



IN THE HIGH COURT OF ORISSA, CUTTACK

AFR

W.P.(C) No. 23353 of 2023

*(In the matter of an application under
Articles 226 & 227 of the Constitution of India)*

1. *Sourava Rout*
2. *Biswajyoti Behera* *Petitioners*

-Versus-

1. *Odisha Legislative Assembly represented
through its OSD-cum-Secretary,
Odisha Legislative Assembly Building,
Bhubaneswar, Khurda*
2. *The State of Odisha represented
through its Secretary to Government,
Parliamentary Affairs Department,
Govt. of Odisha, Lok Seva Bhavan,
Bhubaneswar, Khurda* *Opp. Parties*

Advocates appeared in this case

- | | |
|----------------------------|--|
| <i>For Petitioners</i> | <i>: Mr. Subrat Misra,
Advocate</i> |
| <i>For Opp. Party No.1</i> | <i>: Mr. P.K. Nanda,
Advocate</i> |
| <i>For Opp. Party No.2</i> | <i>: Mr. Bibekananda Nayak,
Addl. Govt. Advocate</i> |

CORAM: JUSTICE SANJAY KUMAR MISHRA

Date of Hearing: 01.05.2026

Date of Judgment: 03.07.2026



S.K. Mishra, J. This Writ Petition has been preferred by the Petitioners assailing the order in Memo No.4581 (3)/L.A Bhubaneswar dated 21.07.2023 issued by the Selection Board of the Odisha Legislative Assembly Secretariat, vide which the entire selection process for recruitment to the posts of Reporters, pursuant to advertisement dated 26.01.2021, was cancelled resulting in denial of appointment to the Petitioners despite their selection.

2. The brief facts leading to the filing of the Writ Petition are that on 26.01.2021 an advertisement was issued by the Secretary, Odisha Legislative Assembly Secretariat, Bhubaneswar for recruitment to seven posts of Reporters. The Petitioner No.1 applied under UR category, whereas Petitioner No.2 applied under SC category. As per Notice No.3859/LA dt. 16.04.2021 of the Secretariat of Odisha Legislative Assembly, both the Petitioners, being duly selected in the Type Test held on 07.03.2021, were invited for the Short-hand Skill Test (English & Odia) and Viva Voce (Certificate verification) for the said posts, which was scheduled to be held on 19.04.2021 and 22.04.2021. As per selection Notice No.4641/LA dated 29.06.2021, the



names of the Petitioner No.1 and 2 found place at Serial Nos. 1 and 2 respectively.

2.1. Subsequently, the meeting of the Selection Board, scheduled on 04.10.2021 for approval of appointments, was postponed without any disclosed reason contrary to the Rules of the Orissa legislative Assembly Secretariat (recruitment and Conditions of Service) Rules 1983, shortly, 'the Rules, 1983'. Being aggrieved, the Petitioners earlier approached this Court in W.P.(C) No.31988 of 2021 seeking a direction for issuance of appointment orders. This Court, vide judgment dated 19.05.2023, directed the Selection Board to take a final decision regarding the appointment of the Petitioners in terms of the select list dated 29.06.2021 within eight weeks.

2.2. However, the Opposite Party No. 1 challenged the judgment dated 19.05.2023 passed in W.P.(C) No. 31988 of 2021 by filing W.A. No. 1458 of 2023. During the pendency of the said Appeal, the Selection Board passed an order dated 21.07.2023 cancelling the entire selection process and denying appointment to the Petitioners, which the



Petitioners came to know upon publication of the said order on the Notice Board and website of the Odisha Legislative Assembly Secretariat. Hence, this Writ Petition.

3. This Writ Petition has been filed basically on the grounds that, the action of the Selection Board in passing the order dated 21.07.2023 cancelling the selection process, despite the Petitioners being in the final select list dated 29.06.2021, is illegal, arbitrary and liable to be set aside, as a right had accrued in their favour in view of their selection in the select list dated 29.06.2021 so also the law settled in ***Dinesh Kumar Kashyap & others Vs. South East Central Railway***, reported in (2019) 12 SCC 798.

3.1. It is the case of the Petitioners that, the plea of absence of verification of original documents for cancellation is arbitrary, illegal and contrary to the completed selection process and earlier pleadings. Further, the impugned order of cancellation reflects non-application of mind and is vitiated by malice in law, particularly in view of the earlier judgment passed by the coordinate Bench holding the selection process to be fair. It is also the case of



the Petitioners that the Selection Board has overstepped its powers under Rule 7(2) and its proviso of the Rules, 1983.

4. The Opposite Party No.1, in its Counter Affidavit has stated that pursuant to the advertisement dated 26.01.2021 for recruitment to the posts of Reporters, though the Petitioners participated in the selection process and cleared all the tests and the Examination Committee recommended the names of the Petitioners to the Selection Board on 23.08.2021, but the Selection Board could not be convened, leading to filing of W.P.(C) No.31988 of 2021, which was disposed of with a direction to convene the Selection Board in terms of Rule 7(2) of the Rules, 1983. In compliance thereof, the Selection Board was convened on 21.07.2023 and, upon deliberation, cancelled the entire selection process and directed for issuance of a fresh advertisement.

4.1. It is the stand of the Opposite Party No.1 that mere inclusion in the select list does not confer any right on the Petitioners for appointment. The recommendation of the Examination Committee was subject to approval of the Selection Board and final approval of the Hon'ble Speaker,



which remained incomplete. Hence, no right was crystallized in favour of the Petitioners.

4.2. Further, the Selection Board, upon examining the records, found that original documents relating to the selection process were not available and noted the dissent of the Members of the Examination Committee, indicating serious irregularities and compromise of the sanctity of the process. Accordingly, it recommended the cancellation of the entire selection.

4.3. It is also the stand of the Opposite Party No.1 that the Examination Committee had disowned the selection process and the same never attained finality. The Petitioners were merely recommended candidates awaiting final approval of the Hon'ble Speaker. It is further stated that the father of one of the Petitioners was a member of the Examination Committee and, in view of the overall factual scenario, the Selection Board recommended cancellation of the entire selection process and issuance of a fresh advertisement to ensure a fair and transparent recruitment.



4.4. It is further stand of the Opposite Party No.1 that in public employment, the selection process must be fair, transparent and in consonance with Articles 14 and 16 of the Constitution of India, and any tainted process is liable to be discarded. In view of the settled legal position and the facts of the case, the action of the Selection Board in cancelling the selection process and directing fresh recruitment is just, proper and in accordance with law.

5. In response, a Rejoinder Affidavit has been filed by the Petitioners reiterating the averments made in the writ petition and denying the contentions raised in the Counter Affidavit. It has been contended that the Petitioners having successfully cleared all stages of the selection process and having been placed at Sl. Nos. 1 and 2 in the select list, their right to appointment stood crystallized and the subsequent decision of the Selection Board, cancelling the entire selection process, is arbitrary, illegal and contrary to the directions issued by this Court in the earlier Writ Petition.

5.1. It is the case of the Petitioners that, the order dated 21.07.2023 is contrary to the judgment dated



19.05.2023 passed in W.P.(C) No. 31988 of 2021, which has attained finality, and that reliance on the note of dissent is misplaced as its existence had been denied under RTI reply dated 27.07.2022 and no such plea was earlier taken.

