

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS. 5963-5964 OF 2021**  
**(Arising out of SLP(Civil) Nos.9302-9303/2019)**

State of Odisha & Ors.

....Appellant(s)

Versus

Arati Mohapatra

.... Respondent(s)

**J U D G M E N T**

**A.S. Bopanna,J.**

1. The Appellant-State of Odisha & others are before this Court in these appeals assailing the orders dated 20.03.2018 and 06.12.2018 passed by the High Court of Orissa in WP(C) No.22713/2014 and Review Petition No.230/2018. By the order passed in the writ petition, the learned Division Bench of the High Court has set aside the orders passed by the Odisha

Administrative Tribunal, Cuttack Bench in O.A. No.2699(C)/2006 and M.P. No.729(C)/2006.

2. The brief facts leading to the present round of litigation between the parties has the genesis in the selection process which was initiated in the year 1996 for recruitment of primary school teachers in government schools, in the State of Odisha. Through the resolution dated 12.03.1996 the procedure for recruitment was formulated and the selection process was initiated. Pursuant thereto a list consisting of 379 candidates selected for appointment was published on 31.01.1997. The name of the respondent herein was indicated at Serial No.301 and it had depicted that the respondent had secured 114.80 marks. The respondent was accordingly appointed as an Assistant Teacher in Singiri, in the Pay Scale of Rs.1080-30-EB-30-1800. The respondent no.1 had joined duty on 30.07.1997.

3. When this was the position a group of aggrieved unsuccessful candidates approached the State Administrative Tribunal (for short 'SAT') in O.A. No.2792(C)/1999 and analogous petitions alleging irregularities and foul play in the

selection process. The SAT having considered the same, accepted the contention of the applicants and through the order dated 24.01.2001 directed the recruiting authority to prepare a fresh select list category wise. Since the said process had not been completed, one of the applicants Ms. Prem Lata Panda filed a Contempt Petition No.382(C)/2001 before the SAT alleging non-compliance of the order dated 24.01.2001. The SAT, through the order dated 02.12.2004 directed that a fresh select list be prepared within four months. The appellants herein, in compliance thereto prepared a fresh selection list dated 15.12.2004 and the appointments made were withdrawn in order to comply with the order.

4. One Ms. Saillasuta Dei filed an application before the SAT in O.A.No.305/2005 impugning the action of the appellants in withdrawing the appointments and in that light sought for strict implementation of the order dated 24.01.2001 passed in O.A. No.2792(C)/1999 and analogous matters. In that view, the appellants appointed a Committee on 08.09.2006 to prepare a fresh merit list as also a re-select list of candidates which was accordingly prepared and approved on 17.11.2006. As per the

list the last of the candidate selected in the general category had secured 111.53 marks. The marks shown against the name of the respondent was 109.86 due to which the appellants contended that the respondent was not entitled to continue in service.

5. In that view, the respondent was terminated from service on 30.11.2006. The respondent claiming to be aggrieved by such termination filed an application before the SAT in O.A. No.2699(C)/2006. Certain other candidates who were terminated from service either due to the criteria of the difference in marks or due to the fabrication of documents had also approached the SAT making out a grievance with regard to the termination. The SAT having taken note of the rival contentions passed a common order dated 03.06.2014 wherein the O.A. No.2699(C)/2006 filed by the respondent herein was also disposed of. However, in the course of the order the SAT had taken note that the applicants before it have already been terminated from service because they filed forged certificates/documents and a vigilance case is pending. Hence, it ordered that a decision is to be taken after conclusion of the

vigilance case. In that view, it was observed that if the decision in the vigilance case goes in their favour they would be at liberty to approach the departmental authorities for redressal of their grievance relating to reinstatement.

6. The case of the respondent herein was also included in the above said order. Obviously, the said observation was an error insofar as the respondent is concerned since the termination of the respondent was not due to that reason but due to the difference in the marks which was noticed while preparing the fresh re-selection list. The respondent therefore filed a Review Petition in M.P.No.729(C)/2006 before the SAT which was disposed of by the order dated 21.10.2014. Though the said observation was deleted by the review petition, the SAT having taken note that the marks shown in the re-selection list against the name of the respondent being 109.88 as against what was originally shown as 114.80 marks, did not see reason to interfere with the termination order.

7. The respondent therefore claiming to be aggrieved by the order dated 03.06.2014 in O.A. No.2699(C)/2006 and the order dated 21.10.2014 in M.P. No.729(C)/2006 approached the High

Court in the abovestated writ petition. The High Court on taking note of the sequence of events, took into consideration the marks which was originally awarded to the respondent i.e., 114.80 marks, more particularly relying on the details of the minutes dated 31.01.1997 which was obtained by the respondent under the provisions of the Right to Information Act (for short 'RTI Act') wherein the name of the respondent appeared at Serial No.301 as she had been awarded 114.80 marks. The learned Division Bench of the High Court accordingly directed the appellants herein to treat the respondent as having secured 114.80 marks in the selection list and communicate a reasoned order to the respondent within three months. The review filed against the said order was dismissed keeping in view the limited scope available in review, rather than adverting to the contentions put forth on merit to seek review. It is in that light, the appellants being aggrieved are before this Court.

