The Orissa Superior Judicial Service and Orissa Judicial Service Rules 2007 as amended from time to time. The said Rules does not have specific provision for matters relating to Resignation. Rule 41 of the Rules provide as under:

"41. Applicability of Odisha Civil Service (C.C.A) Rules 1962 and the Odisha Service Code — The Provisions of rules 12,13, 14,15,16,17,18,19 & 20 of the Odisha Civil Services (Classification, control & Appeal) Rules 1962 and the Provisions of the Odisha Service Code shall mutatis and mutandis be applicable to members of the service and the powers under the said rules may be exercised by the High Court except the powers of dismissal, removal, reduction in rank or termination of service of Officer of the service which may be exercised by the Governor on the recommendation of the High Court.

46. Residuary Provision — The conditions of service of the members of the service to which no express provision is made in these rules shall be determined by the rules and order for the time being applicable to Officers of Indian Administrative Service in the State."

Odisha Service Code does not have a specific provision for resignation however The Odisha Civil Services Pension Rules 1992 deals with the issue in Rule 34, extracted hereunder:

"34. Forfeiture of service on resignation-

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another



appointment, whether temporary or permanent under the State Government where service qualifies.

"Provided that the employees, who have joined pensionable establishment under subsequent appointment in any other post in pensionable establishment under the State Government on or after 01.01.2005 by dint of technical resignation / proper permission from the authority shall continue to be governed under the provisions of this rule. (Vide Finance Department Notification No.24142/F, dtd.04.09.2015)

Provided further that the employees covered under the Contributed Provident Fund etc. scheme prior to 01.01.2005, shall, however, not to be entitled to this benefit w.e.f. dtd.01.01.2005.

(3) Interruption in service in a case falling under sub-rule (2) due to the two appointments being at different stations, not exceeding the joining time as permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

4) The appointing authority may permit a person to withdraw his resignation in the public interest where the officer wishes to withdraw it and that the resignation was tendered by the Government servant for some compelling reasons which did not involve in reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of material change in the circumstances which originally compelled him to tender the resignation.

(5) Request for withdrawal of resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up another appointment in or



under a private commercial company or in a Corporation wholly or substantially owned or controlled by the Government."

"Under a 2025 amendment, officers now get a 90 days window to withdraw resignation."

3) If we take the Residuary provision under Rule 46 of the The Orissa Superior Judicial Service and Orissa Judicial Service Rules 2007 and search for Rules applicable to IAS officers in the State, the All India Services (Death-cum-Retirement Benefits) Rules, 1958 and supplemental DoPT OMs has to be Rule 5 is extracted as under:

"5. Removal, Dismissal or Resignation from Service. –

5(1) No retirement benefits may be granted to a person who has been dismissed or removed from the Service or who has resigned from the Service:

Provided that, if the circumstances of the case so warrant the State Government may grant to a person who has been dismissed or removed from the Service a compassionate allowance not exceeding two-thirds of the retirement benefits which would have been admissible to him if he had been invalidated and not dismissed or removed from the Service.

*5(1A)(i) The Central Government **may permit a member of service to withdraw his resignation in the public interest** on the following conditions, namely :-*

*(a) that the resignation was tendered by the a member of service **for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him/her to tender the resignation;***



(b) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the member concerned was in no way improper;

*(c) that **the period of absence from duty between the date on which the resignation became effective and the date on which the member is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days;***

*(d) **that the post,** which was vacated by the member of service on the acceptance of his/her resignation or any other comparable post, **is available.***

(ii) Request for withdrawal of a resignation shall not be accepted by the Central Government where a member of service resigns his/her service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(iii) Request for withdrawal of resignation shall not be accepted by the Central Government where a member of the Service resigns from his/her service or post with a view to be associated with, any political parties or any organisation which takes part in politics, or to take part in, or subscribe in aid of, or assist in any other manner, any political movement or political activity or to canvass or otherwise interfere with, or use his/her influence in connection with, or take part in, an election to any legislature or local authority.

(iv) When an order is passed by the Central Government allowing a member to withdraw his/her resignation and to resume duty,



the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.