5.2. It is further case of the Petitioners that, the plea regarding involvement of the Petitioner's father in the Examination Committee is false and has been taken for the first time in the present Counter Affidavit. Further, the selection process had already culminated in preparation of the select list upon completion of all stages, and only approval under Rule 7(2) remained, which the Selection Board was bound to grant, and if original records are not maintained by the Opposite Party, an adverse inference is liable to be drawn against it.

6. Learned Counsel for the Petitioners, reiterating the facts and grounds pleaded in the Writ Petition so also Rejoinder Affidavit, submitted that the plea of the Opposite Party that on a conjoint reading of Rule 7(2) and its proviso of the Rules, 1983, the selection process was completed on issuance of Notice No.4641/LA dated 29.06.2021 is



misleading. In view of the observation made vide the common Judgment dated 19.05.2023 passed in W.P.(C) No.31988 of 2021 and W.P(C) No.6171 of 2022 by the coordinate Bench, so also Judgments of the Supreme Court in ***Dinesh Kumar Kashyap*** (supra), so also in ***R.S. Mittal Vs. Union of India***, reported in 1995 Supp (2) SCC 230, a right had accrued in favour of the Petitioners for their appointment in the posts of Reporters.

6.1. Learned Counsel for the Petitioners, drawing attention of this Court to paragraph Nos.32, 33, 34, 46, 47 and 49 of the Judgment dated 19.05.2023 passed in W.P.(C) No.31988 of 2021, further submitted that as the Opposite Party No.1 filed Counter Affidavit in W.P(C) No.6171 of 2022 contrary to the earlier Counter Affidavit filed in W.P(C) No.31988 of 2021, where no allegations were leveled against the Petitioner Nos. 1 and 2, as reflected in common judgment dated 19.05.2023. That apart, vide letter dated 27.07.2022 under the Right to Information Act, it was stated that no such note of dissent was received nor available in records. Further, this Court vide common judgment dated 19.05.2023 in W.P(C) No.31988 of 2021,



upon calling for the original records, found no evidence of any “note of dissent” and recorded a clear finding that “no such note of dissent exists at least the same is not available on record”.

6.2. It was also submitted by the learned Counsel for the Petitioners that, the action of the Selection Board in cancelling the entire selection process, being contrary to the observations made by the coordinate Bench in W.P.(C) No.31988 of 2021, is illegal, arbitrary, suffers from non-application of mind and is vitiated by malice in law. Accordingly, learned Counsel for the Petitioners submitted that the impugned notice dated 21.07.2023 be set aside and necessary directions be issued for appointment of the Petitioners to the posts of Reporters.

6.3. Learned Counsel for the Petitioners referring to Rule 7(2) and its Proviso of the Rules, 1983 further submitted that the role of Selection Board of the Secretariat of Odisha Legislative Assembly in granting approval to the appointment of the Petitioners as Reporters is only formal in nature and should have been granted within a reasonable time of completion of the selection process,



which got completed on 23.08.2021 as per the memorandum of meeting of the Selection Board held on 23.08.2021 vide which it was proposed to recommend the names of the Petitioners for appointment as Reporters.

6.4. Mr. Misra further submitted that the impugned notice dated 21.07.2023 is illegal, arbitrary and struck by malice in law so also *res judicata*, as the findings of the learned coordinate Bench vide judgment dated 19.05.2023 passed in W.P.(C) No.31988 of 2021 attained finality on dismissal of W.A. No.1458 of 2023, preferred by the Odisha Legislative Assembly.

6.5. It was further submitted by Mr. Misra that though Odisha Legislative Assembly, being aggrieved by the judgment dated 19.05.2023 passed in W.P.(C) No.31988 of 2021, preferred W.A. No.1458 of 2023, during pendency of the said Writ Appeal, on the pretext of implementing the said judgment dated 19.05.2023 passed in W.P.(C) No.31988 of 2021, issued the impugned notice dated 21.07.2023 illegally, thereby cancelling the entire selection process for the posts of Reporters pursuant to the advertisement dated 26.01.2021. Accordingly, the said



Writ Appeal stood dismissed vide order dated 04.08.2023 as infructuous. Hence, such a decision, being contrary to the observations made so also direction given by the coordinate Bench, deserves interference.

6.6. Mr. Misra further submitted that one Satya Narayan Maharana, who was an unsuccessful candidate, preferred W.P.(C) No.6171 of 2022 challenging the selection of the Petitioners on the grounds of irregularity in selection process. The said Writ Petition also stood dismissed vide common judgment dated 19.05.2023 (supra), vide which the learned coordinate Bench, after calling for the concerned file, passed a detailed order observing therein that there is no procedural irregularity/ flaw in the said selection process. That apart, Satya Narayan Maharana also preferred W.A. No.1343 of 2023, challenging the common judgment dated 19.05.2023 passed in W.P.(C) No.31988 of 2021 and W.P.(C) No.6171 of 2022 and the said Writ Appeal also stood disposed of vide order dated 06.03.2024 as infructuous. Hence, the Opposite Party No.1 was not justified to issue the impugned notice dated



21.07.2023, thereby taking a decision to go for fresh recruitment for filling up the posts of the Reporters.

6.7. Mr. Misra further submitted that the stand of the Opposite Party No.1 that the Selection Board was free to take a decision on its own after being subjectively satisfied about the process has to be read in conjunction with the judgment dated 19.05.2023 rendered in W.P.(C) No.31988 of 2021 which has become final after dismissal of the W.A. No.1458 of 2023.

6.8. Learned Counsel for the Petitioners also submitted that the Selection Board was not justified to cancel the entire selection process on the ground of alleged non-availability of original records for verification, more particularly, after perusal of those records by the coordinate Bench and coming to a conclusion vide Judgment dated 19.05.2023 (supra) that there was no infirmity or illegality in the selection process. Further, in absence of original records for verification, adverse inference ought to have been drawn to the effect that there were no irregularities in the selection process.



6.9. To substantiate his submissions, Learned Counsel for the Petitioners relied on the Judgments of the Supreme Court in ***Union of India and another Vs. Ex-Major Sudershan Gupta***, reported in (2009) 6 SCC 298, ***IDBI Bank Ltd Vs. Ramswaroop Daliya and others***, passed in ***Civil Appeal Nos. of 2024*** arising out of ***SLP(C) Nos.8159-8160/23, K. B. Ramachandra Raje Vs. State of Karnataka***, reported in (2016) 3 SCC 422, ***Tej Prakash Pathak & others Vs. Rajasthan High Court and others***, reported in (2025) 2 S.C.C 1, ***Pratap Kishore Panda & others Vs. Agni Charan Das***, reported in (2015) 17 SCC 789, ***Public Service Commission, Uttaranchal Vs. Mamta Bisht & others***, reported in (2010) 12 SCC 204, ***M. J. Exporters Pvt. Ltd. Vs Union of India and others***, reported in (2021) 13 SCC 543, ***Mumbai International Airport(P) Ltd Vs. Regency Convention Centre***, reported in (2010) 7 SCC 417, ***Shankarsan Dash Vs. Union of India***, reported in (1991) 3 SCC 47 and ***State of Assam and others Vs. Arabinda Rabha and others***, reported in 2025 SCC OnLine SC 523.



7. Per contra, learned Counsel for the Opposite Party No.1, drawing attention of this Court to the observations and direction given by the coordinate Bench in W.P.(C) No.31988 of 2021, submitted that the Selection Board was convened on 21.07.2023 and cancelled the entire selection process and directed for issuance of fresh advertisement in terms of the direction given by the learned coordinate Bench.

