

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 805 of 2021 and batch of Writ Appeals

1. **W.A. No. 805 of 2021**
- State of Odisha and Another* **Appellants**
Mr. M.K. Khuntia, Addl. Govt. Advocate
Mr. A.P. Das, Addl. Standing Counsel
-versus-
Joseph Barik **Respondent**
None
2. **W.A. No.490 of 2021**
- State of Odisha and another* **Appellants**
Mr. M.K. Khuntia, Addl. Govt. Advocate
Mr. A.P. Das, Addl. Standing Counsel
-versus-
Saishaba Kumar Mandal and another **Respondents**
None
3. **W.A. No. 935 of 2021**
- State of Odisha* **Appellant**
Mr. A.P. Das, Addl. Standing Counsel
-versus-
B. Nareen Kumar Reddy and Others **Respondents**
None
4. **W.A. No.943 of 2021**
- State of Odisha* **Appellant**
Mr. M.K. Khuntia, Addl. Govt. Advocate
-versus-
Nikhil Mohan Bastia **Respondent**

5. **W.A. No.286 of 2022**
State of Odisha and Others *Appellants*
Mr. A.P. Das, Addl. Standing Counsel
-versus-
Chittaranjan Jena *Respondent*
None
6. **W.A. No. 659 of 2022**
State of Odisha and Others *Appellants*
Mr. A.P. Das, Addl. Standing Counsel
-versus-
Ranjan Kumar Mohanty *Respondent*
None
7. **W.A. No. 681 of 2022**
State of Odisha and Another *Appellants*
Mr. M.K. Khuntia, Addl. Govt. Advocate
-versus-
Sashi Sekhar Behera *Respondent*
None
8. **W.A. No. 683 of 2022**
State of Odisha and Another *Appellants*
Mr. M.K. Khuntia, Addl. Govt. Advocate
-versus-
Rabindranath Gochhayat *Respondent*
None
9. **W.A. No. 685 of 2022**
State of Odisha and Another *Appellants*
Mr. M.K. Khuntia, Addl. Govt. Advocate
-versus-
Sangram Keshari Mohanty *Respondent*
None

10. **W.A. No. 691 of 2022**
State of Odisha and Another **Appellants**
Mr. Rabi Narayan Mishra, Addl. Govt. Advocate
-versus-
Alekh Charan Sahoo **Respondent**
None
11. **W.A. No. 831 of 2022**
State of Odisha and Another **Appellants**
Mr. M.K. Khuntia, Addl. Govt. Advocate
-versus-
Dilip Kumar Patra and Another **Respondents**
None
12. **W.A. No.1042 of 2022**
State of Odisha and another **Appellants**
Mr. M.K. Khuntia, Addl. Govt. Advocate
-versus-
Ramesh Chandra Mishra **Respondent**
Mr. Sarada Prasad Dash, Advocate
13. **W.A. No.1107 of 2022**
State of Odisha and another **Appellants**
Mr. M.K. Khuntia, Addl. Govt. Advocate
-versus-
Pratap Keshri Malla **Respondent**
None
14. **W.A. No.1127 of 2022**
State of Odisha and another **Appellant**
Mr. M.K. Khuntia, Addl. Govt. Advocate
-versus-
Bedambar Behera **Respondent**
Mr. Bigyan Sharma, Advocate

15. **W.A. No. 1223 of 2022**
State of Odisha and Others **Appellants**
Mr. M.K.Khuntia, Addl. Govt. Advocate
-versus-
Sisir Ranjan Prusty **Respondent**
Mr. T.K. Biswal, Advocate
16. **W.A. No.1232 of 2022**
State of Odisha and another **Appellants**
Mr. M.K.Khuntia, Addl. Govt. Advocate
-versus-
Amulya Kumar Tripathy **Respondent**
Mr. Tushar Kanta Nayak, Advocate
17. **W.A. No.1239 of 2022**
State of Odisha and another **Appellants**
Mr. M.K.Khuntia, Addl. Govt. Advocate
-versus-
Shishir Kumar Das **Respondent**
None
18. **W.A. No. 1272 of 2022**
State of Odisha and Others **Appellants**
Mr. M.K. Khuntia, Addl. Govt. Advocate
-versus-
Manas Ranjan Sahoo **Respondent**
None
19. **W.A. No. 1314 of 2022**
State of Odisha and Another **Appellants**
Mr. M.K. Khuntia, Addl. Govt. Advocate
-versus-
Prasanta Kumar Das **Respondent**
Mr. Bigyan Sharma, Advocate

