



REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.....OF 2026

(@ SLP (Civil) No. 15383/2025)

DEBASHISH MOHAPATRA & ORS. ...APPELLANT(S)

VS.

DISTRICT AND SESSION

JUDGE, JAGATSINGHPUR & ORS. ...RESPONDENT(S)

ORDER

1. Heard.

2. Leave granted.

3. The short question that falls for our consideration is whether the termination of the services of the appellants, who had attained confirmed status in service, without the institution of any departmental enquiry, is violative of the safeguards enshrined under Article 311 of the Constitution of India¹.

4. The present appeal is directed against the judgment and order dated 11th December, 2024, passed by the High Court of Orissa at Cuttack² in Writ Petition (Civil) No.

¹ Hereinafter, referred to as "Constitution".

² Hereinafter, referred to as "High Court".

13706 of 2024, whereby the Division Bench dismissed the writ petition filed by the appellants and affirmed the order dated 10th March, 2023, passed by respondent No. 1 terminating their services.

5. The facts giving rise to the present appeal, insofar as they are relevant for its adjudication, may be briefly stated as follows: -

5.1. An advertisement dated 16th October, 2017 came to be issued by the office of respondent No. 1 inviting applications for eight posts of Junior Clerk-cum- Copyist³. Pursuant thereto, the appellants applied for the said posts and participated in the selection process, including the written examination. Upon completion of the recruitment process, appellant Nos. 1 and 2 were declared successful and were issued appointment orders on 23rd July, 2018. They joined their respective posts on 1st August, 2018. Appellant No. 3 was subsequently issued an appointment order on 8th March, 2019 and joined service on 18th March, 2019.

5.2. Subsequently, by order dated 25th April, 2022, the appellants were confirmed in service and appointed against substantive posts, thereby acquiring the status of confirmed government servants.

³ Hereinafter, referred to as “subject-post”.

5.3. However, while the appellants continued in service, a show-cause notice dated 28th February, 2023 came to be issued to them as well as eight other employees appointed pursuant to the same recruitment process, calling upon them to explain why their services should not be terminated. The notice alleged that their appointments were illegal and irregular, inter alia, on the ground that they had been appointed against vacancies in excess of those advertised under the recruitment notification.

5.4. Thereafter, respondent No. 1, by order dated 10th March, 2023, terminated the services of the appellants on the ground that they had been appointed against posts which were allegedly non-existent and, therefore, their appointments were not merely irregular but *void ab initio*.

5.5. Aggrieved thereby, the appellants preferred an appeal before the Appeal Committee of the High Court for Subordinate Courts, comprising three sitting Judges of the High Court. The Appeal Committee, by order dated 12th December, 2023, dismissed the appeal and affirmed the order of termination, holding that the appellants' appointments were void ab initio since they had been appointed against posts which were not in existence on the date of issuance of the advertisement.

5.6. The appellants thereafter invoked the writ jurisdiction of the High Court under Article 226 of the Constitution,

assailing the aforesaid orders of termination and the consequential order passed by the Appeal Committee.

5.7. The High Court, by the impugned judgment, dismissed the writ petition and affirmed the orders terminating the services of the appellants.

6. Aggrieved thereby, the appellants are before this Court.

7. It is not in dispute that no departmental enquiry whatsoever was conducted by the respondent authorities prior to the termination of the appellants' services. The controversy essentially arises out of the appointments made by the then District Judge, Jagatsinghpur, who is stated to have appointed candidates against posts in excess of the vacancies originally notified under the advertisement. The appellants contend that having been duly selected through a regular recruitment process and having subsequently attained the status of confirmed employees, their services could not have been terminated without adherence to the procedural safeguards guaranteed under Article 311(2) of the Constitution.

8. When the aforesaid facts came to the notice of the High Court on the administrative side, a letter⁴ dated 25th February, 2023 was issued directing respondent No. 1 to take appropriate action in accordance with law against the

⁴ No. 3241-LX-29/1988.

candidates whose appointments were perceived to be illegal, including the present appellants.

9. There can be no quarrel with the proposition that public employment must be governed by the constitutional mandate of equality and that appointments made *dehors* the prescribed procedure cannot ordinarily be permitted to subsist. Equally, the authorities as well as the High Court, while discharging their administrative responsibilities, are duty-bound to ensure that appointments to public posts are made strictly in accordance with law.

10. However, in their anxiety to rectify what was perceived to be an irregularity in the recruitment process, the authorities appear to have overlooked an equally fundamental constitutional safeguard. The rule of law demands not only that public employment be conferred in accordance with law, but also that deprivation of such employment be effected only through a procedure sanctioned by law. The end sought to be achieved, howsoever laudable, cannot justify the adoption of means contrary to constitutional guarantees.

Constitutional Mandate of Article 311

11. Article 311 of the Constitution is not an empty formality or a procedural ritual that may be dispensed with at the convenience of the employer. It embodies a substantive constitutional protection consciously engrafted by the framers of the Constitution to insulate civil servants from arbitrary deprivation of service. The guarantee contained therein is a solemn constitutional assurance that a person who has acquired the status contemplated under the provision shall not be visited with the civil consequences of dismissal, removal, or reduction in rank except in the manner known to law.