7.1. Learned Counsel for the Opposite Party No.1 further submitted that inclusion of the name of the Petitioners in the select list does not confer any right to their appointment in the posts of Reporters. That apart, recommendation of the Examination Committee was subject to approval of the Selection Board and final approval of the Hon'ble Speaker. In view of the reasons detailed in the impugned notice, the same deserves no interference and the Writ Petition, being devoid of merit, deserves dismissal.

7.2. Learned Counsel for the Opposite Party No.1 submitted that the Selection Board repudiated the selection process due to grave deficiencies, including non-production



of the original records and the dissent notes of the Committee Members, which revealed serious misgivings and disownment of the process. The delay in raising such objections was not fatal, as the Examination Committee stage was only preliminary and the final stage involved scrutiny and approval by the Hon'ble Speaker under Rule 7(2) of the OLA (RCS) Rules, 1983. Since the learned Single Judge had passed an open remand order, the Selection Board was free to take a decision on its own after being subjectively satisfied about the process of selection and there is no illegality or infirmity in the said decision to cancel the selection process.

7.3. It was further submitted that, if the purity of the selection process is tainted even to the slightest degree, the process must be discarded, as public posts cannot be filled through a tainted selection process. In the present case, the dissent notes of all three Members of the Selection Committee reasonably and logically indicate that the selection process was tainted. Therefore, the action of the Selection Board in cancelling the selection process was just and proper.



7.4. To substantiate his submissions, learned Counsel for the Opposite Party No.1 relied on the Judgments of the Supreme Court reported in (1991) 3 SCC 47 (**Shankarsan Dash Vs. Union of India**) and 2025 SCC OnLine SC 523 (**State of Assam and others Vs. Arabinda Rabha and others**).

8. From the pleadings on record so also submissions made by the learned Counsel for the parties, the following issues emerge to be dealt in the present Writ Petition.

(i) Whether there was any procedural irregularity/flaw or illegality in the selection process for appointment in the posts of Reporters, thereby justifying its cancellation and taking a decision by the Selection Board vide the impugned notice dated 21.07.2023 at Annexure-7 to issue a fresh advertisement for filling up the posts of Reporters?

(ii) Whether the Selection Board was justified to cancel the selection process on the pretext of implementation of the direction given by the



coordinate Bench in its judgment dated 19.05.2023 passed in W.P.(C) No.31988 of 2021, despite observations made vide the said judgment that there is no procedural irregularity/flaw in the selection process for appointment in the posts of Reporters?

(iii) Whether the selection of the Petitioners and publication of the merit /select list, as recommended by the Examination Committee as well as Assembly Secretariat, created any legal right in favour of the Petitioners, there by justifying a direction from this Court for their appointment in the posts of Reporters?

9. Issue Nos.(i) and (ii), being interlinked, are dealt herewith together for the sake of brevity.

10. Admittedly, W.P.(C) No.31988 of 2021 was preferred by the Petitioners praying therein to direct the Opposite Party No.1 to issue appointment order in their favour for the posts of Reporters as per merit list/select list, as recommended by the Examination Committee as well as Assembly Secretariat. Per contra, W.P.(C) No.6171 of 2022



was preferred by one Satya Narayan Maharana, an unsuccessful candidate, praying therein to quash the entire selection process so also selection of the present Petitioners, who were arrayed as Opposite Party Nos.2 & 3 to the said Writ Petition . Both the said Writ Petitions were taken up and disposed of vide a common judgment dated 19.05.2023.

10.1. As is revealed from the common judgment dated 19.05.2023 passed in W.P.(C) No.31988 of 2021 and W.P.(C) No.6171 of 2022, the Opposite Party No.1 filed a Counter Affidavit in W.P.(C) No.31988 of 2021 detailing therein the entire selection process without any allegation regarding procedural irregularity or illegality in the said process. Rather, a positive stand was taken therein that though an attempt was made to convene a meeting of the Selection Board on 28.09.2021 and 04.10.2021, on both the occasions meeting was postponed. It was further stated that as per the provisions of Rule 7(2) of the Rules, 1983, appointment to the posts of Reporters can only be made in consultation with the Selection Board since the posts of Reporters are Class-II Post and such selection process can



only be completed with due approval of the recommendation of the Selection Board by the Hon'ble Speaker.

10.2. However, in W.P.(C) No.6171 of 2022 preferred by one Satya Narayan Maharana, a contrary stand was taken alleging therein the procedural irregularity so also decision taken by the Opposite Party No.1 to cancel the selection process to the posts of Reporters, without mentioning therein any specific reasons to arrive at such a conclusion to cancel the selection process. Hence, the coordinate Bench called for the records pertaining to the examination process pursuant to the advertisement dated 26.01.2021 issued by the Secretary, Odisha Legislative Assembly for examination and appointment of seven numbers of Reporters in Odisha Legislative Assembly . On careful and close scrutiny of the records as well as note sheets, it was observed that recruitment process has been conducted by following the Rules very meticulously .It was further held that the Opposite Parties have failed to prove a valid justification to cancel the selection process on the ground of sanctity and fairness of such recruitment process. Since



in the common judgment dated 19.05.2023 (supra), the Issue No-1 involved in the present lis has been vividly discussed and decided, instead of reiterating those facts on record, it would be apt to reproduce below paragraph Nos.28 to 34, so also paragraph Nos.40, 42, 43, 46 and 47 to 49 of the said judgment for the sake of brevity.

“28. Surprisingly, nowhere in the counter affidavit filed by the Opposite Party No.1 in W.P.(C) No.31988 of 2021 on 02.05.2022 there is no whisper with regard to note of dissension by the Examination Committee members. Although it has been alleged in the counter affidavit in the W.P.(C) No.6171 of 2022 that a note of dissent has been submitted by the Examination Committee members although the date of said note of dissent has not been mentioned, neither a copy of said dissent note has been annexed to the counter affidavit. In view of such confusion and two different stands taken in two different counter affidavits filed on behalf of the Opposite Party No.1, this Court is required to examine the issue further, Accordingly, this Court called for records pertaining to examination process pursuant to the advertisement under Annexure-1. On perusal of the record, pertaining to the entire selection process pursuant to Annexure-1, this Court observed that the note sheet dated 13.02.2014 reveals that several posts of Joint Secretary, Deputy Secretary reporting, Under Secretary reporting, reporter, were lying vacant and accordingly, the file was put up to fill up such vacant posts. Accordingly, steps were taken to fill up such posts and in fact, it appears that the some of the posts have been filled up in the meantime. On perusal of the note-sheet dated 20.11.2020, it appears that it has been noted that seven posts of reporters are lying vacant, keeping in view the requirement of the present day i.e. in which computer skill and higher qualification was inserted by amending the Rules 1983 with the concurrence of the Law Department vide amendment Rules, 2020. After obtaining



concurrence of Hon'ble Chief Minister as well as Hon'ble Speaker such rules were amended and notified on 20.01.2021 and same was published in the Odisha Gazette on the very same day. Accordingly, a draft advertisement was prepared for recruitment to the post of reporters. After due approval of the authorities, the advertisement was published in three daily leading newspapers fixing last date of receiving application on 10.02.2021. On further perusal of the note-sheet, it appears that with the approval of the Hon'ble Speaker, Examination Committee was constituted on 03.02.2021 which consists of the following members:-

