

ORISSA HIGH COURT : CUTTACK

WPC (OAC) No.2180 of 2016

In the matter of an Application under Article 226/227 of
the Constitution of India, 1950

read with

Section 19 of the Administrative Tribunals Act, 1985

1. Ganesh Chandra Bhuyan,
Son of Bansidhar Bhuyan,
At: Padana, P.O.: Salamanga,
P.S.: Balikuda,
District: Jagatsinghpur,
at present working as ECG Technician
SCB Medical College & Hospital
Cuttack
2. Deepak Kumar Nayak,
Son of Bhanja Kishore Nayak,
resident of Plot No.1F/487, Sector – 10,
Avinaba Bidanasi (CDA), Cuttack,
at present working as ECG Technician
SCB Medical College & Hospital
Cuttack

Petitioners

-VERSUS-

1. State of Odisha
represented through
Principal Secretary,
Health and Family Welfare Department,
Lok Seva Bhawan,
Bhubaneswar in Khordha District
2. Director of Medical Education & Training, Odisha
Heads of Department Building,
Bhubaneswar, District: Khordha

AFR

3. Superintendent,
SCB Medical College & Hospital,
Cuttack
4. Dean & Principal,
SCB Medical College & Hospital
Cuttack
5. Administrative Officer
SCB Medical College & Hospital
Cuttack ... Opposite parties.

AND

WPC (OAC) No.28 of 2016

Ganesh Chandra Bhuyan,
Son of Bansidhar Bhuyan,
At: Podana, P.O.: Salamanga,
P.S.: Balikuda, District: Jagatsinghpur,
at present working as ECG Technician
SCB Medical College & Hospital
Cuttack ...

Petitioner

-VERSUS-

सत्यमेव जयते

1. State of Odisha
represented through
Principal Secretary,
Health and Family Welfare Department,
Lok Seva Bhawan,
Bhubaneswar in Khordha District
2. Director of Medical Education & Training, Odisha
Heads of Department Building,
Bhubaneswar, District: Khordha
3. Superintendent,
SCB Medical College & Hospital,
Cuttack

4. Dean & Principal,
SCB Medical College & Hospital
Cuttack
5. Administrative Officer
SCB Medical College & Hospital
Cuttack ... Opposite parties.

AND

WPC (OAC) No.29 of 2016

Deepak Kumar Nayak,
Son of Bhanja Kishore Nayak,
resident of Plot No.1F/487, Sector – 10,
Avinaba Bidanasi (CDA), Cuttack,
at present working as ECG Technician
SCB Medical College & Hospital
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Petitioner

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SCB Medical College & Hospital,
Cuttack
4. Dean & Principal,
SCB Medical College & Hospital
Cuttack

5. Administrative Officer
SCB Medical College & Hospital
Cuttack ... Opposite parties.

Counsel appeared for the parties:

For the Petitioners : Mr. Budhadev Routray,
Senior Advocate,
M/s. S. Das, Rama Prasad Dalai,
S. Jena, K. Mohanty, S.K. Samal,
Satya Prakash Nath, Subhadutta
Routray, Advocates

For the Opposite parties : Mr. Biplab Mohanty,
Additional Government Advocate

P R E S E N T:

THE HONOURABLE MR. JUSTICE MURAHARI SRI RAMAN

Date of Hearing : 03.11.2023 :: Date of Judgment : 15.11.2023

JUDGMENT

MURAHARI SRI RAMAN, J.—

THE CHALLENGE:

Questioning propriety of action of the opposite party No.4-Dean & Principal of the S.C.B. Medical College & Hospital, Cuttack, fixing date for verification of documents and interview for filling up posts of ECG Technician in Group-C category in respect of candidates, whose names appeared in the final merit list as uploaded in the web-portal with reference to Advertisement No.9119, dated 17.12.2015 read with

Corrigendum No.9381, dated 28.12.2015 *vide* Annexure-17, the Petitioners, namely, Sri Ganesh Chandra Bhuyan and Sri Deepak Kumar Nayak, working as ECG Technicians in said Medical College and Hospital, approached the Odisha Administrative Tribunal, Cuttack Bench Cuttack by way of Original Application (registered as O.A. No.2180 (C) of 2016, with prayer to grant of following reliefs:

- “(a) Admit the Original Application, call for the records, and quash the notice under Annexure-17 so far as the post of ECG Technician is concerned, and further be pleased to direct the Respondents to consider the case of the present applicants for regularization against the sanctioned vacant post of ECG Technicians under Annexure-14 in terms of the Odisha Group-C and Group-D (Contractual Appointment) Rules, 2013 and they may be extended with all such service benefits as is due and admissible to the post of ECG Technicians;*
- (b) And/or pass such other order(s) or direction(s) as this Hon’ble Tribunal may deem just and proper.”*

1.1. The prayer of the petitioners to pursue the original application jointly before the learned Odisha Administrative Tribunal, Cuttack Bench, Cuttack was allowed *vide* Order dated 23.06.2016 in P.P. No.300(C) of 2016 and notice was issued in the main case, *i.e.*, O.A. No.2180(C) of 2016 directing the opposite parties to file

counter. On the said date, the following Order was passed:

“The applicants have challenged the notice vide Annexure-17 with a payer to direct respondents to consider the case of the applicants for regularisation.

Learned counsel for the applicants submitted that the applicants are working as ECG technicians in SCB Medical College & Hospital, Cuttack on contractual basis being recruited through due process. Even though they have completed more than six years and their cases have been recommended from time to time for regularisation, yet instead of taking any action for regularisation of their services, proceeded to fill up the post of ECO Technician making fresh recruitment. It is further submitted that earlier the applicants have filed O.A.No.2367(C)/2014 where the Tribunal directed for consideration of representations of the applicants for contractual appointment against the post created vide Order dated 05.05.2014, but without considering the same, the impugned notice has been issued. It is accordingly submitted to quash the same and as an interim measure to stay the same.

Learned Standing Counsel, on the other hand, submitted that the applicants have no locus standi to challenge the notice without making any application pursuant to advertisement dated 28.12.2015.

Considering the submission of learned counsel for the applicants and learned Standing Counsel, issue notice on admission.

Counter be filed within four weeks and rejoinder, if any, be filed within two weeks thereafter.

List this matter after six weeks

So far as prayer for interim relief is concerned, let the respondent authorities proceed with the recruitment, but no final appointment order should be issued without considering the representations of the applicants, as per order of this Tribunal in O.A. No.2367 (C) of 2014.

Send copies.”

1.2. It is further stated that earlier the petitioners have filed Original Application No. 2367(C) of 2014, where the Odisha Administrative Tribunal *vide* Order dated 31.10.2014 directed for consideration of representation(s) of the petitioners for regularization of contractual appointment against the posts of ECG Technician created *vide* Order dated 05.05.2014 of the Government of Odisha in the Health and Family Welfare Department, but without considering the same, the impugned notice declaring result in connection with Advertisement No.9119, dated 17.12.2015 read with Corrigendum No.9381, dated 28.12.2015 *vide* Annexure-17 has been issued.

1.3. After abolition of the Odisha Administrative Tribunal by virtue of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Notification F. No. A-11014/10/2015-AT [G.S.R.552(E)], dated 2nd August, 2019), the said case having been transferred to this Court, O.A. No. 2180 (C) of 2016 has been re-registered as WPC (OAC) No.2180 of 2016.

THE FACTS:

2. The background facts leading to knocking the doors of this Court by the petitioners, ECG Technicians of SCB Medical College & Hospital, Cuttack (referred to as “SCBMCH” for brevity) as adumbrated in the pleadings reveal that the Superintendent, SCBMCH issued an Advertisement, published in Odia daily newspaper “the Sambad” on 17.11.2010, inviting applications for filling up various technical posts in Trauma Care Centres of SCBMCH on contractual basis. The Petitioners, having the requisite qualification of +2 Science with 1 year training in ECG Technology from institution approved by All India Council for Technical Education, applied for the post of ECG Technician, whose “salary” is found mentioned in the said Advertisement at “Rs.5,200/-”.
- 2.1. On scrutiny, having secured 88.2% of marks, while the petitioner No.1 was placed at serial No.1 in the merit list, the petitioner No.2, claiming to be under Socially Economically Backward Class category, was placed at serial No.6, and accordingly got selected for the said post of ECG Technician in the selection process conducted by Selection Committee comprising of the Superintendent, SCB Medical College and Hospital; Head of the Department, Cardiology; Senior Hospital Administration, Professor of Orthopedic; Trauma Care Centre, Administrative Officer; Accounts Officer and Hospital

Manager. In the said selection list along with these Petitioners five others were also selected.

2.2. Out of the said seven persons so selected, four persons, namely, Sri Pradeep Kumar Barik, Sri Ranjan Kumar Dakua, Sri Alok Ranjan Senapati and Sri Manasi Samantaray were given appointment as ECG Technicians in Trauma Care Centre at SCBMCH.

2.3. In the Proceeding of Meeting “for engagement of ECG Technician as contractual basis from User Fund” held on 28.04.2011, it has been decided as follows:

“A meeting was convened on 28.04.2011 at 12 Noon in the office chamber of the Superintendent, SCB Medical College Hospital, Cuttack under the Chairmanship of Prof. PK Chinara, Dean & Principal, SCB MC, Cuttack regarding contractual engagement of ECG Technician from users fund.

The following members were present.