12. It is in the backdrop of the aforesaid constitutional framework that the legality of the impugned action must be examined. Before proceeding further, we deem it appropriate to reproduce Article 311 of the Constitution: -

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.–

...

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

...

Provided further that this clause shall not apply–

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct

which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

...”

(emphasis supplied)

13. Article 311 is, in many ways, a constitutional manifestation of the guarantee against arbitrariness embodied in Article 14 of the Constitution. The promise of equality before law is not confined merely to equal treatment but it extends to fairness in decision-making and acts as a bulwark against arbitrary State action. Article 311 carries this constitutional philosophy into the realm of public employment by affording procedural safeguards to persons serving in civil capacities under the Union or a State.

14. Clause (2) of Article 311 expressly mandates that no person shall be dismissed, removed, or reduced in rank except after an inquiry in which he has been informed of the charges against him and afforded a reasonable opportunity of being heard. The inquiry contemplated by the Constitution is not an empty formality. It is a

substantive safeguard designed to ensure adherence to the principles of natural justice before a civil servant is visited with serious civil consequences. The constitutional intent is clear that in a democratic republic governed by the rule of law, public employment cannot be terminated at the unfettered discretion of the employer.

15. The framers of the Constitution, conscious of the abuse of executive power that had characterised colonial administration, deliberately incorporated these protections so as to secure fairness, impartiality, and procedural propriety in matters affecting public servants. Article 311 thus represents not merely a service protection but a constitutional commitment to the rule of law.

16. The Constitution, however, recognises limited exceptions to this requirement. The second *proviso* to Article 311(2) contemplates three situations in which an inquiry may be dispensed with: first, where dismissal, removal, or reduction in rank is founded upon conduct which has led to a criminal conviction; secondly, where the competent authority records in writing its satisfaction that it is not reasonably practicable to hold such inquiry; and thirdly, where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold the inquiry. Thus, save and except these narrowly tailored exceptions, the holding of an inquiry prior to dismissal, removal, or

reduction in rank remains the constitutional rule and not a matter of discretion.

17. Reverting to the facts of the present case, the allegation against the appellants is that their appointments were illegal from inception, having been made against posts which were allegedly non-existent on the date of recruitment. Even assuming such allegation to be correct, one crucial circumstance could not have been ignored. The appellants had already been confirmed in service by order dated 25th April, 2022. Confirmation in service is not a mere administrative formality but it confers upon an employee a substantive status carrying with it enhanced security of tenure and the protection of constitutional safeguards available to a civil servant.

18. Once the appellants had attained the status of confirmed employees, their services could not have been terminated by a simpliciter administrative order founded upon allegations touching the validity of their appointments. Whether the appointments suffered from illegality, whether the appellants had any role to play therein, and whether such illegality warranted termination were all matters requiring adjudication in accordance with the procedure contemplated by Article 311(2).

19. The respondents have not conducted any departmental inquiry whatsoever. In addition, they have also failed to demonstrate the existence of any circumstance bringing the case within any of the three exceptions carved out under the second *proviso* to Article 311(2). The constitutional mandate, therefore, stood attracted in full force.

20. In our considered opinion, both the respondent authorities and the High Court fell into manifest error in proceeding on the assumption that an allegation of illegality in appointment, by itself, authorised the termination of confirmed employees without adherence to the constitutional safeguards. Such an approach overlooks the distinction between the validity of an appointment and the procedure required for depriving a civil servant of his employment after he has acquired protected status under the Constitution.

21. We are, therefore, constrained to hold that the action of respondent No. 1 in terminating the services of the appellants without holding a departmental inquiry is clearly violative of Article 311(2) of the Constitution and is liable to be struck down on that ground alone. Nevertheless, as other significant issues arise for consideration, we deem it appropriate to examine them as well.

Appointments against Anticipated Vacancies

22. Learned counsel for the appellants has placed reliance on certain provisions of the *Orissa District and Subordinate Courts' Non-Judicial Staff Services (Method of Recruitment and Conditions of Service) Rules, 2008*, framed under the *proviso* to Article 309 of the Constitution, to contend that the competent authorities possess the power to vary the sanctioned strength of posts. Since these provisions have a direct bearing on the controversy, they are reproduced hereinbelow: -

“6. Competitive Examinations-

• • •

(2) There shall be a District Recruitment Committee for each District consisting of the following: -

1. Principal District and Sessions Judge ... Chairman
2. Senior most Additional District and Sessions Judge
... Member
3. Civil judge (Sr. Division)/C.J.M. ... Member

(3) The competitive examinations shall be conducted by the District Recruitment Committee. The date on which the examination is to be held shall be fixed by District Recruitment Committee in consultation with the High Court and such Recruitment Committee shall fix the places at which the examination is to be held.

...

7. Manner of Selection of Candidates-

...