1. Shri Matraj Dung Dung -Deputy Secretary
2. Smt. Sushila Mallick - Deputy Secretary
3. Sri Satyabrat Samal -Accounts Officer

29. Moreover, the note-sheet further reveals that total 127 numbers of applications were received pursuant to advertisement under Annexure-1 for appointment to the post of reporters. After scrutiny of the applications, it was decided to hold the recruitment test at College I.T. and Management Education, Mancheswar Industrial Estate, Bhubaneswar and accordingly, admit cards were issued to 76 candidates to appear in type writing test which was held on 17.02.2021. Vide note dated 02.03.2021, six Government officers were nominated to conduct such examination test. Noting 94 dated 4th of March, 2021 reveals that the case of Priyabrata Mohanty has been mentioned. The note-sheet further reveals that expert committee expressed their inability to discharge the responsibility bestowed on them on the ground that they are not having such experience to conduct recruitment test. Accordingly, Home Department was requested on 05.03.2021 to depute experts to conduct recruitment test of reporters. In response to the aforesaid request, the Home Department had deputed four numbers of Private Secretary to conduct the recruitment test and note-sheet further reveals that with regard to the interim order passed in the writ petition filed by the Priyabrata Mohanty, views of the Law Department was sought for from the Principal Secretary to law, who had given his opinion on 08.04.2021 by saying that the result of the candidates except, namely, Priyabrata Mohanty be not published while giving appointment one post shall be kept reserved and the same shall depend on final outcome of the writ petition.



30. Accordingly, one post of reporter UR category was kept vacant and decision was taken to continue with the recruitment process by conducting shorthand test and viva-voce test. The note-sheet dated 23.02.2021 reveals that names of two candidates in shorthand skill test was declared finally, names of both the petitioners were declared as successful candidates and accordingly they were called to attend the viva-voce test on 23.02.2021. Besides both the petitioners, Priyabrata Mohanty was also called upon to attend viva-voce test as per order dated 03.03.2021. The said order in the note-sheet also reveals that the examination related papers have been kept in a sealed cover. The note sheet also reveals that the decision not to publish the result of the petitioner no.1 as he belong to UR(M) category and further it was decided to go ahead and publish the result of the petitioner no.2 as she can be appointed against SC category post. Accordingly, the view of the learned Advocate General was also sought for. Note-sheet also reveals that the note of Deputy Secretary and the Chairman of the Examination Committee was also approved by the Hon'ble Speaker.

31. Noting dated 28.06.2021 of the Chairman of the Selection Committee reveals that the final result of the viva-voce test was kept in a sealed cover awaiting approval of the Hon'ble Speaker and further in another noting dated 29.06.2021, it has been mentioned that the Hon'ble Speaker desired to declare the viva-voce test reporters for the post of report and before such declaration, the views of the Legal Cell may be taken. Finally, completing the entire process vide noting dated 29.06.2021, the final result was up-loaded in the website of OLA. Thereafter, the subsequent note-sheet reveals that the meeting of the Selection Board was convened, however, the same was postponed. Note sheet dated 29.03.2021 reveals that the order dated 03.03.2022 dismissing the W.P.(C) No.8181 of 2022 had been received by the Opposite Party No.1 office. Finally, the Under Secretary to Law, vide his noting dated 28.09.2021 advised Opposite Party No.2 to place the result before the Selection Board for approval vide noting dated 28.09.2021 before the Hon'ble Speaker in the meeting of the Selection Board convened on 04.10.2021.

32. While this was the position, note-sheet dated 06.04.2022 reveals that one Satya Narayan



Maharana, the petitioner in W.P.(C) No.6171 of 2022 filed a writ application challenging the selection of the petitioners wherein this Court as an interim measure directed any appointment made shall be subject to the final outcome of the writ application. Accordingly, the aforesaid order has been taken note of. Now comes an important note-sheets dated 15.11.2022 prepared under the signature of OSC-cum-Secretary, the said note is marked "Confidential". Further the same reveals that discussion took place with regard to alleged irregularities, infirmities pointed out by Chairman and members of the Examination Committee on 28.09.2021, which was constituted for conducting recruitment test and to recommend the selected candidates for appointment as reporters in OLA. The Chairman of the Selection Committee, namely, Shri Matraj Dung Dung had retired by then as Deputy Secretary. It has also been mentioned that member of the Examination Committee complained before the Hon'ble Speaker on 28.09.2021 pertaining to selection process to the posts of reporters. Finally, in the said note-sheet, it has been expressed that to maintain integrity and sanctity in the selection process, the selection process in respect of reporters post basing on advertisement dated 29.06.2021 may be considered as cancelled. **On perusal of the note-sheet dated 15.11.2022, this Court observed that note of dissent submitted by the members of the Examination Committee could not be produced before this Court. Further same does not find place in the entire record. Even accepting for the sake of argument that there was note of dissent in the record till 15.11.2022, on 15.11.2022, for the first time, the note of dissent findings mention in the note-sheet that too without a copy of such note of dissent being part of the record. Moreover, without conducting a formal enquiry with regard to such, a decision was taken hastily on one date to recommend for cancellation of the advertisement. Although view of the Law Department was sought for, however, noting of the then Principal Secretary, Law Department dated 15.11.2022 reveals that in view of the communication dated 29.08.2021, he had advised to enquire into recruitment process and to fix responsibility on the persons involved. On perusal of the note-sheet of the Principal**



Secretary, Law Department, it appears that he has not discussed the note of dissent dated 29.08.2021, rather he has not even mentioned the word “note of dissent” in the said note-sheet. However, in view of the communication dated 29.08.2021, he had advised to conduct an enquiry into recruitment process. As advised by the learned Principal Secretary to Law, file was placed before the Hon’ble Speaker and in his noting, the Hon’ble Speaker recommended for taking the views of the Advocate engaged for the OLA Secretariat and further to take leave of the Court at the earliest for cancellation of the recruitment process. On the opinion of the learned Advocate appearing for the OLA, a decision was taken to cancel the selection process to the post of reporter which was initiated under Annexure-1 although no specific reasons has been indicated and no justification has been given in arriving at such a conclusion to cancel the selection process at Page-122 of the note-sheet i.e. noting from 196 reveals that instruction was received from the Hon’ble Governor’s Secretariat dated 19.08.2021 for taking necessary action in the matter to furnish a report to the Hon’ble Governor is Secretariat relating to the recruitment of reporters in OLA. The allegations made by such representationist have been noted in the said note-sheet.

33. It is, at this stage, the note-sheet of the file discussed about the order passed by this Court for production of record. In the note-sheet after the order passed by this Court Deputy Secretary called for the records, since he did not get information from the Deputy Secretary which was decided to be kept in a hard file and in a sealed cover. With regard to original note of dissent aforesaid note no.191 reveals that OSD-cum-Secretary has noted in the file that the original note of dissent was received by him and the same was forwarded to Smt. Baijayanit Pattanaik, Under Secretary of the establishment branch. **However, it has been finally stated that the original note of dissent is not available/found in the branch and as such, it was presumed that the original note of dissent dated 29.08.2021 is with Smt. Baijayanti Pattanaik, Deputy Secretary. She was directed to submit the original note of dissent. Note no.212, reveals**



that the Ex-Deputy Secretary Shri Matraj Dung Dung, Chairman of the Examination Committee, who has retired in the meantime, has submitted that not a single piece of paper is available with him or with any member of the Examination Committee as he is not the custodian of such papers. Further it reveals that the suspicious circumstance relating to the examination as alleged by the Chairman of the Examination Committee, who has submitted note of dissent on 29.08.2021 before the Hon'ble Speaker, such note of dissent was submitted before the Hon'ble Speaker on 29.08.2021. Interestingly, the above named Smt. Baijayanti Pattanaik, to whom it is stated that the note of dissent was handover in her reply to memo dated 19.01.2023 has stated that she was on leave on 29.08.2023 (sic) for funeral ceremony of her father, who had passed away on previous night. As such, she has not received the original note of dissent nor she was dealing with the file in the matter.

