

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**WRIT APPEAL No.523 of 2020**

*(From the judgment dated 6<sup>th</sup> August, 2020 passed by learned Single Judge in Writ Petition (Civil) No.14345 of 2017)*

**Nihar Ranjan Tripathy** ..... **Appellant**

*Versus*

**State of Odisha and others** ..... **Respondents**

Advocate(s) appeared in this case:-

For Appellant : Mr. Susanta Kumar Dash, Advocate

For Respondents : Mr. Manoj Kumar Khuntia, A.G.A.  
(For Respondent Nos.1 & 2)

Mr. V. Narasingh, Advocate  
(For Respondent No.3)

**CORAM :**  
**THE CHIEF JUSTICE**  
**JUSTICE B.P. ROUTRAY**

**JUDGMENT**  
**06.09.2021**

**B.P. Routray, J.**

1. The judgment dated 6<sup>th</sup> August, 2020 of the learned Single Judge passed in Writ Petition (Civil) No.14345 of 2017 has been assailed in the present writ appeal.
  
2. The Appellant was the unsuccessful Writ Petitioner.

3. In the newly created establishment of Odisha Human Rights Commission (OHRC), Bhubaneswar, the post of Junior Stenographer was created on 24<sup>th</sup> April, 2003 when no prescribed guideline or rule was there for direct recruitment to the post in question. So in absence of any such provisions governing conditions of recruitment, the Petitioner was appointed on 29<sup>th</sup> August, 2003 by the OHRC directly without due process of selection. Neither was any advertisement made nor any competitive examination held for recruitment to the post. The Petitioner was straightaway appointed through formal interview for an initial period of one year which was extended from time to time.

4. The Odisha Human Rights Commission (Method of Recruitment and Conditions of Service of Officers and other staff) Rules, 2012 (hereinafter referred as “OHRC Rules, 2012”) came into force w.e.f. 4<sup>th</sup> January, 2013. Rule 4 of the said rules prescribes that, appointment to different categories of posts in the commission shall be made either by direct recruitment holding competitive examination, or by promotion, or by deputation. Rule 8 further prescribes that “*Notwithstanding anything contained in the provisions of these rules, the persons holding posts in the State Commission on the date of commencement of these rules either on direct recruitment or transfer on deputation basis and who fulfill the qualifications and experience laid down in these rules and who are*

*considered suitable by the Committee, shall be eligible for absorption in the respective grades.... ”*

5. After the OHRC Rules, 2012 came into force, the service of the Petitioner was regularized on absorption w.e.f. 16<sup>th</sup> November, 2013 in the regular scale of pay in terms of Rule 8 and periodical increment was also granted to him.

6. Subsequently in course of audit verification for the year 2014-15, the Office of the Accountant General, Odisha raised objection towards irregular regularization of the appellant through absorption. The said objection noted at para 20(A) of the audit report reads as under:

“Although OHRC is an autonomous body all the relevant Act/Rules Regulations as well as instructions issued by the Government are applicable to this organization also. In the instant case i.e. the absorption of Sri Nihar Ranjan Tripathy is irregular as he was not appointed according to the relevant rules or in adherence to Articles 14 and 16 of the Constitution of India and subsequently absorbed. Hence, the para is retained.”

Thereafter OHRC in their letter dated 13<sup>th</sup> July, 2017 directed that the Petitioner is not entitled to further increment in view of the audit objection that his appointment/absorption was irregular and he is liable for refund of excess amount of remuneration received. The Appellant

was further directed to repay an amount of Rs.4264/- . He challenged the audit objection in para 20(A) and subsequent order of the OHRC (Annexure 10 & 11 respectively) in the writ petition with a prayer to quash the same and further to regularize his service.

7. Learned Single Judge upon adjudication of the writ petition did not find any infirmity in the orders impugned before him, but so far repayment of Rs.4264/- is concerned, it was directed to effect the same only after compliance of the principles of natural justice.

8. It is submitted on behalf of the Appellant that learned Single Judge has committed error in failing to appreciate the principle that the process of recruitment prescribed in the OHRC Rules, 2012 cannot have the retrospective application and no prescribed provision for recruitment to the post was there at the time of appointment of the Appellant. Therefore it is wholly unsustainable to hold the regularization as irregular being violative of the rules. It is also submitted that no opportunity of hearing was granted to the Appellant against the audit objection.

9. It remains undisputed that the initial appointment of the Appellant-Petitioner in the Office of the Commission was without any process of

selection. The prayer for regularization of the Appellant-Petitioner has been rejected by the learned Single Judge on the ground that his appointment without following due recruitment process is violative of Articles 14 and 16 of the Constitution of India.

10. Now coming to the submission that the OHRC Rules, 2012 cannot be given retrospective effect to hold the initial appointment of the Appellant-Petitioner as irregular, it appears to be wholly misconceived. The reason being that at the time direct recruitment in the year 2003, even in absence of any specific rules prescribing the procedure, the authorities are expected to follow the fundamental principles enshrined in Articles 14 and 16 of the Constitution. The question is not about retrospective application of the rules, but regarding adherence of common standards of competitive examination. Perusal of the OHRC Rules, 2012 and the schedule appended thereto reveals the procedure for selection through competitive examination. Rule 8 thereof permits regularization by absorption either on direct recruitment or on deputation. The method of direct recruitment has been prescribed in Rule 6 read with the Schedule. When the initial appointment to the post has been made without following the method of competitive examination which is against the fundamental principles of recruitment, the subsequent regularization based on the same also becomes irregular.

and there cannot be any second opinion on this. So the learned single judge has rightly come to the conclusion that it is violative of Articles 14 and 16 of the Constitution of India. While regularizing through absorption on direct recruitment, it is the duty of the authority to see that the direct recruitment concerned has been made in accordance with the settled principles of law.

11. The learned Single Judge has discussed in detail the argument of the Appellant about his opportunity of a right of hearing before acting upon observation of the audit report, which is not required to be discussed here essentially to avoid repetition. In this regard, the learned Single Judge has also relied on the proposition of law propounded in the case of *Ravi S. Naik v. Union of India, AIR 1994 SC 1558* and *Malloch v. Aberdeen Corporation, 1971 (2) All ER 1278*. We concur with the approach and the conclusion of the learned Single Judge.

12. In the result, the writ appeal is dismissed.

(*B.P. Routray*)  
*Judge*

(*Dr. S. Muralidhar*)  
*Chief Justice*

*B.K. Barik, P.A.*