1. *Prof. D.N. Moharana, Superintendent*
2. *Prof. H.N. Mishra, HOD, Cardiology*
3. *Dr. (Col) S. Mohapatra, Sr. Hospital Administrator*
4. *Dr. B.N. Mohapatra, Associate Prof. Orthopaedio, I/c Trauma Care Center.*
5. *Dr. B.N. Moharana, Administrative Officer*
6. *Sri Rabindranath Parida, Accounts Officer*
7. *Mrs. Soumya Mohanty, Hospital Manager*

As per decision taken in the Swasthya Bikash Samiti meeting held on 24.01.2011 ECG Technician are to be posted for Cardiology Department, and for general pool. In this regard the HOD, Cardiology has been requesting time

and again for engagement of 4 (four) nos. of ECG Technician from users fund to manage the work load for Cardiology as well as the general pool. An Interview was conducted for engagement of ECG Technician for Trauma Care Centre by the Team of Cardiologist under the guidance of HOD, Cardiology as per direction of the D.M.E.T., Orissa. For the merit list 4 nos. of Cardiology have been appointed in Trauma Care Centre and there are three candidates namely Sri Ganesh Ch. Bhuyan, Sri Dhaniram Singh and Sri Deepak Ku. Nayak left from the sald list, who can be engaged on contractual basis along with Md. Riyazuddin Sharif, who is already working in Cardiology Department. The Committee considering the need of the hospital decided to engage the above three candidates along with Md. Riyazuddin Sharif as ECG Technician as contractual basis from Users Fund.

The meeting ended with vote of thanks to the Chair.”

- 2.4. Accordingly, pursuant to Office Order No.8387, dated 29.04.2011, the Petitioners having joined as ECG Technicians at the Cardiology Department, while discharging their respective duties with remuneration of Rs.5,200/-, the Superintendent of SCBMCH by Order dated 15.05.2011, sent them for Training Programme on Theory and Hands on Practical for 90 days along with other Technicians of Trauma Care Centre and Common Pool including those of the Department of Cardiology. On successful completion, the Professor and Head of Department of the SCBMCH certified duly.

- 2.5. On the basis of feasibility of creation of five numbers of ECG Technician posts in the Department of Cardiology

in SCBMCH *vide* Letter No.146, dated 19.07.2012 issued by the Professor & Head of Department, Cardiology, the Superintendent of SCBMCH *vide* Letter No.20301-F. No.314, dated 15.09.2012 requested the Director of Medical Education & Training, Odisha to create five numbers of posts of ECG Technician in the Department of Cardiology. The Director of Medical Education & Training, Odisha has also addressing the Government of Odisha in Health and Family Welfare Department, describing the requirement of ECG Technicians *vide* Letter Memo No.17673, dated 12.11.2012 justified creation of five posts. Referring to said communication, citing workload and requirement of more ECG technicians in SCBMCH for attending critically ill-patients, the Professor & Head of the Department of Cardiology suggested for permanent appointment of existing technicians to the Government of Odisha in Health and Family Welfare *vide* Letter No.382, dated 02.02.2013. By yet another Letter No.3768-EST-III-MISC-214, dated 16.02.2013, the Superintendent of SCBMCH made request to the Government of Odisha in Health & Family Welfare Department to take necessary steps to appoint ECG Technicians on permanent basis for the Department of Cardiology for smooth functioning.

2.6. When the Government of Odisha was sitting tight over the matter, the Professor & Head of Department of

Cardiology issued Letter No.693, dated 06.08.2013 with following request:

*“Sub.: Requirement of ECG Technicians and to consider two Technicians for permanent those are working on contractual basis under Swasthya Bikash Samiti for the Dept. of Cardiology, SCBMCH, Cuttack.
(Letter No: 382 on dt. 02.02.2013)*

Sir,

With due respect, I would like to inform you that the Dept. of Cardiology has 2 permanent Graduate Technicians performing the ECG since last 25 years. Another permanent Technician has retired since 2009. As you might be aware, we have to perform ECG on critically ill patients in OPD & Indoor throughout day & night on all days of the week. The number of ECGs being performed in this department has gone beyond 10,000 to 12,000 per year since last 2 years. In view of the ever increasing workload of performing ECG throughout day & night, additional five ECG Technicians may be considered for permanent appointment to provide this essential service in proper time.

In this regard, I had already sent a proposal to the Superintendent, SCBMCH vide Letter No.146 on of 19.07.2012 which has been duly forwarded to you through proper channel vide Supt. Office Letter No. 20301 on dt. 15.09.2012 and DMET Office Letter No. 17672 on dt. 12.11.2012 for your kind consideration.

The ECG Technicians Sri Ganesh Chandra Bhuyan & Sri Deepak Kumar Nayak, who are currently providing the service in the Department of Cardiology on contractual

basis, with requisite qualifications as per the norms set by Govt. of Odisha have acquired the necessary skills to cater to seriously ill patients Considering their performances they may be regularized against the said vacancy for better patient service and smooth management of Department work”

2.7. Again the Superintendent, SCBMCH *vide* Letter No.19616— EST.III-MISC.214, dated 29.08.2013 forwarded the proposal of Professor & Head of Department of Cardiology for requirement of ECG Technician on permanent basis.

2.8. Considering the above suggestion and request, the Government of Odisha *vide* Health and Family Welfare Department Notification No.11906—ME-I-IM-16/13/H, dated 05.05.2014, created *inter alia* four posts of “ECG Technician” in the Cardiology Department with scale of pay Rs.5,200/- — Rs.20,200/- with Grade Pay of Rs.2,400/- endorsing remarks that “Recruitment to be made in a transparent manner following the relevant recruitment Rules and provisions of ORV Act and stipulation contained in G.A. Department Notification No.32010/Gen, 12.11.2013”.

2.9. After the posts so created, in spite of the fact that the authority concerned had recommended the names of the petitioners to the Government for consideration of their case for permanent appointment/regularisation of services, as no step was taken, on 16.05.2014 and

01.09.2014, the petitioners have made representation(s) to the Government of Odisha in Health and Family Welfare Department to consider their cases.

2.10. As the attempt went in vain, the petitioner No.1 approached the learned Odisha Administrative Tribunal by way of application under Section 19 of the Administrative Tribunals Act, 1985, being O.A. No.2367 (C) of 2014, which came to be disposed of *vide* Order dated 31.10.2014 with the following observation:

“The applicant is working as ECG Technician Department of Cardiology, SCB Medical College and Hospital, Cuttack on contractual basis was recruited through due process as per advertisement at Annexure-1. The grievance of the applicant is that vide Letter No.613 dtd. 06.08.2013 (Annexure-3 series) his case for regularization in the post of ECG Technician has been recommended by the Professor & HOD Cardiology, SCB Medical College and Hospital, Cuttack. In the meanwhile Government has created four posts of ECG Technician, Cardiology Department of SCB Medical College and Hospital, Cuttack against which the authorities want to appoint persons on contractual basis. He submitted that the grievance of the applicant will be fully redressed if the paper book will be forwarded to the respondent No.1-Commissioner-cum-Secretary, Health and Family Welfare Department, Bhubaneswar treating the contents of the O.A., and other annexures as his representation for consideration and disposal of the same within a stipulated period.

Learned Govt. Advocate has no objection to such course of action.

Considering the submissions made by the learned counsel for both the parties and without going into the merits of the case respondent No.1-Commissioner-cum-Secretary, Health and Family Welfare Department, Bhubaneswar is directed to treat the contents of the O.A. as the representation of the applicant and consider the case of the applicant for contractual appointment against the posts created vide order dtd.05.05.2014 (Annexure-4) and dispose of the same as per rules, laws in force in this regard within a period of two months from the date of receipt of this order. It may be mentioned that the Tribunal has not gone into the merit of the case and respondent No.1 is at liberty to take decision independently in accordance with existing law.

With these observations O.A. is disposed of.

Send copy of this order along with copy of the paper book to the respondent No.1 at the cost of the applicant.”

2.11. In connection with aforesaid Order of the learned Odisha Administrative Tribunal, the Health and Family Welfare Department in Letter No.8468-MISC-IM-16/2014/H&W, dated 28.04.2015 forwarding the grievance petition(s) of the petitioners, instructed Director of Medical Education & Training to take “appropriate action”, with a direction to intimate the result of such action. In turn, the Director of Medical Education & Training, Odisha in his Letter No.7240-MET-IV-MISC.29/2015, dated 26.04.2015 requested the Superintendent, SCBMCH to furnish detail report along with views on the grievance petition of the petitioners.

2.12. The Superintendent of SCBMCH has submitted following report *vide* Letter No.17872— EST.III, dated 06.08.2015:

“With reference to above, I am to say that an advertisement was published in daily Sambad on 17.11.2010, inviting application from the candidates for the post of (4 Nos.) ECG Technician for the Trauma Care Center of this hospital. The following 7 candidates have applied for the said post.

1. *Dhaniram Singh*
2. *Paradip Ku. Barik*
3. *Deepak Ku. Nayak*
4. *Ganesh Ch. Bhuyan*
5. *Nihar Ranjan Dakua*
6. *Manasi Samantaray.*
7. *Alok Ranjan Senapati*

An interview was conducted for the posted ECG Technician for Trauma Care Center by the team of Cardiologist under the guidance of HOD Cardiology as per the direction of D.M.E.T. (O), Bhubaneswar. The following candidates were selected and engaged as ECG Technicians under Trauma Care Center.

1. *Pradip Ku. Barik*
2. *Nihar Ranjan Dakua*
3. *Alok Ranjan Senapati*
4. *Manasi Samantaray*

Further as per the decision of Swasthya Bikash Samiti in its meeting held on 24.01.2011, it has been decided to engage another 4 Nos. of ECG Technicians for smooth running of ECG work in cardiology Dept. of this hospital (Copy enclosed). In this context & Prof. & HOD, Cardiology has time and again requested this office to engage said 4 ECG Technicians at an early date.

