

M.A.No. 147 of 2006 (Arising out of OA No. 234 of 2005)

ORDER DATED 24-03-2005.

Applicant Miss. Pravat Nalini Tripathy, (pursuant to an open advertisement dated 15-12-1993 issued by the Respondent Department inviting application for three unreserved posts of Technician), having applied, appeared the open competitive examination conducted by the Respondents. She having been found successful in the test, her name was placed at Sl. No.7 of the final select list. As the Respondent Department had filled up only 6 posts of Technicians, the Applicant, being at Sl. No.7 of the merit list, could not be appointed along with others. It appears the successful candidates, figured at Sl. Nos. 1, 4 and 5 of the select list, were selected (and appointed) by producing false/fake certificates and, when pointed out, they resigned from the posts on 09-08-1996, 16-05-1996 and 27-06-1996. Instead of regularizing the services of the Applicant against the post left vacant by the illegally selected/appointed candidates, when the Respondents wanted to do away the casual engagement of the Applicant (which she was performing w.e.f. 02-01-1995), she approached this Tribunal in O.A .No. 341 of 1996 seeking for a direction to the Respondents to allow her to continue in the services. Applicant, having been unsuccessful in her persuasion to be regularized, approached this Tribunal in Original

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Application No. 151 of 1997 along with two others (Miss.Kalpana Das & Mrs. Lililma Singh). The main stand of the Respondent Department in the counter filed in that O.A. was that the force of the panel having elapsed with effect from 25-02-1995, prayer for regularization of the Applicant out of the said panel was not available to be considered. Taking note of the materials placed on record, arguments advanced by the parties and various judge-made-laws, this Tribunal disposed of the said Original Application in its order dated 10th February 2005 with the following directions:-

“.....As regards the other plea of the Respondents that the select list is no more valid, it is to be noted here that there are no materials produced by the Respondents showing that there was any further interview/Advertisement or panel has been made/prepared for filling up of the post of Technician. Applicants were given engagement, though casually, when their names continue in the select/merit list and the grievance of the Applicants arose when the candidates, who had taken the posts of the Applicants, ran away by resigning from the posts. Law is a living organism and its utility depends on its vitality and ability to serve as a sustaining pillar of society. Justice to the individual is one of the highest interests of the democratic state. The best advantage of one person could be the worst disadvantage to another. Law steps into iron out such creases and ensures equality of protection to individuals as well as group liberties. Despite three left out vacancies, the Respondents have not filled up the same apparently, remaining under the impression that the panel is not in force. But for the reasons of various judicial pronouncements and circulars, we

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are inclined to hold that the panel is active until the next panel is drawn. In the aforesaid circumstances, the panel cannot be treated to have outlived its utility. However, in the face of the formal submissions made by the Respondents that two posts have been abolished w.e.f. 05.11.1999 and two posts have been separated from Doordarshan, Bhubaneswar, we are not sure, whether there is any vacancy in the cadre of Technician for operating the panel. We, therefore, leave this matter to the departmental authorities to act upon the panel prepared by them and consider the grievance of the Applicants for giving them appointment strictly in accordance with the position shown in the select/merit list. Until final decision is taken in the matter, Applicants shall be allowed to continue, as it is, as Casual employees.”

2. Instead of appointing the Applicant (who is a regularly selected candidate), after the orders of this Tribunal; when she was intimated about non availability of any vacancy in the cadre of Technician (despite resignation of the candidates selected and appointed), to appoint the Applicant; she has filed present Original Application under section 19 of the Administrative Tribunals Act, 1985. . . .

3. Inspite of notices having been issued in this case, on 03-06-2005, giving six weeks time to file counter, no counter has yet been filed. By filing the present Misc. Case No.147/2006, Applicant has placed on record a copy of the letter of the Chief Engineer (EZ) at Kolkata (under Annexure-A/9 dated 22-12-2005) which goes to show that the vacancies in

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the cadre of Technician are still available to be filled up. As disclosed by the Chief Engineer at Kolkata, the following vacancies in the cadre of Technicians are still available to be filled up:-