34. In view of the aforesaid analysis of the entire note-sheet, pertaining to the record which was produced before this Court, this Court is of the considered view that the same raises more questions than answers to the issues raised in the writ application. **Moreover, this Court observes that the original note of dissent does not exist as Smt. Baijayanti Pattanaik, who has been allegedly received the note of dissent marked to her, stated that she was on leave on that particular date. Moreover, a careful scrutiny of the entire record reveals that although the entire selection process was concluded in a hassle free manner in note dated 29.08.2021 and the names of the selected candidates uploaded in the website of OLA, there was no objection with regard to selection process at least no such discussion was found in the note-sheet of the file.** It is for the first time in November, 2022 discussion with regard to note of dissent further even accepting that there were irregularities in the examination process, till November, 2022. **Had that been so, the illegality or irregularity should have brought to the notice of the authorities forthwith otherwise the delay in reporting would definitely reduce the credibility and importance of such allegation. Considering the**



fact that the note of dissent was discussed for the first time in the note-sheet of November, 2022, there is a delay of more than one year. Such delay cannot be simply brushed aside by this Court, particularly when, such time gap so large that the same could be an afterthought and as such questioning the selection of the selected candidates has become more doubtful. Besides such delayed discussion reduced the credibility of any kind of dissent or allegation with regard to recruitment process. Moreover in the absence of any clarity coupled with the fact that no enquiry having been conducted on such allegation by the authorities before coming to the conclusion to cancel the recruitment process, complex this Court to believe that such belated discussion on the dissent note is an afterthought to nullify the recruitment process. Most importantly, the relevant document, i.e. note of dissent, as it appears from the record, has not seen the light of the day. **Therefore, this Court asked itself a question as to how far it would be justified to take cognizance of such a note of dissent which finds not mentioned in the note-sheet from 28.09.2021 to November, 2022. Further this court is of the view that had the Selection Board meeting been conducted in due time, the petitioners would have been appointed by now. In such view of the matter, this Court has no hesitation in coming to a conclusion that no such note of dissent exists at least the same is not available on record despite the best attempt by the Secretariat of OLA to trace the same out. Hence, the same shall not be taken into consideration while deciding the present case.**

xxx

xxx

xxx

40. Learned senior counsel appearing for the Opposite Party No.1 did not controvert the factual aspect much in course of his argument, however, by referring to the note of dissent dated 29.08.2021, he submitted that a decision has been taken keeping in view the sanctity and fairness of the recruitment process to cancel the recruitment test. **In course of his argument, he did not assail the recruit process up to final publication of the selected candidates and he also did not submit Rules, 1983 has been violated in any manner. The entire**



focus of Mr Palit, learned senior counsel's argument was to defend the conduct of the Opposite Parties, in taking a decision to cancel the recruitment process and the entirely based on the note of dissent and the allegation made against the said recruitment process. However, **Mr. Palit, learned senior counsel in course of his argument very fairly submitted that the copy of the so-called dissent is not available on record which fact is also evident from the record produced before this Court pursuant to the direction of this Court. He also did not dispute the memorandum dated 23.08.2021 of the Selection Board wherein the Examination Committee recommended the name of the petitioners in order of merit for appointment as reporters and accordingly, the Secretary, OLA had convened a meeting of the Selection Board.** Of course, that meeting never took place and the same was being postponed from time to time. So far the factual aspects of the matter as argued by Mr. Palit, learned senior counsel is concerned, the same needs no elaborated discussion here as this Court has already elaborately discussed the entire note-sheet of the record which were placed before this Court.

xxx

xxx

xxx

42. Mr. Palit, learned senior counsel further took a plea that the writ petition is not maintainable on the ground (I) the same is premature as the selection process to the post of reporter is not over (II) no court can direct the authorities to execute the select list which has not been finalized by following the due process of selection and as per the governing rules.

43. While analyzing the said two grounds, this Court is of the considered view that it is true that the selection process is not yet over as the same is to be finalized by the Hon'ble Speaker in consultation with the Selection Board as per Rule 7(2) of the Rules 1983. However, in view of the settled position of law, this Court can always direct the authorities to expedite and to conclude the selection process in view of the fact that such selection process is a statutory one and the same has to be carried out by following the rules, 1983. Moreover, as a public body guided by the rule of law, the Opposite Parties cannot take the plea that there is no obligation to



conclude the selection process within a stipulated period of time. Even otherwise also this Court on examination of records found that there are several posts of reporters which are lying vacant at the moment as a result of which the work of Legislative Assembly is likely to be affected adversely. Therefore, this Court in larger public interest have always issued a mandamus exercising of jurisdiction conferred under Article 226 to direct the authorities to conclude the selection process strictly in terms of rules governing such selection process. **Therefore, such argument of Mr. Palit is bound to fail.**

46. Additionally, learned senior counsel appearing for the Opposite Parties argued that Article 14 and 16 of the Constitution of India mandates that the selection process has to be conducted in a fair, transparent and accountable manner. Irregularities and illegalities of process of recruitment deprives the genuine candidates of an equal opportunity to participate in the recruitment process and to be appointed to the posts. Therefore, the same definitely affects the rights of the candidates as contained in Article 14 and 16 of the Constitution of India. Therefore, he submitted that sanctity of the recruitment process can never be compromised. In considering such argument of Mr. Palit, this Court has no other opinion that the argument advanced by Mr. Palit is based on facts or allegation of irregularities in the selection process and on presuppositions of a scenario that irregularities and illegalities have been committed in the recruitment process. **This Court, on detailed analysis of facts as well as records found that there is no record to show that there exists any illegality or irregularity in the selection process. His entire argument on irregularity and illegality based on a note of dissent which was not even available on record and the same was never produced before this Court despite specific direction. Moreover, no attempt was ever made to conduct an enquiry in the matter. Therefore such a ground is not available to him to be taken in the facts and circumstances of the present case.**

47. The last plank of argument of learned senior counsel appearing for the Opposite Party No.1 is that in view of the fact that the purity of the selection process to public posts as mandate under Section 16



of the Constitution of India cannot be compromised. Alternatively purity in the selection process discovered in the slightest manner the procedure is to be discarded and such post cannot be filled up by following a tainted process of selection. He further submitted that there is enough material on record to show that the selection process is tainted. This Court upon a careful consideration of the aforesaid contention of Mr. Palit is of the considered view that the proposition of law advanced by him is a settled position of law and the same cannot be denied. **So far purity of examination process is concerned; the principle of law argued by Mr. Palit shall have application depending on the facts and circumstances of each case. So far the present case is concerned, the record does not reveal any irregularity or illegality on the contrary, a note of dissent has been referred to in the note-sheet whereas the said note of dissent was neither produced before this Court nor the same is available on record. Other than, such allegation, there is no materials which would impeach the fairness and the transparency of selection process which in fact was sought to be defended by filing the counter affidavit in W.P.(C) No.31988 of 2021 although a different counter affidavit has been filed in W.P.(C) No.6171 of 2022. On a careful and close scrutiny of the records as well as note-sheet this Court also observed that the recruitment process has been conducted by following the rules very meticulously and accordingly names were finally up-loaded on 28.09.2021. The note of dissent which was discussed for the first time in November, 2022 is more than one year after the final select list was published.**

48. In such view of the matter, this Court has no hesitation to come to a conclusion that the Opposite Parties have failed to produce any material to impeach fairness and impartiality of the selection process. However, while observing so, this Court is also view that the recruitment process which was started pursuant to the advertisement under Annexure-1 is still incomplete as the requirement of Rule 7(2) of Rules, 1983 has not been completed. As such no mandamus could be issued at this juncture to give appointment to the petitioners.