8. We have heard Mr. Sibbo Sankar Mishra, learned counsel appearing for the appellants, Mr. Ashok Panigrahi, learned counsel appearing for the respondent and perused the appeals

papers including the written submission filed on behalf of both parties.

9. The sequence of the events noted above and the series of litigation between the parties including the challenge to the original selection list by a group of unsuccessful candidates which led to the formation of a re-selection committee and the preparation of re-selected list after considering the matter afresh is not in serious dispute. Though the genesis for the earlier select list being cancelled and the re-selection list being published was the allegation made by the unsuccessful candidates in O.A. No.2792(C)/1999 and analogous petitions that there was foul play in the process, the fact that the select list has been re-arranged based on the marks obtained is evident from the facts narrated above. It is also undisputed that the respondent is not one of those candidates against whom an allegation is made with regard to the submission of fabricated documents for obtaining appointment. In fact this aspect is clear from the order dated 21.10.2014 passed by SAT in M.P. No.729(C)/2006. In the said order, the reason to justify the termination of respondent is taken note, which is that the

respondent had obtained 109.88 marks and was accordingly placed at the appropriate spot in the re-select list. The said marks was lesser than the last selected candidate in the general category, who had obtained 111.53 marks.

10. Against the above backdrop, it is noticed that the only reason for which the High Court has intervened and directed the appellants herein to consider the case of the respondent by reckoning the marks secured by her as 114.80 is by taking note of the information secured under RTI Act relied upon by the respondent, wherein the minutes dated 31.01.1997 indicated the marks obtained by the respondent as 114.80 marks and she was placed at Serial No.301.

11. The learned counsel for the respondent seeks to justify the conclusion reached by the High Court since according to him the information was obtained from the official files under the RTI Act and such information would justify that the respondent having obtained 114.80 marks is entitled to be selected, which action has been directed by the High Court to be taken by the petitioners herein.



12. The learned counsel for the appellants would, on the other hand, contend that the error in the conclusion reached by the High Court is due to the fact that the reliance was placed on the list which was prepared on 31.01.1997, the details of which were furnished under the RTI Act. Though that was the position in the list finalised on 31.01.1997, the same had been set aside by the SAT in O.A. No.2792(C)/1999 and due to the orders passed therein, subsequent thereto a re-selection list was prepared. In the said process the marks were correctly assigned wherein the marks obtained by the respondent in the viva voce was 14.40 which while added to her marks obtained towards matriculation of 44.42 marks and 51.04 marks in the competitive test, the total would add up to 109.86 and not 114.80 marks as claimed. Hence, it is contended that the High Court was not justified in its conclusion.

13. In the light of the above, the only question for consideration is as to whether the High Court was justified in taking note of the information merely because it was secured under the RTI Act, to be the basis for its conclusion. We are of the opinion that the High Court was not justified and had fallen

into error. This is for the reason that the information furnished under the RTI Act showing the name of the respondent at Serial No.301, having obtained 114.80 marks was the select list which was prepared for the first time, which was the subject matter of litigation; had been set aside and was therefore not reckonable. In the re-select list, the name of the respondent is shown at Serial No.474 having obtained 109.86 marks. The marks awarded by the three Selection Committee members in the Viva-voce is shown as 16;20.20 and 7, the total of which to be divided by 3 will work out to the average of 14.40 marks in Viva-voce. The same if added to the career marks of 95.46, the total would be 109.86 marks which is in consonance with the stand taken and contention put forth by the appellants.

14. Hence, all these aspects will reveal that, though it had been shown as 114.80 marks in the list which was finalised on 31.01.1997, when it is admitted that the said list had been set aside by the SAT accepting the allegations of the applicants therein that the list had not been appropriately prepared, neither the respondent nor the High Court ought to have placed reliance on the same when the re-selection list prepared afresh

was acted upon for appointment.

15. In that view, the order passed by the High Court cannot be sustained. The orders dated 20.03.2018 and 06.12.2018 passed by the High Court of Orissa in WP(C) No.22713/2014 and in Review Petition No.230/2018 are set aside. The appeals are accordingly allowed with no order as to costs.

16. Pending applications, if any, shall stand disposed of.

.....J.  
(M.R. SHAH)

.....J.  
(A.S. BOPANNA)

**New Delhi,  
September 27, 2021**