

AFR



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P(C). NO. 5592 OF 2019

In the matter of an application under Articles 226 & 227 of the Constitution of India.

Union of India & Others		<i>Petitioners</i>
-versus-		
Kalpana Nayak		<i>Opp. Party</i>

Advocates Appeared in this case

<i>For Petitioners</i>	-	Mr. P.K. Parhi, DSGI along with Mr. K.Panda, CGC
<i>For Opp. Party</i>	-	M/s. C.P. Sahani, P.K. Samal, B.K.Samal & P.K. Beura, Advocates

CORAM

HON'BLE MR. JUSTICE DIXIT KRISHNA SHRIPAD
HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Hearing & Judgment : 12.01.2026

PER KRISHNA S. DIXIT,J.

Union Government and its entities are knocking at the doors of Writ Court for assailing the order dated 03.01.2019, whereby OP's O.A. No.496 of



2016 having been favoured, her removal from service came to be set at naught with a direction for reinstatement.

2. Learned DSGI- Mr. P.K. Parhi in his usual vehemence submits that as on the date the appointment order was issued, i.e. 09.06.2014, the OP had attained only the age of 17 years & 9 months, when the rule prescribes 18 years as the minimum age for engagement/appointment. Therefore, on coming to know of true age of the OP, he has been removed from service. He also submits that OP's representation for regularizing her service is also rejected. Learned counsel representing the OP vehemently opposes the petition making submission in justification of the impugned order of the Tribunal and reasons on which it has been constructed. He adds that the removal of his client from service, is without any opportunity of hearing and therefore, being in violation of principles of natural justice, the same has been found fault with by the CAT. So contending, he seeks dismissal of the petition.

3. Having heard learned counsel for the parties and having perused the petition papers, this Court declines indulgence in the matter broadly agreeing with the reasoning part of the Tribunal and also for the following additional reasons:

3.1. The OP's date of birth is admittedly 07.06.1996; the advertisement was issued on 14.08.2013 calling for application for engagement. OP had staked



her claim for engagement by producing all necessary documents including the Matriculation Certificate, which reflected her date of birth clearly. After looking into all these documents and considering the candidature, OP was issued appointment order on 09.05.2014. It is only on 18.04.2016, the order removing OP from engagement came to be issued. Thus, as on the date the removal was effected, OP had already attained majority and that there is no complaint whatsoever against discharge of her duties. Thus, there is absolutely no culpability attributable to the OP in anyway. Rightly, no culpability is laid at her threshold, either.

3.2. In the matter of engagement, where all documents are produced by the aspiring candidates, the process of engagement takes place indoor and therefore, the doctrine of 'indoor management' comes into play. It is not the case of Petitioners that OP had committed any fraud or fabrication or any act of *suppressio very suggestio falsi*. It also cannot be assumed, even for the sake of argument, that OP had suppressed her date of birth or had given a wrong date of birth, either, inasmuch as OP had produced the Matriculation Certificate, which apparently contained her correct date of birth, as has been reflected in the application too. It hardly needs to be stated that the entry in the Matriculation Certificate is entitled to strong presumption of validity, vide ***Union of India v. C. Rama Swamy***, AIR 1997 SC 2055. For the fault of



officials involved in accomplishing the recruitment process, an innocent candidate cannot be put to prejudice. The fact that the guilty official, who had granted appointment letter, even when the OP had shortage of minimum age limit, has been punished in a disciplinary inquiry, does not advance the case of Petitioners to the detriment of the OP. Guilty party is punished rightly. In the disciplinary inquiry held against the delinquent official, no notice was issued to the OP and no opportunity of participation was afforded to her, she being neither a co-delinquent nor a witness. Being an innocent party, she could not have been removed from service, especially years after attaining majority, the shortfall being too short.

3.3. The contention that a minor's contract is void *ab initio* vide *Mohori Bibee v. Dharmodas Ghose*, [1903] UKPC 12, does not much avail to the Petitioners, inasmuch as OP then being the minor, is herself a beneficiary of contract, which eventually travelled to one of status vide *Union of India v. Tulsiram Patel*, AIR 1985 SC 1416, and more particularly when the repudiation of contract is sought to be done long after OP attained majority, having satisfactorily discharged the functions. The very **Mohori Bibee** recognizes validity of minors' contracts when they are substantially for their benefit. Contention of the kind ordinarily avails to the minor to repudiate his/her agreement, that too subject to all just



exceptions. Mr. Parhi very fairly tells us that the case is not of civil service and that he has no information as to any complaint about OP's discharge of duty. In cases of this nature, arguably the maxim *factum valet quod fieri dabitur* (what ought not to be done becomes valid when done) becomes invocable. That being the position, impugned order of the CAT whereby removal of OP is set at naught, is unassailable. It has brought about a just result, regardless of arguable irregularity.

3.4. There would have been an arguable case for the Petitioners warranting interference of this Court, if OP was too young, like 15 or 16 year old when appointment order was issued on 09.05.2014 or that the order removing OP was made within a short period of her attaining the majority or that the performance of OP was unsatisfactory. For the long delay brooked in removing the OP, no explanation is offered. It is not that for any other reason, OP is ineligible to be engaged for service of the kind. Engagement of this nature becomes handy for the poor in the rural areas, where poverty looms large. Therefore, while removing a person from employment/engagement, a strong case has to be made out. In view of all this, we are of the considered opinion that the impugned order has brought home a just result and it is pregnant with elements of justice. Therefore, our intervention is uncalled for.



In the above circumstances, this petition being devoid of merits is liable to be dismissed and accordingly it is, costs having been made easy. The OP shall be reinstated in service, as before, within six weeks and a compliance report shall be filed with the Registrar General of this Court, failing which the Petitioners run the risk of contempt action.

Web copy of the judgment to be acted upon by all concerned.

(Dixit Krishna Shripad)
Judge

(Chittaranjan Dash)
Judge

Orissa High Court, Cuttack
The 12th day of January 2026 /Madhusmita