In this regard meeting was convened on 28.04.2014 under the Chairmanship of Dean & Principal, where a has been decided to engage Sri G.C. Bhuyan, Deepak Ku. Nayak, and Dhaniram Singh as ECG Technician from the merit list prepared for posting at TCC and they may be posted in the common pool of Cardiology and this salary may be met from Users Fund (copy enclosed). Subsequently the Prof. & HOD Cardiology vide his Letter No. 146, dated 19.07.2012 has requested to the Superintendent for creation of 5 posts of ECG Technician in Cardiology Dept. Moreover he has requested the Commissioner-cum-Secretary vide his Letter No. 613 dated 06.08.2013 wherein he has requested for creation of ECG Technician and to consider the case of G.C. Bhuyan & D.K. Nayak considering their performance (Copy enclosed). In the meantime they have filed a case in Hon'ble OAT OA No. 2367 (C)/2014 wherein Hon'ble OAT has passed the order to consider their case in accordance with the existing law. Simultaneously the ECG Technician namely Pradip Ku. Barik, Alok Ranjan Senapati, Nihar Ranjan Dakua and Smt. Manasi Samantaray have filed a case in OAT Cuttack vide OT 748 (C)/2015 where they have prayed to give them regular engagement (Copy enclosed). As then name are find place first in the merit list. In the meantime 4 posts of ECG Technician have been created for Cardiology Department vide Health & Family Welfare Department Letter No.11906/H, dated 05.05.2014.

Under such circumstance, necessary steps may be taken in this regard.”

2.13. Despite creation of posts leading to availability of regular vacancies, and favourable report being submitted by the authority concerned, instead of

absorbing the petitioners, Advertisement No.9119, dated 17.12.2015 has been issued to fill up the said vacancies. Such an action compelled the petitioners to file O.A. No.28(C) of 2016 and O.A. No.29(C) of 2016 before the learned Odisha Administrative Tribunal. Though notices were issued in the said cases, no interim orders were passed as the petitioners had not completed 6 years of service so as to be considered as per the Odisha Group-C and Group-D Posts (Contractual Appointment) Rules, 2013.

2.14. While the matter stood thus, the opposite party No.4- Dean & Principal, SCBMCH, issued notice to the candidates as per the select list dated 14.10.2015 for verification of documents and interview in respect of Group-C posts in connection with Advertisement No.9119, dated 17.12.2015 read with Corrigendum No.9381, dated 28.12.2015, which is subject-matter of challenge in WPC (OAC) No.2180 of 2016.

2.15. Being aggrieved by the action of the opposite parties, the petitioners have challenged the notice in connection with Advertisement No.9119, dated 17.12.2015 read with Corrigendum advertisement No.9381 dated 28.12.2015 in the present matter.

3. After transfer of the matter to this Court on abolition of the Odisha Administrative Tribunal, counter affidavit has been filed by the opposite parties contending that in

the merit list containing seven candidates in respect of Advertisement dated 17.11.2010, four ECG Technicians were given appointment in the Trauma Care Centre, but the three left out candidates, including the present petitioners, have been given engagement in “the Cardiology Department keeping in view of the necessity in the Department” pursuant to decision taken *vide* Office Order No.8387, dated 29.01.2011, consequent upon which the petitioners “joined as such on 30.04.2011 to discharge their duties in the Cardiology Department”.

- 3.1. It is also stated in the counter affidavit that since the petitioners have been discharging duties “satisfactorily since their joining”, the opposite parties have been moving the Department of Health and Family Welfare for creation of posts and at paragraph 6 it has been stated as follows:

*“*** It is further humbly stated that the petitioners have been discharging their duties in the Cardeology department satisfactorily since their joining and are being paid consolidated remuneration from Users Fund to cater the needs of the Department and the hospital as a whole. Due to unavailability of any sanctioned posts, higher authorities have been moved time and again. vide office Letter No.20301, dated 15.09.2012, Letter No.3768, dated 16.02.2013, Letter No.17872, dated 06.08.2015, Letter No.4774, dated 27.02.2019 & Letter No.6688, dated 15.03.2019 requesting for creation of further posts of ECG Technicians for absorption of the petitioners*

*following due procedure as there is dearth requirement of ECG Technicians keeping in view of increase in number of patients. ***”*

4. Refuting the contention of the opposite parties, the petitioners have filed rejoinder affidavit on 01.05.2023 by stating that since they have been appointed by following selection process, which cannot be said to be backdoor entry, the opposite parties should have considered the recommendation of authority concerned for regularization of petitioners while creating the vacant posts. It is also placed by the Petitioners that since they are governed by the Odisha Group-C and Group-D Posts (Contractual Appointment) Rules, 2013, as they have completed six years of service on contractual basis, they are entitled for regular appointment as per Rule 4 read with Rule 10 thereof.

4.1. Stemming on the Odisha Group-C and Group-D Posts (Contractual Appointment) Amendment Rules, 2017, whereby Annexure has been appended showing the Fitment Table— Revised Remuneration of Contractual Employee with effect from 01.01.2016, the petitioners submitted that *vide* Memo No.1836, dated 09.08.2019, the Superintendent of SCBMCH allowed them to draw “monthly remuneration at the rate of Rs.15,320/-, w.e.f. 01.07.2019”, which is in terms of 6th Year, Stage-7 with Pay of Rs.5,200/- in Pay Band-I. This clearly indicates that the petitioners are governed under the Odisha

Group-C and Group-D Posts (Contractual Appointment) Rules, 2013, which is recognized by the opposite parties.

- 4.2. Since the petitioners, in the meantime, have completed 10 years of service as ECG Technician in SCBMCH, having joined as such in the year 2011, and their grievance has been pending even though favourable appraisal has been made to the Government of Odisha in Health and Family Welfare Department in Letter dated 06.08.2015 by the Administrative Officer, SCBMCH in connection with direction of said Department, the opposite parties are liable to be directed for consideration of the case of the petitioners.
5. The opposite party No.3 raised objection to the rejoinder affidavit by way of affidavit dated 28.08.2023 and contended that “the petitioners were barred from participating in recruitment process” undertaken pursuant to Advertisement dated 17.12.2015 for “recruitment against the four sanctioned posts for ECG Technicians”, because of the prescribed age limit of 32 years and that “various grievance petitions for absorption of the petitioners against regular posts are pending consideration of Department of Health and Family Welfare and no decision has yet been taken therein”.

ARGUMENTS OF THE RESPECTIVE COUNSELS FOR THE PARTIES:

6. Pleadings being completed and exchanged between counsel for both sides, on their consent the matter has taken up for final disposal. This Court heard Sri Budhadev Routray, learned Senior Advocate along with Sri Subhadutta Routray, learned Advocate appearing for the petitioners and Sri Biplab Mohanty, learned Additional Government Advocate for the opposite parties.
7. It is submitted by Sri Budhadev Routray, learned Senior Advocate ably assisted by Sri Subhadutta Routray, learned counsel for the petitioners that the petitioners came out successful in the selection process having appeared pursuant to Advertisement dated 17.11.2010, and as a result of which they joined in the post of ECG Technician in the Cardiology Department of the SCBMCH. Citing their cases for regular appointment, many communications were exchanged between the Health and Family Welfare Department and the authorities at SCBMCH. Said Department was also appraised about requirement of post of ECG Technician in Cardiology Department to cater to the exigencies of critically ill patients. Accordingly, the Government of Odisha in Health and Family Welfare Department in the year 2014 created four posts, which ought to have been considered for regular appointment of the petitioners in consonance with provisions contained in the Odisha Group-C and Group-D Posts (Contractual Appointment) Rules, 2013 and in compliance with the direction of the

Odisha Administrative Tribunal, Cuttack Bench, Cuttack
vide Order dated 31.10.2014 in O.A. No. 2367 (C) of
2014.

7.1. Arguing further, Sri Budhadev Routray, learned Senior Advocate made fervent submission that the document at Annexure-18 of the rejoinder affidavit being Order No.8993-Estt.(III), dated 20.04.2021, *i.e.*, sanction of earned leave of seven days by the Administrative Officer, SCBMCH, is tell-tale of the fact that the petitioner No.1 has been treated to be working against sanctioned post and such an aspect is governed by service condition in terms of the Odisha Group-C and Group-D Posts (Contractual Appointment) Rules, 2013. It is also not disputed that the authorities have been utilising the services of the petitioners since 2011 continuously till date. The fact of extension of the benefit of pay as per the Fitment Table appended to the Odisha Group-C and Group-D Posts (Contractual Appointment) Rules, 2013 as amended by virtue of the Odisha Group-C and Group-D Posts (Contractual Appointment) Amendment Rules, 2017, is clear indicative that the appointing authority was bound to issue formal order of regular appointment since the petitioners have completed 6 years of service. The fact-sheet as per direction of the Health and Family Welfare Department to the Director of Medical Education & Training, Odisha submitted by the Administrative Officer of the SCBMCH being not disputed or denied,

and said process, being much prior to publication of Advertisement No.9119, dated 17.12.2015 inviting applications for filling up four posts of ECG Technician, the Government should not have detained itself from regularizing the services in terms of the provisions of the Odisha Group-C and Group-D Posts (Contractual Appointment) Rules, 2013.

7.2. Sri Budhadev Routray, Senior Advocate relied on the decisions rendered by the Hon'ble Supreme Court of India in the case of *State of Karnataka Vrs. Umadevi*, (2006) 4 SCC 1 = (2006) 3 SCR 953 as clarified in *State of Karnataka Vrs. M.L. Kesari*, (2010) 9 SCC 247 = (2010) 9 SCR 543, following which the Single Bench of this Court has directed not only to regularise services, but also extend consequential service and financial benefits in the case of *Patitapaban Dutta Dash Vrs. State of Odisha*, W.P.(C) No. 9951 of 2020, vide Judgment dated 09.09.2021 (MANU/OR/0356/2021). Said Judgment got affirmed by the Division Bench of this Court in *State of Odisha Vrs. Patitapabana Dutta Dash*, W.A. No.777 of 2021, vide Judgment dated 12.04.2023, reported at 2023 (I) ILR-CUT 906. Sri Routray also drew attention of this Court to the Judgment dated 01.12.2015 delivered in the matter of *Dr. Prasana Kumar Mishra Vrs. State of Odisha*, W.P.(C) No.11148 of 2005 [reported at 2016 (I) ILR-CUT 373], against which *Writ Appeal No.4 of 2016* being preferred, the same got dismissed on 11.12.2019.