(4) On the basis of marks secured in the written test, practical test as provide in sub-rule (3) and the viva voce test, a merit list of all the candidates (both general and reserved categories) shall be prepared and thereafter separate merit list for general and reserved categories shall be prepared according to the descending order of total marks.

(5) Candidates according to the descending order of total marks of each category mentioned in sub-rule (4) shall be selected for filling of the vacancy.

(6) The select list in respect of posts advertised shall remain valid for a period of one year from the date of first appointment from such list or till the date notified for next recruitment whichever is earlier.”

23. Rule 6(2) provides for the constitution of a District Recruitment Committee comprising the Principal District Judge as its Chairman and the senior-most Additional District Judge and Civil Judge (Senior Division)/Chief Judicial Magistrate as members. Under Rule 6(3), the said Committee is entrusted with the conduct of the recruitment examination.

24. Rule 7 envisages preparation of a merit list on completion of the selection process. Thereafter, under Rule 7(5), a select list is required to be prepared from amongst the successful candidates for filling up the vacancies, and by virtue of Rule 7(6), such select list remains valid for a period of one year.

25. Significantly, the Rules do not contain any substantive provision prescribing the manner in which the number of vacancies is to be determined or notified. The only

reference to vacancies is found in Provision (5) of Appendix-A appended to the Rules, which reads as follows: -

“5. The District Judge shall prepare a list of successful candidates in order of merit and communicate the results of the examinations and appoint candidates in the vacancies that have occurred or may occur during the period of one year from the date of first appointment from such list. The decision of the District Judge as to the result of the examination shall be final in no case shall be liable to be challenged.”

(emphasis supplied)

26. Provision (5) makes it abundantly clear that the District Judge is empowered to make appointments from the select list not only against “*existing vacancies*” but also against “*vacancies that may arise within one year*” from the date of the first appointment. The expression “*have occurred or may occur*” leaves no scope for a contrary interpretation. The rationale behind the provision is evident. It enables the District Judiciary to promptly fill vacancies arising during the currency of the select list without undertaking a fresh recruitment process each time, thereby ensuring administrative efficiency and continuity in judicial functioning.

27. Equally, the power of appointment is subject to a clear limitation, i.e. they can be made only against vacancies arising within one year from the date of the first appointment. The Rules, therefore, permit appointments

against anticipated vacancies within the prescribed period, but do not sanction the indefinite operation of a select list or appointments at the unfettered discretion of the appointing authority.

28. Significantly, it is not the case of the respondents that the appellants were appointed against unsanctioned posts. On the contrary, the record reveals that the appellants were continuously discharging their duties, drawing regular salaries, and enjoying all service benefits attached to their posts. These circumstances clearly indicate that their appointments were treated by the authorities themselves as appointments against sanctioned posts and that their service conditions were governed by the statutory Rules framed under Article 309 of the Constitution.

29. In the absence of any allegation that the posts themselves were non-existent or unsanctioned, the respondents cannot now contend that the appellants were holding posts dehors the sanctioned cadre, particularly after having continued them in service and confirmed their appointments in accordance with the applicable Rules.

30. Before parting, we may note that no allegation of fraud, misrepresentation, or *mala fides* has been levelled against the appellants. They merely participated in the recruitment process, were selected on merit, and

appointed by the competent authority. The alleged irregularity, if any, is attributable to the appointing authority and not to the appellants. Having served for several years, acquired experience, and been confirmed in service, it would be wholly inequitable to penalise them for an act in which they had no role. In the absence of any wrongdoing on their part, we see no justification for depriving them of their employment.

31. Consequently, the judgment and order dated 11th December, 2024, passed by the High Court of Orissa at Cuttack in Writ Petition (Civil) No. 13706 of 2024 is set aside.

31.1. As a necessary corollary, the termination order dated 10th March, 2023, passed by respondent No. 1, as well as the order dated 12th December, 2023, passed by the Appeal Committee of the High Court, are hereby quashed.

32. We further direct that the appellants shall be reinstated in service with continuity of service and all consequential benefits. However, it shall be open to the competent authority to proceed against the appellants afresh, if so advised, strictly in accordance with law and after complying with the requirements of Article 311(2) of the Constitution.

33. The appeal is accordingly allowed.

34. An application for impleadment (I.A. No. 203269 of 2025) has been preferred by certain applicants claiming to be similarly situated as the present appellants. It is not in dispute that their services were also terminated by respondent No. 1 *vide* Order No. 24 dated 10th March, 2023 on identical grounds, notwithstanding the fact that they too had attained confirmed status in service. Since the controversy raised by the impleading applicants is identical in facts as well as in law and arises out of the very same order of termination, we consider it appropriate to extend the benefit of the present judgment to them as well.

34.1. Accordingly, I.A. No. 203269 of 2025 is allowed. The competent authority shall also reinstate the impleaded appellants in terms of the directions contained in ***paragraph 32*** of this judgment.

35. Pending application(s), if any, shall stand disposed of.

.....J.
[VIKRAM NATH]

.....J.
[SANDEEP MEHTA]

**NEW DELHI;
MAY 26, 2026**