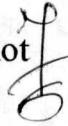
Sl.No.	Name of stations	vacancy position
1.	Balasore	1
2.	Berhampur	1
3.	Bhawanipatna(HPT)	1
4.	Bhubaneswar (HPT)	3
5.	Bhubaneswar DDII	1
6.	DDMC,BH Patna	1
7.	Alipurduar	1
8.	Anandapur	2
9.	Anugul	1
10.	Athamalik	2
11.	Bhadrak	2
12.	Bolangir	2
13.	Banei	1
14.	Boudh	1
15.	Brajarajnagar	2
16.	Dhenkanal DDII	1
17.	Gondiya	2
18.	Jeypore	1
19.	Joda	2
20.	Kabisuryanagr	2
21.	Kamakhyanagar	2
22.	Karanjia	1
23.	Kendrapara	1
24.	Keonjhar	3
25.	Khandrapara	1
26.	Lutherpunk	2
27.	Narsinghpur	2
28.	Padampuram	1
29.	Pallahara	1
30.	Paradeep	1
31.	Patnagarh	2

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32.	Phulpuras	1
33.	Rairangpur	1
34.	Redhakhol	1
35.	Talcher	2
36.	Tirtol	1
37.	Tushara	1

4. From the letter dated 15-10-2004 it is also clear that that no posts of Technicians have been shifted from LPT Gondia and LPT Durgapur and two posts of Technician at LPT Gondia and one post of Technician at LPT Durgapur are still available to be filled up. Annexure-A/6 dated 04-06-2002 & Annexure-A/7 dated 28th January, 2004 clearly indicates that two persons were promoted to the posts of Technician (subject to the out come of the OA No. 151/1997 filed by the Applicant) and, therefore, after the disposal of the aforesaid Original Application, Respondent Department ought to have asked them to make room for the Applicant.

5. Now, learned counsel appearing for the Applicant is pressing hard for disposal of this Original Application in view of the harassment and hardship caused to the Applicant for no fault of them. Having heard the counsel for the parties and having perused the materials placed on record, it clearly establishes that this is a clear case of harassment to the Applicant. On the face of the un-controverted documents under Annexure-A/9 dated 22-12-2005, the impugned order under Annexure-A/5 dated 12/24-01-2005 is not



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available to be sustained. Law is well settled that if vacancies are there and approved candidates are available to hold the post, there is no reason not to allow them to join. In the case of **VIJAY KUMAR SHARMA AND OTHERS vrs. CHAIRMAN, SCHOOL SERVICE COMMISSION AND OTHERS** reported in (2001) 4 Supreme Court Cases 289, the Hon'ble Apex Court held as under:-

"We see no justification for not appointing Appellant I when vacancies were available. We also see no justification for not extending the panel life of the OBC Category. We, therefore, direct that Appellant I be appointed against the vacancies which are available in the OBC category.:

6. In the case of **PURUSHOTTAM VRS. CHAIRMAN, M.S.E.B. AND ANR.** (in Criminal Appeal Nos. 2906-07 of 1999 Arising out of SLP (C) Nos.1184-1185 of 1999 disposed of on 11-05-1999), Their Lordships of the Hon'ble Apex Court have been pleased to held as under:-

"4. In view of the rival submission the question that arises for consideration is whether a duly-selected person for being appointed and illegally kept out of employment on account of untenable decision on the part of the employer, can be denied the said appointment on the ground that the panel has expired in the meantime. We find sufficient force in the contention of Mr. Deshpande appearing for the appellant inasmuch as there is no dispute that the appellant was duly selected and was entitled to be appointed to the post but for the illegal decision of the screening committee which

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decision in the meantime has been reversed by the High Court and that decision of the High Court has reached its finality. The right of the appellant to be appointed against the post to which he has been selected cannot be taken away on the pretext that the said panel has in the meantime expired and the post has already been filled up by somebody else. Usurpation of the post by somebody else is not on account of any defect on the part of the appellant, but on the erroneous decision of the employer himself. In that view of the matter, the appellant's right to be appointed to the post has been illegally taken away by the employer. We, therefore, set aside the impugned order and judgment of the High Court and direct the Maharashtra State Electricity Board to appoint the appellant to the post for which he was duly selected within two months from today. We make it clear that appointment would be prospective in nature".

7. In the present case it is seen that although the Applicant was regularly selected for the post of Technician, usurpation of the post by somebody else being not on account of any defect on the part of the appellant but on the erroneous decision of the employer itself, by applying the law laid down by Their Lordships of the Hon'ble Apex Court, the impugned order under Annexure-A/5 dated 12/24/01-2005 is hereby quashed. The Respondents are hereby directed to appoint the Applicant in the post of Technician within a period of 30 days from the date of receipt of a copy of this order.

Signature

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In view of the observations made above, there remains nothing further to be adjudicated in this O.A. which stands disposed of in above said terms. No costs.

Y. Mohanty
24.03.88
(M.R.MOHANTY)
MEMBER (JUDICIAL)