It is submitted that SLP(C) No.4945 of 2020 against said Writ Appeal also got dismissed by Hon'ble Supreme Court of India *vide* Order dated 07.08.2020. Reference has also been made to *Sunil Barik Vrs. State of Odisha, 2021 (II) OLR 469; Ranjeet Kumar Das Vrs. State of Odisha, 2018 (I) ILR-CUT 695; Subrat Narayan Das Vrs. State of Odisha, W.P.(C) No.18659 of 2016, vide Judgment dated 12.07.2022.*

7.3. Sri Budhadev Routray, learned Senior Advocate emphatically submitted that when the petitioners have been continuously discharging their duties to the satisfaction of the authorities since 2011 till date, which fact has been admitted in the counter affidavit, and in view of consistent view of this Court as referred to above, there is no escape to say that their services were against non-sanctioned post; rather the four posts are sanctioned on the request of the Cardiology Department of the SCBMCH with reference to the long period of services rendered by these petitioners. Furthermore, these petitioners have been selected by conducting due process of selection. Emphasis has been laid by Sri Budhadev Routray on the Odisha Group-C and Group-D Posts (Contractual Appointment) Rules, 2013 as amended by virtue of the Odisha Group-C and Group-D Posts (Contractual Appointment) Amendment Rules, 2017 to contend that the services of the petitioners deserve to be regularized inasmuch as they have

completed more than six years of service on contractual basis.

8. *Per contra*, Sri Biplab Mohanty, learned Additional Government Advocate referring to counter affidavit submitted that the petitioners are not entitled to regularization under the Odisha Group-C and Group-D Posts (Contractual Appointment) Rules, 2013 as they are age barred and they have been working on contractual basis without their posts being sanctioned. It is further urged that the remuneration of the petitioners were being paid from users' fund.

8.1. It has been stated by the learned Additional Government Advocate that the petitioners' "initial engagement was schematic" and creation of four posts of ECG Technician is the policy decision of the Government. Therefore, the petitioners "have no *locus standi* to say that such appointments are permanent in nature".

DISCUSSIONS AND ANALYSIS:

9. It is gathered from the pleadings, arguments and submissions with reference to the Odisha Group-C and Group-D Posts (Contractual Appointment) Rules, 2013 as amended by virtue of the Odisha Group-C and Group-D Posts (Contractual Appointment) Amendment Rules, 2017 that,

- i.* the petitioners have been working as ECG Technician in the Cardiology Department on contractual basis continuously since 2011;
- ii.* the petitioners have been selected by a process of selection pursuant to Advertisement published on 17.11.2010 in “the Sambad”, an Odia daily;
- iii.* out of the seven candidates selected in the selection process, four were given appointment in Trauma Care Centre and the left out three candidates including the petitioners were engaged in the Cardiology Department on contractual basis;
- iv.* the report submitted by the Administrative Officer, SCBMCH on 06.08.2015, describing the background under which the petitioners were engaged to work as ECG Technician in the Cardiology Department, was in compliance of direction of the Government of Odisha in Health & Family Welfare Department to the Director of Medical Education & Training, Odisha, with reference to the Order dated 31.10.2014 passed by the learned Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.2367 of 2014, which was much prior to Advertisement No.9119, dated 17.12.2015;

- v. it has been admitted by the opposite parties in the counter affidavit at paragraph 6 that “the petitioners have been discharging their duties in Cardiology Department satisfactorily since their joining”;
- vi. it is also admitted by the opposite parties in the said paragraph of the counter affidavit that “due to unavailability of any sanctioned posts, higher authorities have been moved time and again”;
- vii. it has been candidly stated by the opposite parties in paragraph 6 of counter affidavit that letters were issued to the Government “requesting for creation of further posts of ECG Technicians for absorption of the petitioners” as there is “requirement of ECG Technicians keeping in view of increase in number of patients”, in pursuance of which four posts of ECG Technician are created by the Government.

9.1. While the aforesaid position remained undisputed, it is not denied that the petitioners had been sent for 90 days to participate in the Training Programme on Theory and Hands on Practical along with other ECG Technicians, which they have been certified to have completed successfully. Since 2012 the authorities at SCBMCH have been requesting for creation of ECG Technician posts and requesting for regularization of the petitioners as there is need for such posts. It is not the case of the

opposite parties that the petitioners were not selected by a selection process and their engagement was not pursuant to Advertisement dated 17.11.2010.

10. In the above backdrop, the aspect of regularization in service, as considered by different Courts, is required to be taken note of.

10.1. The Madras High Court in the case of *N. Karunanidhi Vrs. Union of India, W.P. No. 12887 of 2016, vide Judgment dated 22.04.2022* made the following benevolent observation in favour of employees whose services have been utilized by the Government for a long time:

*“18. If the Courts cannot give direction for their regularisation of service, in the constrained legal scenario what other remedies that are available to these unfortunate employees, who have been engaged in service for public purpose, without having any definite future to hold on? **These petitioners cannot be kept on the tenterhooks of their employment for years together, by brushing aside and discarding their concerned yearning for a definite future, with unresponsive indifference.***

19. *A welfare State grounded on constitutional values, cannot come up with apathetic and callous stand that despite continued employment of these petitioners for years together, no semblance of right is available to them. Such stand by the State is opposed to constitutional values as enshrined in*

Article 21 of the Constitution of India. The Courts of course have held that equal opportunity must be provided in public employment and entry through back door should be discountenanced. When Article 21, being violated by the State, action towards its servants, the consideration of the Government must primarily be focussed on alleviating legitimate grievances of its employees. Even assuming that the recruitment of these writ petitioners had not been fully in consonance with the procedure for appointment in Government services, the fact remained that these persons have been consciously appointed by the Government for implementing public projects and the work has been extracted from them continuously for several years. It is therefore, not open to the Government after a period of time to turn around and contend that these writ petitioners have no right at all to seek any kind of guarantee for their future.

20. ***In the opinion of this Court, continued employment for several years, even on a projects meant to serve the State as a whole, certain rights would definitely accrue to them, atleast to the extent of making a claim for formulation of a scheme/towards their absorption.*** This Court is quite conscious of the fact that the Government has been benevolent and had come up with several schemes in the past and directed regularisation of services of thousands of employees over a period of time. Such benevolence ought to permeate to the lowest levels to take within its sweep the desperate cry of the petitioners as well. As in the sublime words of the father of nation, Mahatma Gandhi, 'A nation's greatness is measured by how it treats its weakest members'. Merely

because these writ petitioners have been employed in the projects, the policy makers may not shut their mind and close their eyes to their precarious plight having to serve public purpose but left in the lurch and unprotected, at the end of the day.”

10.2. Learned Single Judge of this Court in *Prasana Kumar Mishra (supra)* made the following observation:

- “7. In *Binan Kumar Mohanty Vrs. Water and Land Management Institute (WALMI)*, 2015 (I) OLR 347 referring to *Kapila Hingorani Vrs. State of Bihar*, (2003) 6 SCC 1 the apex Court held that the Government companies/public sector undertakings being ‘States’ would be constitutionally liable to respect life and liberty of all persons in terms of Article 21 of the Constitution of India. Therefore, if the petitioner has rendered service for around 20 years, keeping in view the ratio decided in *Kopila Hingorani (supra)*, this Court issues direction to the opposite parties to mitigate the hardship of the employees. Financial stringency is no ground for not issuing requisite directions when there is violation of fundamental rights of the petitioner. **Allowing a person to continue for a quite long period of 20 years of service and exploiting him on the pretext of financial crunch in violation of Article 21 of the Constitution of India is sheer arbitrariness of the authority which is highly condemnable.**
8. In *Narendra Kumar Ratha and Others Vrs. State of Odisha and Others*, 2015 (I) OLR 197, this Court has taken into consideration the object of Article 16 of the Constitution of India to create a constitutional right to equality of opportunity and employment in

public offices. The word ‘employment or appointment’ cover not merely the initial appointment, but also other attributes like salary, increments, revision of pay, promotion, gratuity, leave pension and age of superannuation etc. Appointment to any post under the State can only be made in accordance with the provisions and procedure envisaged under the law and guidelines governing the field.

9. *In Prabodh Verma and Others Vrs. State of U.P. and Others, (1984) 4 SCC 251, the apex Court held that Article 16 is an instance of the application of the general rule of equality laid down in Article 14, with special reference to the opportunity for appointment and employment under the Government.*
10. *Similar view has also been taken by the apex Court in Km. Neelima Mishra Vrs. Harinder Kaur Paintal and Others, (1990) 2 SCC 746 = AIR 1990 SC 1402 and E.P. Royappa Vrs. State of Tamil Nadu and Another, (1974) 4 SCC 3. Clause (1) of Article 16 guarantees equality of opportunity for all citizens in the matters of employment or appointment to any office under the State. The very concept of equality implies recourse to valid classification for preference in favour of the disadvantaged classes of citizens to improve their conditions so as to enable them to raise themselves to positions of equality with the more fortunate classes of citizens. This view has also been taken note of by the apex Court in the case of Indra Sawhney Vrs. Union of India, 1992 Supp. (3) SCC 217 = AIR 1993 SC 477.”*

10.3. The case of *Prasana Kumar Mishra (supra)* was carried in appeal before the Division Bench, being W.A. No.4 of

2016, which was dismissed *vide Order dated 11.12.2019*. Said matter being carried further to the Hon'ble Supreme Court of India, *vide Order dated 07.08.2020*, the SLP(C) No.4945 of 2020, filed at the behest of Biju Patnaik University of Technology, stood dismissed.

10.4. In *Sunil Kumar Barik (supra)*, it has been discussed as follows:

“12. As it appears from the record itself, the case of the petitioner is squarely covered by the exception carved out in paragraph 53 of the judgment rendered in *Umadevi (3)* mentioned *supra*. Meaning thereby, against an existing sanctioned vacancy in the post of Barber, the petitioner having been engaged by following due procedure of selection in the post of Home Guard and continued for a quite long period, which is not disputed by the opposite parties-State as per the pleadings available in the counter affidavit and, as such, the petitioner is still continuing, the same cannot be treated as an ‘illegal engagement’, rather it may be nomenclatured as an ‘irregular engagement’.

