

ITEM NO.3

Court 5 (Video Conferencing)

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No.7306/2020

(Arising out of impugned final judgment and order dated 06-09-2019 in RVWPET No. 201/2019 12-01-2018 in WPC No.16592/2015 passed by the High Court of Orissa at Cuttack)

THE STATE OF ODISHA & ORS.

Petitioner(s)

VERSUS

BHAGABAN MISHRA & ANR.

Respondent(s)

(With appln.(s) for IA No.88701/2020-CONDONATION OF DELAY IN FILING and IA No.88704/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.88702/2020-STAY APPLICATION)

Date : 04-01-2021 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s) Mr. Shovan Mishra, AOR
Ms. Bipasa Tripathy, Adv.
Ms. Shubhangi Singh, Adv.

For Respondent(s) Mr. Ashok Kumar Panigrahi, Adv.
Mr. Gautam Laha, Adv.
Mr. Sanjeev Kumar, AOR

UPON hearing the counsel the Court made the following
O R D E R

- 1 Delay condoned.
- 2 Mr Shovan Mishra, learned counsel appearing on behalf of the State of Odisha submits that :

- (i) The resolution of the State Government dated 5 September 2011 clearly specifies in Clause 8(iv) that the pay of Classical Sanskrit teachers possessing the common qualification shall be fixed notionally under Rule 74B of the Odisha Service Code;
- (ii) Rule 74B of the Odisha Service Code applies where a government servant who is **holding a post** is promoted or appointed to another post carrying duties or responsibilities of a greater importance;
- (iii) The resolution dated 5 September 2011 specifies that it shall come into force from the date of its issuance and is hence prospective;
- (iv) The decision of the High Court dated 7 April 2017 in Writ Petition (Civil) No 25622/2014 related to an in-service candidate who continue to hold the post, as is evident from paragraph 14 of the judgment; and
- (v) In the present case, the respondent had demitted the office on 31 July 2011 and was, therefore, not in service when the resolution dated 5 September 2011 was issued and hence, he would not be entitled to the benefit of the Resolution.

3 Issue notice, returnable in twelve weeks.

4 The respondents shall file their counter affidavit within a period of six weeks from the date of service of the notice.

5 Till the next date of listing, there shall be a stay of the operation of the impugned judgments and orders dated 6 September 2019 in RVWPET No 2019 and 12 January 2018 in WPC No 16592 of 2015 passed by the High Court of Orissa.

(CHETAN KUMAR)
A.R. - cum - P.S.

(SAROJ KUMARI GAUR)
Court Master