20. **W.A. No.1346 of 2022**
- State of Odisha and another* *Appellants*
Mr. A.P. Das, Addl. Standing Counsel
-versus-
Umakanta Biswal *Respondent*
None
21. **W.A. No.1347 of 2022**
- State of Odisha* *Appellant*
Mr. M.K. Khuntia, A.G.A.
-versus-
Kali Charan Sadangi and another *Respondents*
None
22. **W.A. No. 1365 of 2022**
- State of Odisha and Another* *Appellants*
Mr. A.P. Das, Addl. Standing Counsel
-versus-
Prasanta Kumar Malla *Respondent*
None
23. **W.A. No. 1368 of 2022**
- State of Odisha and Another* *Appellants*
Mr. M.K. Khuntia, Addl. Govt. Advocate
-versus-
Nalini Ranjan Mishra *Respondent*
None
24. **W.A. No. 1460 of 2022**
- State of Odisha* *Appellant*
Mr. A.P. Das, Addl. Standing Counsel
-versus-
Umesh Chandra Moharana *Respondent*
Mr. S.K. Ojha, Advocate

25. **W.A. No.1651 of 2022**
- State of Odisha and others* *Appellants*
Mr. M.K. Khuntia, A.G.A.
-versus-
Krushna Chandra Dash *Respondent*
None
26. **W.A. No. 1659 of 2022**
- State of Odisha and Another* *Appellants*
Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate
-versus-
Ananga Bhima Deo *Respondent*
Mr. D.R. Bhokta, Advocate
27. **W.A. No. 1733 of 2022**
- State of Odisha* *Appellant*
Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate
-versus-
Pramod Kumar Sahoo *Respondent*
None
28. **W.A. No. 1813 of 2022**
- State of Odisha and Another* *Appellants*
Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate
-versus-
Dr. Rajat Ranjan Sadual *Respondent*
None
29. **W.A. No. 257of 2023**
- State of Odisha and Another* *Appellants*
Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate
-versus-
Aruna Kumar Rout *Respondent*
None

30. **W.A. No. 343 of 2023**
- State of Odisha and Another* **Appellants**
Mr. A.P. Das, Addl. Standing Counsel
-versus-
Mahendra Kumar Sahoo **Respondent**
None
31. **W.A. No. 345 of 2023**
- State of Odisha and Another* **Appellants**
Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate
-versus-
Brusava Kumar Pradhan **Respondent**
Mr. Manas Pati, Advocate
32. **W.A. No. 395 of 2023**
- State of Odisha and Another* **Appellants**
Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate
-versus-
Apurba Kumar Patra **Respondent**
None
33. **W.A. No. 505 of 2023**
- State of Odisha and Another* **Appellants**
Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate
-versus-
Pradyumna Kumar Parida **Respondent**
None
34. **W.A. No. 511 of 2023**
- State of Odisha and Another* **Appellants**
Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate
-versus-
Biswa Bhusan Mohanty **Respondent**
None

35. **W.A. No. 535 of 2023**
State of Odisha and Another *Appellants*
Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate
-versus-
Rajat Chandra Singh *Respondent*
Mr. D.R. Bhokta, Advocate
36. **W.A. No. 536 of 2023**
State of Odisha and Another *Appellants*
Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate
-versus-
B. Lileswar Rao *Respondent*
None
37. **W.A. No. 567 of 2023**
State of Odisha and Another *Appellants*
Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate
-versus-
Janardan Bal *Respondent*
None
38. **W.A. No. 596 of 2023**
State of Odisha and Another *Appellants*
Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate
-versus-
Dr. Malay Kumar Pradhan *Respondent*
Mr. Anjan Kumar Biswal, Advocate
39. **W.A. No. 604 of 2023**
State of Odisha and Others *Appellants*
Mr. A.P. Das, Addl. Standing Counsel
-versus-
Niranjan Behura *Respondent*
None

40. **W.A. No. 634 of 2023**
- State of Odisha* *Appellant*
Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate
- versus-
- Kanhu Charan Nayak* *Respondent*
None
41. **W.A. No. 677 of 2023**
- State of Odisha and Others* *Appellants*
Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate
- versus-
- Sunita Sahu* *Respondent*
None
42. **W.A. No. 731 of 2023**
- The Principal Secretary to Govt., Food, Supplies and Consumer Welfare Dept.* *Appellant*
Mr. A.P. Das, Addl. Standing Counsel
- versus-
- Bijay Kumar Mohanty* *Respondent*
None
43. **W.A. No. 743 of 2023**
- State of Odisha and Another* *Appellants*
Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate
- versus-
- Rajkishore Ghadei @ Ghadai* *Respondent*
None
44. **W.A. No. 790 of 2023**
- State of Odisha* *Appellant*
Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate
- versus-
- Madhab Chandra Sarangi* *Respondent*
None

45.

W.A. No. 1266 of 2022

Commissioner-cum-Secretary, Works Department **Appellant**

Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate

-versus-

Ambika Ballava Swain and Others **Respondents**

None

46.