13. In *State of Jammu and Kashmir Vrs. District Bar Association, Bandipora, MANU/SC/1566/2016 = (2017) 3 SCC 410*, wherein a distinction has been made with regard to ‘irregular’ and ‘illegal’ engagement, referring to the exception carved out in *Umadevi (3)* mentioned *supra*, in paragraph 12 of the said judgment it has been stated as follows:

‘12. The third aspect of Umadevi (3) which bears notice is the distinction between an ‘irregular’ and ‘illegal’ appointment. **While answering the question of whether an appointment is irregular or illegal, the Court would have to enquire as to whether the appointment process adopted was tainted by the vice of non-adherence to an essential prerequisite or is liable to be faulted on account of the lack of a fair process of recruitment.** There may be varied circumstances in which an ad hoc or temporary appointment may be made. **The power of the employer to make a temporary appointment, if the exigencies of the situation so demand, cannot be disputed.** The exercise of power however stands vitiated if it is found that the exercise undertaken

(a) was not in exigencies of administration; or

(b) where the procedure adopted was violative of Articles 14 and 16 of the Constitution; and/or

(c) where the recruitment process was overridden by the vice of nepotism, bias or mala fides.”

10.5. In *Suwendu Mohanty Vrs. State of Odisha, 2015 SCC OnLine Ori 267*, it has been observed as follows:

“9. With regard to the regularization of the services of the petitioners, a mention has been made in Annexure-4 that the petitioners being irregular recruits, their regularization is not permissible under

the State Government Rules. But this condition made in the restructuring order in Annexure-4 so far as it relates to the petitioners cannot be applicable in view of the fact that the petitioners have been appointed against regular vacancies available in the regular scale of pay admissible to the post. **But in view of their continued service for more than 10 years, their cases are covered by the ratio of the judgment of the apex Court in Secretary, State of Karnataka Vrs. Umadevi, (2006) 4 SCC 1 = AIR 2006 SC 1806, wherein the apex Court has held that the appointments made against temporary or ad-hoc basis are not to be regularized. In paragraph 53 of the said judgment, it is provided that irregular appointment of duly qualified persons against sanctioned posts, who have worked for 10 years or more can be considered on merits and steps to be taken as one time measure to regularize them. In Paragraph 53 of the said judgment, the apex Court has held as follows:**

‘53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in

the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.'

10. *The object behind the exception carved out in this case was to permit regularization of such appointments, which are irregular but not illegal, and to ensure security of employment of those persons who served the State Government and their instrumentalities for more than ten years. Similar question came up for consideration before the apex Court in Civil Appeal No. 2835 of 2015 (arising out of SLP (Civil) No. 20169 of 2013 disposed of on 13.3.2015 [Amarkant Rai Vrs. State of Bihar, (2015) 8 SCC 265]. In paragraphs 12 and 13, the apex Court has held as follows:*

‘12. *Elaborating upon the principles laid down in Umadevi’s case (supra) and explaining the difference between irregular and illegal appointments in State of Karnataka Vrs. M.L. Kesari, (2010) 9 SCC 247, this Court held as under:*

‘7. *It is evident from the above that there is an exception to the general principles against “regularisation” enunciated in Umadevi (3), if the following conditions are fulfilled:*

(i) ***The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal.*** *In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.*

(ii) *The appointment of such employee should not be illegal, even if irregular. **Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal.** But where the person employed possessed the prescribed*

qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.'

13. *Applying the ratio of Umadevi's case, this Court in Nihal Singh Vrs. State of Punjab, (2013) 14 SCC 65 directed the absorption of the Special Police Officers in the services of the State of Punjab holding as under:*

'35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor with reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

36. *The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means*

*additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits on a par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is— the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks.’***”*

10.6. Reference can also be had to *Amarendra Kumar Mohapatra Vrs. State of Odisha, (2014) 4 SCC 583 = AIR 2014 SC 1716; Subrata Narayan Das Vrs. State of Odisha, W.P.(C) No.18659 of 2016, vide Judgment dated 12.07.2022.*

10.7. In the case of *Union of India Vrs. Central Administrative Tribunal*, (2019) 4 SCC 290 the following is the observation:

“25. The Court noted in the above judgment that if a strict and literal interpretation was given to the decision in *Umadevi*, no employee from the State of Jharkhand appointed on an irregular basis could ever be regularized as the State was formed on 15 November 2000 and the cut-off date had been fixed as 10 April 2006. **The intent of the Court was to grant similarly-placed employees who had put the requisite years of service as mandated by Umadevi, the benefit of regularization.** The Court thus held that the Jharkhand Sarkar ke Adhinasth Aniyamit Rup se Niyukt Ewam Karyarat Karmiyo ki Sewa Niyamitikaran Niyamawali, 2015 (‘the Regularisation Rules’) must be interpreted in a pragmatic manner and employees of the State who had completed 10 years of service on the date of promulgation of the rules, ought to be regularized. In doing so, the Court ensured that employees in the State of Jharkhand who had completed the same years of service as employees from other States, are granted parity in terms of regularization. The spirit of non-discrimination and equity runs through the decisions in *Umadevi* [(2006) 4 SCC 1], *ML Kesari* [(2010) 9 SCC 247] and *Narendra Kumar Tiwari* [(2018) 8 SCC 238].

26. In this background, the issue which now arises before this Court is in regard to the effective direction which would govern the present case. The High Court has directed the Union of India to absorb the casual workmen, if it is not possible at the Institute

in question, then in any other establishment. The latter part of the direction, as we have already noted, cannot be sustained. Equally, in our opinion, the authorities cannot be heard to throw their hands in despair by submitting that there are no vacancies and that it had already regularized such of the persons in the seniority list, who reported for work. The Tribunal has entered a finding of fact that this defence is clearly not borne out of the record. Accordingly, we are of the view that having decided to implement the decision of the Tribunal, which was affirmed by the High Court, the Union of India must follow a rational principle and abide strictly by the seniority list in proceeding to regularize the workmen concerned. Accordingly, we direct that the case for regularization shall be considered strictly in accordance with the seniority list in pursuance of the directions which were issued by the Tribunal and confirmed by the High Court and such of the persons, who are available for regularization on the basis of vacancies existing at present, shall be considered in accordance with law. The Tribunal has denied back-wages but has ordered a notional fixation of pay and allowances. While affirming that direction, we also direct that persons who have crossed the age of superannuation will be entitled to the computation and payment of their retiral dues on that basis. This exercise shall be carried out within a period of three months from the receipt of a copy of the judgment. If it becomes necessary to grant age relaxation to the concerned workmen, the Appellants shall do so.”

10.8. In *Ranjeet Kumar Das Vrs. State of Odisha, 2018 (I) ILR-CUT 695*, paragraph 9 runs as follows:

“9. Temporary or ad hoc or stop gap or casual basis or the like appointments are made for various reasons. An emergent situation might make it necessary to make such appointments. Since the adoption of the normal method of regular recruitment might involve considerable delay regulating in failure to tackle the emergency. **Sometimes such appointments were to be made because although extra hands are required to meet the workload, there are no sanctioned posts against which any regular recruitment could be made. In fact in the case of ad hoc or casual appointees, the appointments, are in the majority of cases, not against sanctioned posts and the appointments are made because of the necessity of workload and the constraints of sanctioning such post (mainly on financial consideration) on permanent basis.** Needless to say that filling up vacancies against sanctioned posts by regularisation is against the constitutional provisions of equality of opportunity in the matter of public employment violating Articles 14 and 16 of the Constitution by not making the offer of employment to the world at large and allowing all eligible candidates equality of opportunity to be considered on merits. If that be so, considering the emergent necessity of filling up of vacancies and allowing the petitioner to continue for a quite long period, even if with one day break in service, cannot be stated to be a reasonable one, rather, this is an unfair and unreasonable action of the authority concerned.”

10.9.In *Patitapaban Dutta Dash Vrs. State of Odisha, W.P.(C)*
No. 19951 of 2020, vide Judgment dated 09.09.2021, the

Single Bench of this Court has made the following observation:

“8. *It is worthwhile to mention here that the Court comes into picture only to ensure observance of fundamental rights, and to ensure the rule of law and to see that the executive acts fairly and gives a fair ideal to its employees consistent with requirements of Articles 14 and 16 of the Constitution, and that the authority should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. For this very reason, it is held that a person should not be kept in contractual, temporary or ad hoc status for a long period. Where a contractual, temporary or ad hoc appointment is continued for long, the Court presumes that there is need of a regular post and accordingly directs for regularization. **While issuing direction for regularization, the Court must first ascertain the relevant fact, and must be cognizant of the several situations and eventualities that may arise on account of such direction. If for any reason, a contractual, ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization, provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.** Even though a casual labourer is continued for a fairly long spell, say two or three years, a presumption may arise that there is regular need for his service. In such a situation, it becomes*

obligatory for the concerned authority to examine the feasibility of his regularization. While doing so, the authorities ought to adopt a positive approach coupled with empathy for the person.”