49. In view of the aforesaid analysis of facts as well as law, this court is of the considered view that the Opposite Parties have failed to provide a valid justification to cancel the selection process on the ground of sanctity and fairness of such recruitment process. Moreover, the documents or the note of dissent basing on which such allegations were made have not yet seen the light of the day and the same was never produced before this Court despite specific direction by this Court. Therefore, this Court is well within its discretion to draw an interference that such a document never existed. Moreover, no steps whatsoever having been taken to conduct any sort for enquiry to find out the veracity of such allegation made by any of the unsuccessful candidates. As a result this Court has not hesitation to hold that the opposite parties have failed to provide any valid/legal justification in coming to a conclusion to cancel the recruitment process after almost one and half years after the final select list was recommended by the Examination Committee. Accordingly, this Court directs the Opposite Party No.1 to immediately convene a meeting of the Selection Board in terms of Rule 7(2) of Rules, 1983. The names of the selected candidates which were up-loaded in the website of OLA dated 28.09.2021 be placed before such Selection Board. Thereafter, necessary action be taken by the Opposite Party No.1 pursuant to the decision of the Selection Board and the Hon'ble Speaker within a period of eight weeks from the date of communication of a copy of this judgment. It is further made clear that in the event the Selection Board gives its concurrence to the list of selected candidates, then the Opposite Parties shall do well to giving the petitioners appointment against the posts of reporters pursuant to the advertisement under Annexure-1.

(Emphasis supplied)

11. As is revealed from the said findings of the coordinate Bench in judgment dated 19.05.2023 (supra),



not only W.P.(C) No.6171 of 2022 was dismissed vide the said common judgment, but also a direction was given to the Opposite Party No.1 to place the names of the selected candidates (Petitioners) before the Selection Board, which were uploaded in the website of Odisha Legislative Assembly dated 28.09.2021, and to take necessary action pursuant to the decision of the Selection Board and the Hon'ble Speaker within a period of eight weeks from the date of communication of a copy of the said judgment. It was made clear that if the Selection Board gives its concurrence to the list of selected candidates; the Opposite Parties shall do well to give appointment to the Petitioners against the posts of Reporters pursuant to the advertisement dated 26.01.2021.

11.1. Admittedly, being aggrieved by such findings so also direction given by the coordinate Bench in W.P.(C) No.31988 of 2021, the Opposite Party No.1 preferred W.A. No.1458 of 2023, whereas Satya Narayan Maharana (Petitioner in W.P.(C) No.6171 of 2022), preferred W.A. No.1343 of 2023. Both the Writ Appeals were dismissed/disposed of on 04.08.2023 and 06.03.2024



respectively as infructuous, thereby confirming the common judgment dated 19.05.2023 passed in W.P.(C) No.31988 of 2021 and W.P.(C) No.6171 of 2022.

11.2. Further, without any application seeking leave of the Court to cancel the selection process on the ground of procedural irregularity, as was suggested by the Hon'ble Speaker, Odisha Legislative Assembly vide his note sheet dated 17.11.2022, as suggested vide note sheet dated 15.11.2022 of the Principal Secretary to Government (I/c), Law Department, Bhubaneswar, on the plea of implementation of the said judgment dated 19.05.2023(supra), that too during pendency of the Writ Appeal No.1458 of 2023, the impugned notice was issued thereby compelling the Petitioners to approach this Court again in form of present Writ Petition.

11.3. Admittedly, prior to the date of dismissal of W.A. No.1458 of 2023 on 04.08.2023, the impugned notice dated 21st July, 2023 had already been issued by the O.S.D-cum-Secretary to the Hon'ble Acting Speaker of the Odisha Legislative Assembly and the Petitioners had already preferred the present Writ Petition on 24.07.2023. Hence,



on bringing the said fact to the notice of the Division Bench of this Court on 04.08.2023, the learned Counsel for the Petitioners, who was also representing them in W.A. No.1458 of 2023, they being arrayed as Respondents, fairly conceded before the Division Bench that, in view of the cancellation of the entire selection process, even though it was illegal and under challenge in the present Writ Petition, the Writ Appeal has become infructuous. Accordingly, the Writ Appeal stood dismissed as infructuous vide order dated 04.08.2023, which has been annexed to the Counter Affidavit of the Opposite Party No.1 as Annexure-B/1 to demonstrate before this Court as if the present Petitioners conceded to such illegal action of the Opposite Party No.1 for cancellation of the entire selection process for the posts of Reporters pursuant to the advertisement dated 26.01.2021.

11.4. As is revealed from the impugned notice dated 21.07.2023, as at Annexure-7 to the Writ Petition, though the Selection Board took note of the judgment dated 19.05.2023 (supra) , but contrary to the observations made vide the said judgment, it was



observed that it is not appropriate to recommend the names of the Petitioners for appointment to the posts of Reporters of Odisha Legislative Assembly Secretariat in the absence of any verification or even perusal of the original documents relating to the recruitment examination of Reporters. The relevant paragraphs of the impugned notice dated 21.07.2023 are reproduced below for ready reference.

“AND WHEREAS, the Selection Board having perused the judgment dated 19.05.2023 of Hon’ble High Court of Orissa passed in WP(C) No.31988 of 2021 and WP(C) No.6171 of 2022 observed that it is not appropriate to recommend the names of the petitioners for appointment to the post of Reporters of Odisha Legislative Assembly Secretariat in the absence of any verification or even perusal of the original documents relating to the recruitment examination of Reporters pursuant to the advertisement dated 26.01.2021. On an overall consideration of the factual scenario, the Selection Board recommended that the entire selection process for the posts of Reporters pursuant to the advertisement dated 26.01.2021 be cancelled and a fresh recruitment be conducted in a transparent and fair manner. AND WHEREAS, on 19.07.2023 the Hon’ble Acting Speaker has approved the minutes of the meeting of the Selection Board for cancellation of the entire selection process for the posts of Reporters pursuant to the advertisement dated 26.01.2021.”

(Emphasis supplied)

11.5. As is further revealed from the aforesaid paragraphs, the only reason for not recommending the



names of the Petitioners by the Selection Board was absence of any verification or perusal of the original documents relating to the recruitment examination of Reporters so also recommendation of the Selection Board for cancellation of the entire selection process for the posts of Reporters and approval of such recommendation by the Hon'ble Acting Speaker on 19.07.2023.