4) The core DoPT OM on Resignation OM No. 28034/25/87-Estt. (A) 11.02.1988 inter alia in Para 3 mandates as under:

*"2(i) Where the **Government servant concerned is engaged on work of importance and it would take time to make alternative arrangements for filling the post, the resignation should not be accepted straightway but only after alternative arrangements for filling the post have been made**".*

(ii)

"3. A resignation becomes effective when it is accepted and the Government servant, is relieved of his duties. If a -Government servant who had submitted a resignation, sends an intimation in writing to the appointing authority withdrawing his earlier letter of resignation before its acceptance by the appointing authority, the resignation will be deemed to have been automatically withdrawn and there is no question of accepting the resignation. In case, however, the resignation had been accepted by the appointing authority and the Government servant is to be relieved from a future date, if any request for withdrawing the resignation is made by the Government servant before he is actually relieved of his duties, the normal principle should be to allow the request of the Government servant to withdraw the resignation. If, however, the request for withdrawal is to be refused, the grounds for the rejection of the request should be duly recorded by the



appointing authority and suitably intimated to the Government servant concerned."

5) The above provisions clearly reveals that the constitution and the statutory provisions clearly make out a case for treating the resignation, its acceptance or withdrawal of the constitutional judges and other judicial officers differently which must be respected. While the resignation of a constitution Judge is not contingent on acceptance of resignation by the competent authority, the situation is different for judicial officers whose resignation, acceptance, withdrawal etc. are guided by different procedures and a resignation by a judicial officer becomes effective only when it is formally accepted by the competent appointing authority.

6) The principles have been aptly set out in Para 41 and 50 by the Hon'ble Supreme court in ***Union of India Vrs. Gopal Chandra Misra, (1978) 2 SCC 301*** as under:

*"41. The general principle that emerges from the foregoing conspectus, is that in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post, an intimation in writing sent to the competent authority by the incumbent, of his intention or **proposal to resign** his office/post from a future specified date **can be withdrawn by him at any time before it becomes effective, i.e. before it effects termination of the tenure of the office/post or the employment.***

XXXXXXX

XXXXXXX

XXXXXXX

50. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the



office-tenure of the resignor. This general rule is equally applicable to government servants and constitutional functionaries. In the case of a government servant/or functionary/who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under proviso (a) to Article 217(1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti, the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal.”

7) If the present case is considered on the anvil of the aforementioned position of law, the resignation given by the petitioner on 29.11.2022 having been withdrawn on 21.12.2022, much before the date of acceptance by the competent appointing authority, i.e., 02.01.2023, there was no valid letter of resignation before the competent authority to consider for acceptance and therefore the letter of acceptance is null and void and cannot be held to have terminated the employment. Further it is a fact that the judicial officer after



submitting her intention to resign, worked gainfully till 03.01.2023 and enjoyed her salary and perks. It is not in dispute that she withdrew her resignation much prior to its acceptance. It is not her fault that her timely withdrawal application was not processed by the recommending authority with the same haste with which it dealt with the Resignation application and she cannot be punished for the same particularly when she acted in consonance with statutory provisions and applicable guidelines in withdrawing the resignation before its acceptance. Approval of the resignation by the competent authority of the Hon'ble High Court and sending it for acceptance to the Governor/Government cannot be accepted as acceptance from appointing authority as in case of the Judicial officer, the appointing Authority is the Government.

8) Further it has not been established that she suffered any of the prescribed exceptional situations under the Rules of 2007 or the DoPT guidelines which could have led to the denial of her request to withdraw her resignation. In fact her personal situation of having a child requiring intensive and complex medical care due to a congenital life threatening ailment, created a compulsion to be posted at a place where such medical facility is available and her inability to ensure that for the treatment and survival of her son were the determinant factors for resigning the job. Real life situations are complex and each one fights his/her battles in unique ways. Her ruminations and second thoughts brought about by well-meaning people around her and the prospects of not getting a commensurate job of repute, respect and remuneration in near future which would have compromised both her survival and her ability to look after her child that led to her withdrawing the resignation would what a rational and prudent person would have done.

Therefore, the petitioner has rightly and timely withdrew her resignation, however, but for the intervening winter vacation, her withdrawal of the resignation could have been placed before the Full Court and could have been communicated to the Government. Further, to her misfortune, her resignation dated 29.11.2022 was resolved by the Full Court to be forwarded to the



government on 20.12.2022, just a day before she had withdrawn her resignation on 21.12.2022. In the factual conspectus of the present case, therefore, the writ petition has been rightly allowed.

.....
Sibo Sankar Mishra, J.

Manash Ranjan Pathak, J. I agree.

.....
Manash Ranjan Pathak, J.

Orissa High Court, Cuttack
The 10th September 2026/S.K.Parida/RKMishra/Ranjeeta/A.K.Kar