10.10. Aforesaid Judgment rendered by the Single Judge of this Court in *Patitapaban Dutta Dash (supra)* got the seal of approval of this Court being carried in appeal before the Division Bench bearing W.A. No. 777 of 2021, which came to be disposed of *vide* Judgment dated 12.04.2023 [see, (2023) (I) ILR-CUT 906]. While directing the State of Odisha to implement the direction of the Single Judge “in letter and spirit”, this Court in the ultimate held as follows:

“44. *Going by the above legal position, in the present cases, at the highest, the respondents could be considered to be ‘irregularly’ appointed and therefore would, even on the touchstone of Umadevi (supra), be eligible for regularization. The law in M.L. Kesari (supra), has been reiterated in Amarkant Rai Vrs. State of Bihar, (2015) 8 SCC 265, Sheo Narain Nagar Vrs. State of U.P., (2018) 13 SCC 432 = AIR 2018 SC 233 and Rajnish Kumar Mishra Vrs. State of U.P., (2019) 17 SCC 648.”*

11. Though in the affidavit dated 28.08.2023 sworn to by the Registrar (Administration)-cum-General Superintendent, SCBMCH on behalf of the opposite party No.3 it has not been disputed that the petitioners have been working as ECG Technician since 2011 in the Cardiology Department after being selected by the

Selection Committee in connection with Advertisement published on 27.11.2010, it is asserted that “the Advertisement dated 17.11.2010, whereunder the petitioners were applicants, was issued to fill four posts of ECG Technician in the Trauma Care Centre” and “the petitioners were not selected against said posts”. This statement appears to be in conflict with “List of candidates for selection for the post of ECG Technician” appearing at Annexure-2 to the writ petition, where the petitioner No.1 was shown at serial No.1 and the petitioner No.2 at serial No.6. Since three selected candidates were left out after four selected candidates were engaged to work in the Trauma Care Centre, the petitioners were “appointed” as ECG Technician in the Cardiology Department of SCBMCH on contractual basis with remuneration of Rs.5,200/-. However, the Superintendent of SCBMCH in Memo No.1836, dated 09.08.2019 referring to RDC (CD) Letter No.6086, dated 11.07.2019 and G.A. Department Notification No.19575/Gen, dated 12.09.2017 extended the benefit to the petitioners “to draw their monthly remuneration @ Rs.15,300/- with effect from 01.07.2019” which is in consonance with Annexure appended to the Odisha Group-C and Group-D Posts (Contractual Appointment) Rules, 2013 as amended by virtue of the Odisha Group-C and Group-D Posts (Contractual Appointment) Amendment Rules, 2017. It is also noteworthy that the

Administrative Officer of the SCBMCH has allowed the petitioner No.1 to avail Earned Leave from 05.02.2021 to 11.02.2021. Under such premise, it has been argued by Sri Budhadev Routray, learned Senior Advocate that it is difficult to concede to the assertion of the opposite party No.3 in the said affidavit dated 28.08.2023 that “the petitioners’ appointment are *ad hoc* and *de hors* any process of law and they cannot claim any right under the Odisha Group-C and Group-D Posts (Contractual Appointment) Rules, 2013”.

11.1. At this stage it is fruitful to have glance at relevant provisions contained in the Odisha Group-C and Group-D Posts (Contractual Appointment) Rules, 2013, which are reproduced hereunder:

“3. *Applicability:*

(1) *These rules shall apply to the Group ‘C’ and Group ‘D’ posts, which are filled up by way of **direct recruitment:***

Provided that the State Government may by notification exclude any post from the purview of these rules.

(2) *They shall also **apply to the categories of contractual appointments** made under Rule 4 from the date of contractual appointment, if any, made under Rule 5.*

(3) *These rules shall not apply to the Group ‘C’ and Group ‘D’ posts for services and functions like Watch*

& Ward, Sweeping and Cleaning, Gardening etc. Manpower required for such services/functions shall be managed by outsourcing basis.

(4) These rules shall also not apply to contractual appointments made under—

(a) Temporary Plan Schemes (including those under Centrally Sponsored Plan Scheme, Externally Aided Projects);

(b) Temporary Establishments; and

(c) Tenure Based Posts:

Provided that persons appointed on contractual basis under these schemes prior to the commencement of these rules, who are below 45 years shall be allowed to participate in the recruitment process under Rule 5 for any Group C or Group D posts, if they satisfy all other eligibility criteria for the such post as laid down in the relevant recruitment rules and shall be allowed relaxation of upper age limit for entry into Government service.

NOTE:

Persons appointed under of sub-rule (2) and proviso to sub-rule (4) shall get the benefit of these rules only after they were recruited and appointed to any post under Rule 5.

4. Categorisation of existing Contractual Employees:

For the purpose of these rules all contractual appointments made prior to the commencement of these rules shall be classified into two categories; namely:—

(a) **Category I:**

*Contractual appointments/engagements made against contractual posts **created with the concurrence of Finance Department without following the recruitment procedure** including the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and the rules made thereunder and rules regulating recruitment for the regular posts.*

(b) **Category II:**

Contractual Engagements made through manpower service provider agencies with concurrence of Finance Department.

8. **Special Provision for different Categories of existing Contractual Employees:**

(a) **The contractual employees belonging to Category-I and the persons provided by the manpower service provider agencies under Category-II, who shall be less than 45 years of age and shall have completed at least one year of continuous service, in case they apply for Recruitment under sub-rule (1) of Rule 5 for any Group C and Group D posts, shall be allowed relaxation of upper age limit for entry into Government service;**

Provided they satisfy all other eligibility criteria for the post as laid down in the relevant recruitment rules.

- (b) *They shall be allowed one per cent extra marks on the total marks of the examination for each completed year of continuous service subject to a maximum of fifteen per cent, which shall be added to the marks secured by them for deciding the merit position.*

11. Relaxation:

*When it is considered by the Government that it is necessary or expedient so to do in the public interest, it may, by order, for reasons to be recorded in writing, **relax any provision of these rules in respect of any class or category of the employees.***

12. Interpretation:

If any question arises relating to the interpretation of these rules; it shall be referred to the State Government whose decision thereon shall be final.”

11.2.No material is placed by the petitioners to show that their engagement would be comprehended within the fold of Category-I as per Rule 4 afore-quoted. Rule 8, manifests that it is applicable to Category-I and Category-II employees. However, Rule 11 spells out that where the contractual employee is less than 45 years of age and completed at least one year of continuous service, such employee could be given scope to apply for Recruitment under sub-rule (1) of Rule 5 for any Group-C and Group-D posts and upper age can be relaxed for entry into Government service. As it transpires from the

material placed on record, no opportunity is afforded to the petitioners neither in terms of Rule 8 nor in terms of the decisions/Judgments as discussed in the foregoing paragraphs. Therefore, this Court refuses to accede to the contention of the Sri Biplab Mohanty, learned Additional Government Advocate with reference to paragraph 8 of the affidavit dated 28.08.2023 of the opposite party No.3 to the effect that “the petitioners are barred from participating in recruitment process under the said advertisement because of the prescribed age limit of 32 years”. At the cost of repetition it is reiterated that the requisite qualification has never been objected to by the opposite parties; rather after selection being made in the year 2011, the petitioners successfully completed 90 days’ Training Programme of Theory and Hands on Practical. It is also placed on record by the petitioners that their names were sent to the Government of Odisha in Health and Family Welfare by the authorities of SCBMCH for consideration of regularization in service as ECG Technician much before the publication of Advertisement dated 17.12.2015.

11.3. In the meantime, the petitioners have completed more than 6 years of service as contractual employee without any blemish.

11.4. Showing anxiety so far as regularization of services, in a catena of decisions the Hon’ble Supreme Court of India

has succinctly and illuminatingly dealing with the concept of regularization, in the case of *Narendra Kumar Tiwari Vrs. State of Jharkhand*, (2018) 8 SCC 238, has said as follows:

“The purpose and intent of the decision in Umadevi (3) was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) [(2006) 4 SCC 1] is a clear indication that it believes that it was all right to continue with irregular appointments and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi and Kesari sought to avoid.”

11.5. This Court is also conscious of the following Judgment of the Hon'ble Supreme Court of India rendered in the case of *Ganesh Digamber Jambrunkar & Other Vrs. The State of Maharashtra & Other*, 2023 LiveLaw (SC) 801, wherein it has been observed as follows:

“The petitioners were all appointed in Shri Guru Govind Singh Institute of Engineering and Technology on contractual basis and their appointments were made sometime in the year 2011. They are aggrieved as a regular recruitment process has started and we are apprised by learned counsel for the respondent-State that

at present such process stands completed now but appointment letters are yet to be issued. The petitioners want to be regularized in the post for which such appointment process has been started and, in this regard, learned counsel for the petitioners has relied on a judgment of this Court in the case of Sheo Narain Nagar and Others Vrs. State of Uttar Pradesh and Another: (2018) 13 SCC 432. Paragraph '7' of this judgment reads as under:

'7. When we consider the prevailing scenario, it is painful to note that the decision in Umadevi (3) has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. **Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily-wage basis, etc. in exploitative forms.** This situation was not envisaged by Umadevi (3). The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. **That spirit of the Umadevi (3) has been ignored and conveniently overlooked by various State Governments/authorities. We regretfully make the observation that Umadevi (3) has not been implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularising**

*the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Articles 14, 16 read with Article 34(1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakara Vrs. Union of India, AIR 1983 SC 130 = (1983) 2 SCR 165, from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits, etc. There is clear contravention of constitutional provisions and aspiration of downtrodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Umadevi (3). Thus, the time has come to stop the situation where Umadevi (3) can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. **The employment cannot be on exploitative terms, whereas Umadevi (3) laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/ad hoc basis or otherwise. This kind of action is not permissible when we consider the pith and substance of true spirit in Umadevi (3).***

The issue with which we are concerned in this petition is as to whether by working for a long period

of time on contractual basis, the petitioners have acquired any vested legal right to be appointed in the respective posts on regular basis.