11.6. In view of the findings of the coordinate Bench in its common judgment dated 19.05.2023, as extracted above, which attained finality on dismissal of the W.A. No.1458 of 2023 preferred by OLA, so also disposal of W.A. No. 1343 of 2023 preferred by Satya Narayan Maharana and dismissal of W.P.(C) No.8181 of 2021 on 03.03.2021 preferred by one Priyabrata Mohanty challenging the eligibility criteria for selection and appointment to the posts of Reporters, this Court is of the view that the Opposite Party No.1-Odisha Legislative Assembly was not justified to cancel the selection process for appointment in the posts of Reporters pursuant to the advertisement dated 26.01.2021 and take a decision to issue fresh advertisement for filling up such posts and such action of the Opposite Party No.1



is hit by the principle of *res judicata* and deserves interference. In view of such findings of this Court, Issue Nos. (i) & (ii) are answered accordingly in favour of the Petitioners.

12. So far as Issues No (iii), law is well settled that mere selection does not give any vested right to the selected candidate to be appointed. At the same time, law is also well settled that when a large number of posts are lying vacant and the selection process having been followed, the employer must satisfy as to why it did not consider appointing the selected candidates. Just because discretion has been vested with the Authority, it does not mean such discretion can be exercised arbitrarily. Law is also well settled that when the employer is the State, it must give some justifiable non-arbitrary reason for not filling up the post and it is bound to act according to Article 14 of the Constitution. It cannot, without any rhyme or reason, decide not to fill up the post. It must give some plausible reason for not filling up the posts. Though the Courts would normally not question the justification but the justification must be reasonable and should not be an



arbitrary, capricious or whimsical exercise of discretion vested in the State.

13. In **Dinesh Kumar Kashyap** (Supra), the Supreme Court held as follows:

*“6. Our country is governed by the rule of law. Arbitrariness is an anathema to the rule of law. When an employer invites applications for filling up a large number of posts, a large number of unemployed youth apply for the same. They spend time in filling the form and pay the application fees. Thereafter, they spend time to prepare for the examination. They spend time and money to travel to the place where written test is held. If they qualify the written test they have to again travel to appear for the interview and medical examination, etc. **Those who are successful and declared to be passed have a reasonable expectation that they will be appointed. No doubt, as pointed out above, this is not a vested right. However, the State must give some justifiable, non-arbitrary reason for not filling up the post. When the employer is the State it is bound to act according to Article 14 of the Constitution. It cannot without any rhyme or reason decide not to fill up the post. It must give some plausible reason for not filling up the posts.** The courts would normally not question the justification but the justification must be reasonable and should not be an arbitrary, capricious or whimsical exercise of discretion vested in the State. It is in the light of these principles that we need to examine the contentions of SECR.”*

(Emphasis supplied)

13.1. In **R.S. Mittal** (Supra), the Supreme Court, vide Paragraph Nos.6 & 10, held as follows:

“6. Assuming that there was only one vacancy as claimed by the Central Government, there was gross delay on the part of the Central Government in initiating action to fill the same. The vacancy became



available on 14-8-1988 and, according to the chart placed on record by the Central Government, the action was initiated on 28-2-1989. **We fail to understand what the Government meant by the expression “initiating action”. The character and antecedents verifications, if any, should have been got done as soon as the recommendation of the Selection Board was received. No material has been placed on record and none was brought to our notice during the course of arguments to show as to why the Central Government could not initiate action as soon as the vacancy was made available. Needless to say that the recommendation of the Selection Board headed by a sitting Judge of this Court was gathering dust in the records of the Ministry concerned since 25-1-1988. We take serious view of the matter and we direct that any recommendation of a Selection Board which is headed by a sitting Judge of this Court must be given prompt and immediate attention. Once there is a recommendation by such a Selection Board, nothing should intervene between the recommendation and the consideration by the Appointments Committee of Cabinet (ACC). The Minister/Secretary in the Administrative Department is under a legal obligation and is duty-bound to process the recommendation of the Selection Board by giving it a top priority and place the same before the ACC within a reasonable time. In the present case though the action was stated to be initiated on 28-2-1989 the reference to the ACC was made on 1-5-1989. We direct that the recommendations of the Selection Board headed by a sitting Judge of this Court must be placed before the ACC expeditiously and preferably within two months from the date of recommendation.**

xxx

xxx

xxx

10. The Tribunal dismissed the application by the impugned judgment on the following reasoning:

- (a) The selection panel was merely a list of persons found suitable and does not clothe the applicants with any right of appointment. The recommendations of the Selection Board were directory and not mandatory and were not



therefore enforceable by issue of a writ of mandamus by the Court.

- (b) The letter of Ministry of Home Affairs dated 8-2-1982 which extends the life of panel till exhausted is not relevant in the present case. In the circumstances the life of the panel in this case cannot go beyond 18 months and as such expired in July 1989.

It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.”

(Emphasis supplied)

13.2. In Sachin Kumar Vs. Delhi Subordinate

Service Selection Board, reported in (2021) 4 SCC 631

it was held by the Supreme Court as follows;

“35. In deciding this batch of SLPs, we need not reinvent the wheel. Over the last five decades, several decisions of this Court have dealt with the fundamental issue of when the process of an examination can stand vitiated. Essentially, the answer to the issue turns upon whether the irregularities in the process have taken place at a systemic level so as to vitiate the sanctity of the



*process. There are cases which border upon or cross over into the domain of fraud as a result of which the credibility and legitimacy of the process is denuded. This constitutes one end of the spectrum where the authority conducting the examination or convening the selection process comes to the conclusion that as a result of supervening event or circumstances, the process has lost its legitimacy, leaving no option but to cancel it in its entirety. Where a decision along those lines is taken, it does not turn upon a fact-finding exercise into individual acts involving the use of malpractices or unfair means. Where recourse to unfair means has taken place on a systemic scale, it may be difficult to segregate the tainted from the untainted participants in the process. Large-scale irregularities including those which have the effect of denying equal access to similarly circumstanced candidates are suggestive of a malaise which has eroded the credibility of the process. At the other end of the spectrum are cases where some of the participants in the process who appear at the examination or selection test are guilty of irregularities. In such a case, it may well be possible to segregate persons who are guilty of wrongdoing from others who have adhered to the rules and to exclude the former from the process. In such a case, those who are innocent of wrongdoing should not pay a price for those who are actually found to be involved in irregularities. By segregating the wrongdoers, the selection of the untainted candidates can be allowed to pass muster by taking the selection process to its logical conclusion. This is not a mere matter of administrative procedure but as a principle of service jurisprudence it finds embodiment in the constitutional duty by which public bodies have to act fairly and reasonably. A fair and reasonable process of selection to posts subject to the norm of equality of opportunity under Article 16(1) is a constitutional requirement. A fair and reasonable process is a fundamental requirement of Article 14 as well. **Where the recruitment to public employment stands vitiated as a consequence of systemic fraud or irregularities, the entire process becomes illegitimate. On the other hand, where it is possible to segregate persons who***



have indulged in malpractices and to penalise them for their wrongdoing, it would be unfair to impose the burden of their wrongdoing on those who are free from taint. To treat the innocent and the wrongdoers equally by subjecting the former to the consequence of the cancellation of the entire process would be contrary to Article 14 because unequals would then be treated equally. The requirement that a public body must act in fair and reasonable terms animates the entire process of selection. **The decisions of the recruiting body are hence subject to judicial control subject to the settled principle that the recruiting authority must have a measure of discretion to take decisions in accordance with law which are best suited to preserve the sanctity of the process.** Now it is in the backdrop of these principles that it becomes appropriate to advert to the precedents of this Court which hold the field.”