W.A. No. 125 of 2022

State of Odisha **Appellant**

Mr. Manoj Kumar Khuntia, Addl. Govt. Advocate

-versus-

Srimanta Mishra **Respondent**

Mr. Upendra Kumar Samal, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE G. SATAPATHY**

**ORDER
11.05.2023**

Order No.

02. 1. In all these writ appeals by the State of Odisha against the corresponding orders of the learned Single Judge, a common question arises for consideration viz. whether during the pendency of a criminal case against the government servant in the Court of the Special Judge (Vigilance), and notwithstanding exoneration of the said employee in the departmental proceedings, could the learned Single Judge have ordered grant of either ad hoc or regular promotion to the government servant subject to the outcome of the criminal proceedings?
2. One other common factor that requires to be noticed is that except in W.A. No.596 of 2023 where the impugned order under challenge

was passed by the learned Single Judge after completion of pleadings in the writ petition, in all the other appeals the impugned order under challenge was passed by the learned Single Judge on the very first date of hearing of the writ petition without an opportunity to the State of Odisha to file its reply.

3. This Court has heard the learned counsel for the parties.

4. There is no dispute in that the criminal case involving the Respondents in the present appeals is still pending before the Court of the Special Judge (Vigilance) at various stages. In some cases, even a charge sheet is yet to be filed and in other charges may or may not have been framed; in certain other cases, trial is in progress.

5. Learned counsel appearing for the respective Respondents argue that on account of the long years of the pendency of the criminal case and with the impending prospect of many of the Respondents superannuating in the immediate future, one equitable solution would be for this Court to direct the Appellants (State of Odisha) to grant them 'ad hoc' promotions. In support of such plea, reliance placed on an interim order passed by this Court on 27th March, 2023 in W.A. No.321 of 2022.

6. However, it is pointed out by Mr. Khuntia, learned Additional Government Advocate (AGA) that in W.A. No.321 of 2022 the Respondent had been exonerated in the departmental proceedings and the report sent by the Special Judge, Vigilance to this Court

showed that the trial in T.R. Case No.50 of 2014 was progressing very slowly with only three witnesses having been examined. Accordingly, this Court in the said case directed the trial Court to conclude the entire trial and deliver the judgment on or before 1st August, 2023. It is in those circumstances that no interim order was passed by the Division Bench staying the order of the learned Single Judge. The said writ appeal has been directed to be listed on 10th August, 2023.

7. Apart from the fact that the aforesaid order is an interlocutory one peculiar to the facts noted, as far as the present batch of cases is concerned, departmental proceedings are still pending in some and in all the cases criminal proceedings are pending.

8. The Court has been shown a compilation of Office Memoranda (OMs) and Notifications issued by the Government of Odisha from time to time. These include OM dated 18th February 1994, 4th July 1995, 1st November 1997, 28th January 1999, 28th May 2012, 29th April 2017 and 17th June 2021 issued by the General Administration Department. None of them envisages or permits grant of promotion to a government servant either on regular or on ad hoc basis during the pendency of a criminal case involving such government servant.

9. Further in terms of the law explained by the Supreme Court in *Union of India v. K.V. Janaki Raman (1991) 4 SCC 109*, *State of Punjab v. Chamanlal Goel (1995) 2 SCC 570*, the judgment of this

Court dated 5th October, 2016 in W.P.(C) No.19909 of 2015 (*State of Odisha v. Somanath Sahoo*) and the judgment dated 26th April, 2017 in W.P.(C) No.22393 of 2015 (*State of Odisha v. Anil Kumar Sethi*), there is no right of the government servant to be considered for promotion during the pendency of either departmental proceedings or criminal proceedings or both against such government servant.

10. The plea of the learned counsel appearing for the Respondents that they should be granted at least one 'ad hoc promotion' is also without any legal basis in light of the above OMs and the settled position in law.

11. It is clarified that as and when the criminal proceedings end in favour of the government servant by way of an acquittal and such government servant also stands exonerated from the departmental proceedings then notwithstanding the superannuation of such government servant, the notional benefits attaching to the promotion that is due to the government servant would be calculated and the pension fixed accordingly.

12. In the light of the above orders of the Government, it is not possible for this Court to sustain the impugned orders of the learned Single Judge in the present cases directing the Appellants to grant regular promotion to the Respondents even with the caveat that such promotion would be subject to the outcome of the criminal case against such government servant. The said impugned orders of the learned Single Judge are accordingly hereby set aside.

13. It will of course be open to the Respondents to request the criminal Courts concerned to expedite the proceedings and bring the trials to an early conclusion.

14. The writ appeals are accordingly allowed, but in the circumstances, with no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(G. Satapathy)
Judge