*We appreciate the argument of the petitioners that they have given best part of their life for the said college but so far as law is concerned, we do not find their continuous working has created any legal right in their favour to be absorbed. **In the event there was any scheme for such regularization, they could have availed of such scheme but in this case, there seems to be none. We are also apprised that some of the petitioners have applied for appointment through the current recruitment process. The High Court has rejected their claim mainly on the ground that they have no right to seek regularization of their service. We do not think any different view can be taken.***

11.6. In *Union of India Vrs. Ilmo Devi*, 2021 SCC OnLine SC 899, as regards invocation of power under Article 226 of the Constitution of India, the Hon'ble Supreme Court of India laid down as follows:

*“25. The observations made in paragraph 9 are on surmises and conjunctures. Even the observations made that they have worked continuously and for the whole day are also without any basis and for which there is no supporting evidence. In any case, the fact remains that the respondents served as part-time employees and were contingent paid staff. **As observed above, there are no sanctioned posts in the Post Office in which the respondents were working, therefore, the***

directions issued by the High Court in the impugned judgment and order are not permissible in the judicial review under Article 226 of the Constitution. The High Court cannot, in exercise of the power under Article 226, issue a Mandamus to direct the Department to sanction and create the posts. The High Court, in exercise of the powers under Article 226 of the Constitution, also cannot direct the Government and/or the Department to formulate a particular regularization policy. Framing of any scheme is no function of the Court and is the sole prerogative of the Government. Even the creation and/or sanction of the posts is also the sole prerogative of the Government and the High Court, in exercise of the power under Article 226 of the Constitution, cannot issue Mandamus and/or direct to create and sanction the posts.

26. **Even the regularization policy to regularize the services of the employees working on temporary status and/or casual labourers is a policy decision and in judicial review the Court cannot issue Mandamus and/or issue mandatory directions to do so.** In the case of *State of Maharashtra Vrs. R.S. Bhonde*, (2005) 6 SCC 751 it is observed and held by this Court that the status of permanency cannot be granted when there is no post. It is further observed that mere continuance every year of seasonal work during the period when work was available does not constitute a permanent status unless there exists a post and regularization is done.”

11.7. It is significant to take cognizance of that though challenge has been laid to the notice disclosing names of

successful candidates pursuant to Advertisement dated 17.12.2015, the petitioners have chosen not to implead such candidates as parties to the present proceeding.

11.8. Facing with such situation, with the given enunciation of legal position, only aspect remains for consideration in this present writ petition with respect to pendency of representations before the Government of Odisha-opposite party No.1, which are stated to have been under consideration prior to publication of Advertisement No.9119, dated 17.12.2015 read with Corrigendum No.9381, dated 28.12.2015.

CONCLUSION:

12. There is no material placed on record by the opposite parties that the petitioners have been lacking any qualification or bore any blemish record during his employment since 2011. The petitioners were selected by a selection process conducted by a duly constituted Selection Committee. Pursuant to recommendation of their names for regularization, posts of ECG Technician were created. Since there is nothing on record to appreciate the details whether any other ECG Technician was appointed against the four sanctioned posts, in the facts and circumstances of the case, this Court is inclined to issue writ of *mandamus* to the opposite parties to consider the case of the petitioners for regularization.

12.1. It is fact on record as admitted by the petitioners at paragraph 6.21 of the writ petition (original application) that the opposite parties “proceeded with the process of selection and prepared a merit list in respect of candidates who had offered their candidatures for Group-C posts, *i.e.*, the post of ECG Technicians” in response to Advertisement No.9119, dated 17.12.2015 and the petitioners enclosed Annexure-16 to the writ petition, *i.e.*, the merit list of Group-C (ECG Technician), which reflects names of seven candidates. Said document does concern with “Recruitment of Group-C employees in SCB Medical College, Cuttack” for filling up *inter alia* four posts of ECG Technicians [unreserved-1, unreserved (woman)-1, Scheduled Tribe-1 and Scheduled Caste-1].

12.2. It is, thus, felt expedient to notice the concept of “necessary” and “proper” party *vis-à-vis* principles of natural justice as summarized by the Hon’ble Supreme Court of India in *Poonam Vrs. State of U.P.*, (2015) 14 SCR 565:

“14. First, it is necessary to understand about the concept of necessary and proper party. A Four-judge Bench in *Udit Narain Singh Malpaharia Vrs. Additional Member Board of Revenue, Bihar and another*, AIR 1963 SC 786 has observed thus:

‘7. *** it would be convenient at the outset to ascertain who are necessary or proper parties

*in a proceeding. The law on the subject is well settled: **it is enough if we state the principle.** A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in this proceeding.'*

15. *In Vijay Kumar Kaul and others Vrs. Union of India and others, (2012) 7 SCC 610 the court referred to the said decision and has opined thus:*

*'36. Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have been conferred the benefit of promotion to the higher posts. **In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest.** When they have not been impleaded as parties such a relief is difficult to grant.*

37. *In this context we may refer with profit to the decision in Indu Shekhar Singh Vrs. State of U.P., (2006) 8 SCC 129 wherein it has been held thus: (SCC p. 151, para 56)*

'56. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority.'

38. *In Public Service Commission Vrs. Mamta Bisht, (2010) 12 SCC 204* this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus: (SCC pp. 207-08, paras 9-10)

‘9. *** in *Udit Narain Singh Malpaharia Vrs. Board of Revenue, AIR 1965 SC 786*, wherein the Court has explained the distinction between necessary party, proper party and proforma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. **More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called ‘CPC’) provides that non-joinder of necessary party be fatal.** Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide *Gulabchand Chhotalal Parikh Vrs. State of Gujarat, AIR 1965 SC 1153*, *Babubhai Muljibhai Patel Vrs. Nandlal Khodidas Barot, (1974) 2 SCC 706* and *Sarguja Transport Service Vrs. STAP., (1987) 1 SCC 5*)

10. *In Prabodh Verma Vrs. State of U.P., (1984) 4 SCC 251* and *Tridip Kumar*

Dingal Vrs. State of W B., (2009) 1 sec 768, it has been held that if a person challenges the selection process, successful candidates B or at least some of them are necessary parties.'

16. *At this juncture, it is necessary to state that in Udit Narain (Supra) question arose whether a tribunal is a necessary party. Recently a two-Judge Bench in Asstt. G.M., State Bank of India Vrs. Radhey Shyam Pandey, 2015 (3) SCALE 39 referred to Hari Vishnu Karnath Vrs. Ahmad Ishaque and Ors., AIR 1955 SC 233 and adverted to the concept of a tribunal being a necessary party and in that context ruled that:*

'In Hari Vishnu Karnath (supra), the larger Bench was dealing with a case that arose from Election Tribunal which had ceased to exist and expressed the view how it is a proper party. In Udit Narain Singh (supra), the Court was really dwelling upon the controversy with regard to the impleadment of parties in whose favour orders had been passed and in that context observed that tribunal is a necessary party. In Savitri Devi (supra), the Court took exception to courts and tribunals being made parties. It is apposite to note here that propositions laid down in each case has to be understood in proper perspective. Civil courts, which decide matters, are courts in the strictest sense of the term. Neither the court nor the Presiding Officer defends the order before the superior court it does not contest. If the High Court, in exercise of its writ jurisdiction or revisional jurisdiction, as the case may be, calls for the records, the same can always be called for by the High court without the Court or the Presiding Officer being impleaded as a party.

Similarly, with the passage of time there have been many a tribunal which only adjudicate and they have nothing to do with the lis. We may cite few examples; the tribunals constituted under the Administrative Tribunals Act, 1985, the Custom, Excise & Service Tax Appellate Tribunal, the Income Tax Appellate Tribunals, the Sales Tax Tribunal and such others. Every adjudicating authority may be nomenclatured as a tribunal but the said authority(ies) are different that pure and simple adjudicating authorities and that is why they are called the authorities. An Income Tax Commissioner, whatever rank he may be holding, when he adjudicates, he has to be made a party, for he can defend his order. He is entitled to contest. There are many authorities under many a statute. Therefore, the proposition that can safely be culled out is that the authorities or the tribunals, who in law are entitled to defend the orders passed by them, are necessary parties and if they are not arrayed as parties, the writ petition can be treated to be not maintainable or the court may grant liberty to implead them as parties in exercise of its discretion. There are tribunals which are not at all required to defend their own order, and in that case such tribunals need not be arrayed as parties.'

The principle that has been culled out in the said case is that a tribunal or authority would only become a necessary party which is entitled in law to defend the order.

17. The term 'entitled to defend' confers an inherent right to a person if he or she is affected or is likely to be affected by an order to be passed by any legal forum, for there would be violation of natural justice.

The principle of audi alteram partem has its own sanctity but the said principle of natural justice is not always put in strait jacket formula. That apart, a person or an authority must have a legal right or right in law to defend or assail.

18. *We may first clarify that as a proposition of law it is not in dispute that natural justice is not an unruly horse. Its applicability has to be adjudged regard being had to the effect and impact of the order and the person who claims to be affected; and that is where the concept of necessary party become significant. In The General Manager, South Central Railway, Secunderabad and another Vrs. A.V.R. Siddhantti and Others, (1974) 4 SCC 335 the Court was dealing with an issue whether the private respondent therein had approached the High Court under Article 226 of the Constitution for issue of a writ of mandamus directing the General Manager, South Central Railway and the Secretary, Railway Board to fix the inter se seniority as per the original proceedings, dated 16.10.1952, of the Railway Board and to further direct them not to give effect to the subsequent proceedings dated 2.11.1957 and 13.01.1961 of the Board issued by way of 'modification' and 'clarification' of its earlier proceedings of 1952. The High Court accepted the contentions of the private respondent and struck down the impugned proceedings. A contention was canvassed before this Court that the writ petitioners had not impleaded about 120 employees who were likely to be affected by the decision and, therefore, there being non-impleadment despite they being necessary parties, it was fatal to the decision. Rejecting the said submission the court held:*

'As regards the second objection, it is to be noted that the decisions of the Railway Board impugned in the writ petition contain administrative rules of general application, regulating absorption in permanent departments, fixation of seniority, pay etc. of the employees of the erstwhile Grain Shop Departments. The respondents-petitioners are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of Government servant is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. In the present case, the relief is claimed only against the Railway which has been impleaded through its representative. No list or order fixing seniority of the petitioners vis-a-vis particular individuals, pursuant to the impugned decisions, is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision of October 16, 1952, were, at the most, proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition.'