“66. Recruitment to public services must command public confidence. Persons who are recruited are intended to fulfill public functions associated with the functioning of the Government. Where the entire process is found to be flawed, its cancellation may undoubtedly cause hardship to a few who may not specifically be found to be involved in wrongdoing. But that is not sufficient to nullify the ultimate decision to cancel an examination where the nature of the wrongdoing cuts through the entire process so as to seriously impinge upon the legitimacy of the examinations which have been held for recruitment. Both the High Court and the Tribunal have, in our view, erred in laying exclusive focus on the report of the second Committee which was confined to the issue of impersonation. The report of the second Committee is only one facet of the matter. The Deputy Chief Minister was justified in going beyond it and ultimately recommending that the entire process should be cancelled on the basis of the findings which were arrived at in the report of the first Committee. Those findings do not stand obliterated nor has the Tribunal found any fault with those findings. In this view of the matter, both the judgments of the Tribunal and the High Court are unsustainable.”

(Emphasis supplied)



13.3. In **Tej Prakash Pathak** (Supra), it was held by the Supreme Court as follows;

*“64. Thus, in light of the decision in Shankarsan Dash [Shankarsan Dash v. Union of India, (1991) 3 SCC 47 : 1991 SCC (L&S) 800], a candidate placed in the select list gets no indefeasible right to be appointed even if vacancies are available. Similar was the view taken by this Court in Subash Chander Marwaha [State of Haryana v. Subash Chander Marwaha, (1974) 3 SCC 220 : 1973 SCC (L&S) 488] where against 15 vacancies only top 7 from the select list were appointed. But there is a caveat. **The State or its instrumentality cannot arbitrarily deny appointment to a selected candidate. Therefore, when a challenge is laid to State's action in respect of denying appointment to a selected candidate, the burden is on the State to justify its decision for not making appointment from the select list.**”*

(Emphasis supplied)

13.4. In **State of Assam** (Supra), which was relied upon by the learned Counsel for both the parties, it was held by the Supreme Court as follows;

*“55. What follows from the above is that each case has to be decided on its own peculiar facts. **It has to be pleaded and proved to the satisfaction of the Court that the decision of the recruiting authority (to cancel the entire process because of wrongdoing by some tainted elements and not save a part of the process, to the extent it could be saved, to the utter detriment of the interests of the innocent) is wholly disproportionate to the risk and overly severe relative to what is at stake, thereby virtually rendering such decision to be irrational.***

56. Based on what has been discussed in the paragraphs preceding consideration of the authorities cited by Mr Goswami, the appellants' decision in



*cancelling the entire selection process initiated vide the advertisement dated 23-7-2014 relying on the note of the PCCF dated 4-7-2016, and not part of it, in our considered opinion, does not seem to be either arbitrary or unreasonable or without any sense of proportion. Since the earlier process did border on fraud, in the light of the reservation policy not being respected and observance of the decisions of this Court (that meritorious reserved category candidates are entitled to be accommodated in the open category) in breach, there was a brazen violation which was sought to be corrected and, if we may say, justifiably so. **It has not been proved to our satisfaction that the impugned decision of cancelling the select list is the neat result of an injudicious exercise of discretion and was ill-directed in the guise of achieving the sanctity of the entire selection process.***

(Emphasis supplied)

13.5. In *Shankarsan Dash* (Supra), which was also relied upon by the learned Counsel for both the parties, it was decided by the Constitution Bench as follows;

*“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. **However, it does not mean that the State has the license of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.** This correct position has been consistently followed by this*



Court, and we do not find any discordant note in the decisions in State of Haryana v. Subash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165], Neelima Shangla v. State of Haryana [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] , or Jatinder Kumar v. State of Punjab [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899].”

(Emphasis supplied)

14. From the aforesaid judgments of the Supreme Court it is amply clear that a person on the select panel has no vested right to be appointed to the post for which he has been selected, though he has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. The State or its instrumentality cannot arbitrarily deny appointment to a selected candidate. Therefore, when a challenge is laid to State's action in respect of denying appointment to a selected candidate, the burden is on the State to justify its decision for not making appointment



from the select list. It has to be pleaded and proved to the satisfaction of the Court that the decision of the recruiting authority, to cancel the entire process is because of wrongdoing by some tainted elements and not save a part of the process, to the extent it could be saved, to the utter detriment of the interests of the innocent, is wholly disproportionate to the risk and overly severe relative to what is at stake, thereby virtually rendering such decision to be irrational. The decisions of the recruiting body would be subjected to judicial control and scrutiny, subject to the settled principle that the recruiting authority must have a measure of discretion to take decisions in accordance with law which are best suited to preserve the sanctity of the process.

15. In the present case, the coordinate Bench, after calling for the original selection records and examining the same, so also hearing the parties and taking into consideration the stand of the Opposite Party No-1 in its Counter filed in W.P.(C) No-6171 of 2022, came to a conclusion that the Opposite Parties have failed to provide any valid/legal justification in coming to a conclusion to



cancel the recruitment process after almost one and half years after the final select list was recommended by the Examination Committee. Accordingly, a direction was given to the Opposite Party No.1 to place the names of the present Petitioners before the Selection Board, which were uploaded in the website of Odisha Legislative Assembly on 28.09.2021, and to take necessary action pursuant to the decision of the Selection Board and approval of such decision by the Hon'ble Speaker within a specified period of eight weeks from the date of communication of a copy of the said judgment. It was further observed that if the Selection Board gives its concurrence to the list of selected candidates; the Opposite Parties shall do well to give appointment to the Petitioners against the posts of Reporters.

16. Though there was no ambiguity in the said common judgment dated 19.05.2023, instead of implementing the said direction within the specified period , the Opposite Party No-1 preferred Writ Appeal No. 1458 of 2023 being aggrieved by the observations so also direction given vide the said Judgment. However,



during pendency of the said Appeal, misinterpreting the said common judgment to be an open remand, the impugned notice dated 21.07.2023 was issued, thereby cancelling the entire selection process to the posts of Reporters. Such cancellation was basically on the ground that the original documents pertaining to such selection were not available for verification by the Selection Board, which has been extracted in para 11.4 above. Hence, in view of the observations of the coordinate Bench in its common judgment dated 19.05.2023 passed in W.P.(C) No. 31988 of 2021 and W.P.(C) No-6171 of 2022, so also the settled position of law, detailed above, this Court is of the view that the Petitioners have a legal right to pray for setting aside the said cancellation notice and to seek for a direction from this Court for their appointment in the posts of Reporters, as the Opposite Parties have failed to plead and prove to the satisfaction of the Court that the decision of the recruiting authority, to cancel the entire process of selection vide the impugned notice dated 21.07.2023, as at Annexure-7, was justified. Issue No-3 is answered accordingly in favour of the Petitioners.



17. Accordingly, the impugned notice dated 21.07.2023, as at Annexure-7, is set aside. The Opposite Party No.1 is directed to do all the remaining formalities as per Rule 7(2) of the Rules 1983, if it is so required, and appointment letters be issued in favour of the Petitioners for the posts of Reporters in Odisha Legislative Assembly, in terms of the advertisement dated 26.01.2021, within four weeks from the date of production/communication of the certified copy of this Judgment.

18. The Writ Petition is allowed and disposed of accordingly. No order as to costs.

.....
S.K. MISHRA, J.

Orissa High Court, Cuttack
The 3rd July, 2026/Prasant