19. *The court further agreed with the principle stated in B. Gopalaiah and Ors Vrs. Government of Andhra Pradesh, AIR 1969 AP 204, J.S. Sachdev and Ors. Vrs. Reserve Bank of India, New Delhi, ILR (1973) 2 Delhi 392 and Mohan Chandra Joshi Vrs. Union of India and Ors., C.W. No. 650of1970, decided by Delhi High Court. In this context reference to the*

authority in State of Himachal Pradesh and another Vrs. Kailash Chand Mahajan and Others, 1992 Supp. (2) SCC 251 would be appropriate. In the said case a contention was raised that non-impleadment of the necessary party was fatal to the writ petition. In support of the said stand reliance was placed upon two decisions of two different High Courts; one, State of Kerala Vrs. Miss Rafia Rahim, AIR 1978 Ker 176 and the other in Padamraj Vrs. State of Bihar, AIR 1979 Pat 266. The Court distinguished both the decisions by holding thus:

‘The contention of Mr. Shanti Bhushan that the failure to implead Chauhan will be fatal to the writ petition does not seem to be correct. He relies on State of Kerala Vrs. Miss Rafia Rahim. That case related to admission to medical college whereby invalidating the selection vitally affected those who had been selected already. Equally, the case Padamraj Samarendra Vrs. State of Bihar, has no application. This was a case where the plea was founded in Article 14 and arbitrary selection. The selectees were vitally affected. The plea that the decision of the court in the absence of Chauhan would be violative of principle of natural justice as any adverse decision would affect him is not correct.’

The Court placed reliance on A. Janardhana Vrs. Union of India, (1983) 3 SCC 601 and ultimately did not accept the submission that the writ petition was not maintainable because of non-impleadment of the necessary party.

20. *In this context the authority in Sadananda Halo and Others Vrs. Momtaz Ali Sheikh and Others, (2008) 4 SCC 619 is quite pertinent. The Division Bench*

referred to the decision in All India SC & ST Employees' Assn. Vrs. A. Arthur Jeen, (2001) 6 SCC 380 wherein this court had addressed the necessity in joining the necessary candidates as parties. The Court referred to the principle of natural justice as enunciated in Canara Bank Vrs. Debasis Das, (2003) 4 SCC 557. We may profitably reproduce the same:

'Natural justice has been variously defined. It is another name for common sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.'

And again:

'Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed

*under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. The adherence to principles of natural justice as recognised by all civilised States is of supreme importance. ***"*

21. *We have referred to the aforesaid passages as they state the basic principle behind the doctrine of natural justice, that is, no order should be passed behind the back of a person who is to be adversely affected by the order. The principle behind proviso to Order 1, Rule 9 that the Code of Civil Procedure enjoins it and the said principle is also applicable to the writs. An unsuccessful candidate challenging the selection as far as the service jurisprudence is concerned is bound to make the selected candidates parties.*
22. *In J.S. Yadav Vrs. State of U.P. & Anr., (2011) 6 SCC 570 in Paragraph 31 it has been held thus:*

'No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice. The principles enshrined in the proviso to Order 1, Rule 9 of the Code of Civil Procedure, 1908 provide that impleadment of a necessary party is mandatory and in case of non-joinder of necessary party, the petitioner-plaintiff may not be entitled for the relief sought by him. The litigant has to ensure that the

*necessary party is before the court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail. In service jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity. In case the services of a person are terminated and another person is appointed at his place, in order to get relief, the person appointed at his place is the necessary party for the reason that even if the petitioner-plaintiff succeeds, it may not be possible for the Court to issue direction to accommodate the petitioner without removing the person who filled up the post manned by the petitioner-plaintiff. (Vide Prabodh Verma Vrs. State of U.P, Ishwar Singh Vrs. Kuldip Singh, Tridip Kumar Dingal Vrs. State of W.B., State of Assam Vrs. Union of India and Public Service Commission Vrs. Mamta Bisht). More so, the public exchequer cannot be burdened with the liability to pay the salary of two persons against one sanctioned post.’ ****

सत्यमेव जयते

37. *In Public Service Commission, Uttaranchal Vrs. Mamta Bisht and Others, (2010) 12 SCC 204 it was held by a two-Judge Bench that the first respondent therein wanted her selection against a reserved category vacancy and, therefore, the last selected candidate in that category was a necessary party and without impleading her the writ petition could not have been entertained by the High Court, for if a person challenges a selection process, successful candidates or at least some of them are to be arrayed as parties they being necessary parties. ****
38. *The said decision, as we understand, clearly spells out that in the absence of a necessary party, no*

adjudication can take place and, in fact, the non-joinder would be fatal to the case.”

12.3. Since the petitioners have not arrayed the candidates as declared to be selected in the aforesaid merit list *vide* notice in Annexure-17 to the writ petition in pursuance of the Advertisement No.9119, dated 17.12.2015 read with Corrigendum No.9381, dated 28.12.2015, this Court is not inclined to show indulgence. Hence, the first relief sought for in the writ petition does not deserve consideration.

13. As regards the second relief sought for is concerned, it has been affirmed by way of affidavit dated 28.08.2023 by the opposite party No.3 as follows:

“12. That it is pertinent to note that the various grievance petitions for absorption of the petitioners against regular posts are pending consideration of Department of Health and Family Welfare and no decision has been taken therein.”

13.1. The petitioners, as it appears, have been selected by a duly constituted Selection Committee and have been discharging their duties to the satisfaction of the opposite parties, which fact has been admitted by the opposite parties in their counter affidavit. The opposite parties have raised no objection as to the requisite qualification to hold the post of ECG Technician, which the petitioners do possess. Moreover, their names were recommended by the Professor & Head of Department

vide Letter No.613, dated 06.08.2013 to the Government of Odisha in Health and Family Welfare Department. A Report dated 06.08.2015 prepared by Administrative Officer, SCBMCH containing detail description of fact with recommendation to consider the case of the petitioners, as asked for in connection with the direction of the Odisha Administrative Tribunal in Order dated 31.10.2014, was also communicated to the opposite party No.1. As the representations of the petitioners are pending consideration, interest of justice would be best met if the opposite party No.1 is directed to consider the same. Hence said opposite party No.1 is hereby directed to consider the representation(s) of the petitioners in the light of the discussions made above with reference to the decisions rendered by different Courts.

13.2. Needless to observe that for taking appropriate decision as directed *supra* the opposite party No.1 is required to bear in mind that the petitioners have been continuously working as ECG Technician with requisite qualification. Their names were recommended for regularization in the service by the authority concerned much prior to publication of Advertisement dated 17.12.2015. It may also be taken note of that the opposite party No.1 in connection with Order dated 31.10.2014 passed by the Odisha Administrative Tribunal called for report/detailed fact-sheet, which is directed to be

considered at the time of disposal of representation(s) of the petitioners.

13.3. Since the representation(s) of the petitioners has been pending since 2014, the opposite party No.1 is directed to complete the entire exercise, as discussed above, within a period of three months hence.

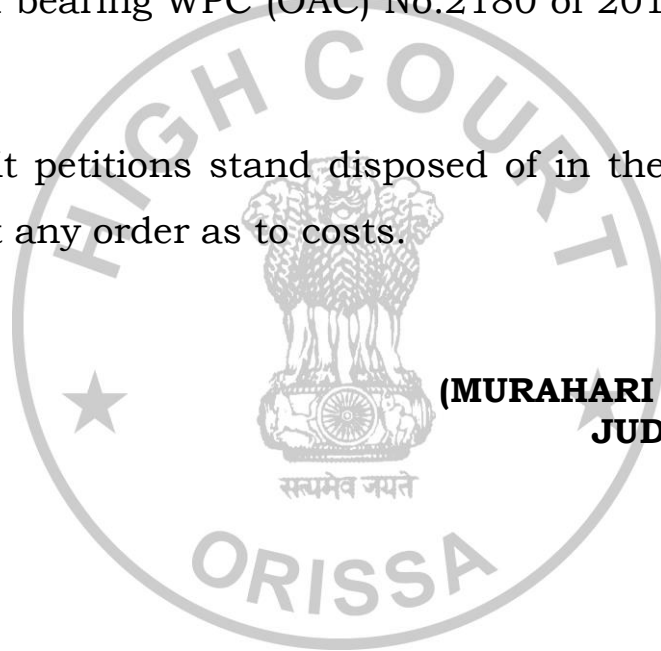
14. Two other petitions, being WPC (OAC) No.28 of 2016 [Ganesh Chandra Bhuyan Vrs. State of Odisha and Others] and WPC (OAC) No.29 of 2016 [Deepak Kumar Nayak and Others], are also listed for hearing analogous with WPC (OAC) No.2180 of 2016 [Ganesh Chandra Bhuyan and Deepak Kumar Nayak Vrs. State of Odisha and Others]. It is stated by Sri Budhadev Routray, learned Senior Counsel appearing for both the petitioners that these writ petitions were filed challenging the Advertisement No.9119, dated 17.12.2015 read with Corrigendum No.9381, dated 28.12.2015. In view of subsequent event, *i.e.*, notice *vide* Annexure-17 calling upon successful candidates for verification of documents and interview in pursuance of said advertisement, being made subject-matter in WPC (OAC) No.2180 of 2016, and the same is heard, there is no need to press the petitions being WPC (OAC) No.28 of 2016 and WPC (OAC) No.29 of 2016.

14.1. In view of such submission made by the learned Senior Counsel that there is no need to press WPC (OAC) No.28

of 2016 and WPC (OAC) No.29 of 2016 filed at the behest of Sri Ganesh Chandra Bhuyan and Sri Deepak Kumar Nayak respectively, as the decision rendered in WPC (OAC) No.2180 of 2016, wherein subsequent event pursuant to Advertisement dated 17.12.2015 has been challenged, would suffice, they are disposed of as not pressed.

15. With the aforesaid observation and direction, the writ petition bearing WPC (OAC) No.2180 of 2016 is disposed of.

15.1. The writ petitions stand disposed of in the above terms without any order as to costs.



**(MURAHARI SRI RAMAN)
JUDGE**

**Orissa High Court, Cuttack
The 15th November, 2023//Aswini/Laxmikant**