



GOVERNMENT OF ODISHA
LABOUR & E.S.I. DEPARTMENT

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ORDER

Bhubaneswar, dated 26.9.23

File No. LESI-LL1-CASE1-0022-2023 - 8863 /LESI.

Whereas, the Hon'ble High Court of Orissa in order dated 17/08/2023 has disposed of the W.P.(C) No. 26116 of 2023, Priyambada Swain & other ALOs -Vrs.- State of Odisha & Anr., with the following orders:

“XXXX...Considering the limited nature of grievance of the Petitioners, the writ application is disposed of at the stage of admission with a direction to the Opposite Party No.1 (Commissioner-cum-Secretary to Government, Labour & ESI Department) to consider the representation of the Petitioners under Annexure-4 in accordance with law within a period of four weeks from the date of production of certified copy of this order. **The Opposite Party No.1 shall do well to dispose of the representation of the Petitioner under Annexure-4 by passing a speaking and reasoned order.** The decision so taken be communicated to the Petitioners within two weeks from the date of taking such decision.”

Whereas a certified copy of aforesaid order dated 17.08.2023 of Hon'ble High Court, made available by the petitioners, has been received in this Department on 25.08.2023.

Whereas the Annexure-4 of the writ petition is the representation dated 03.08.2023 made by four Assistant Labour Officers with prayer to hold DPC to fill up the vacant posts of District Labour Officer as expeditiously as possible without deciding the inter-se-seniority of the ALOs.

Whereas the matter of inter-se-seniority of the existing ALOs is sub-judice before the Hon'ble High Court of Orissa in W.P.(C) No. 5753 of 2023, Sri Sudhir Kumar Sahoo & others -vrs.- State of Odisha and W.P.(C) No.11586 of 2023, Satrujit Sahoo and others -vrs- State of Odisha.

Whereas, Hon'ble High Court in order dated 27.02.2023 passed in I.A. No. 2530 of 2023 arising out of W.P.(C) No. 5753 of 2023, as an interim measure, has directed that the provisional gradation list of Assistant Labour Officers published on dtd. 16.02.2023 shall not be given effect till the next date of hearing. The stay order still continues as per order dated 02.08.2023 and the next date of hearing is not given.

Whereas, Hon'ble High Court in order dated 24.04.2023 passed in I.A. No. 5351 of 2023 arising out of W.P.(C) No.11586 of 2023, as an interim order, has directed that the final gradation list of Assistant Labour Officers shall not be published without leave of the Court. The case is pending for final disposal.

That, in the present case, Hon'ble High Court has directed to consider the representation dated 03.08.2023 of the petitioners and dispose the same by passing a reasoned speaking order.

In the said representation, the petitioners have requested for considering the promotion of ALOs to the rank of DLO, leaving the seniority issue open, as it is under challenge in W.P.(C) No. 5753/2023, since all ALOs can be accommodated without deciding the seniority.

At present, there are 40 vacancies in the cadre of DLO. The feeder cadre for the DLO is that of the ALO. The ALO cadre consists of: (a) direct recruit ALOs, (b) ALOs promoted from the RLI, and (c) departmental employees inducted into ALO cadre from posts other than the RLI cadre.

At present there are 8 direct recruit ALOs and 80 ALOs promoted from RLI cadre. Out of these 80 promoted ALOs, 39 were promoted to ALO during 2020-21 and 41 have been promoted to ALO in the year 2023. As noted earlier, the inter-se-seniority between the two types of ALO is sub-judice under W.P.(C) No. 5753 of 2023 and W.P.(C) 11586 of 2023.

The eligibility of an ALO for promotion is provided under rule-7(1) of Odisha Labour Service (Method of Recruitment and Conditions of Service) Rules, 2019 as follows:

“Every Assistant Labour Officers appointed in the service, shall be eligible for promotion to the post of District Labour Officer, on completion of three years of

continuous service, excluding the period of probation, if any, as prescribed in sub rule (1) of Rule- 13.”.

As per the rule-13(2) of OLS (MR&CS) Rules, 2019,-

“Passing the departmental examination and submission of the two case records shall also be mandatory for the existing Assistant Labour Officers appointed by direct recruitment through Odisha Staff Selection Commission or through promotion from the post of Rural Labour Inspector in connection with their confirmation in the substantive post of Assistant Labour Officer so that they can be considered for next promotion; but their probation period for 2 years shall be dispensed with.”

But, as per the proviso added to the aforesaid rule vide the Odisha Labour Service (MR&CS) Amendment Rules, 2021, **the sub-rule (2) of Rule-13 shall not applicable to the existing ALOs inducted to the Cadre prior to commencement of the OLS(MR&CS) Rules,2019.**

The 8 direct recruit ALOs were recruited during the months of July-December of the year 2016, as contractual ALOs under the erstwhile Odisha Group-B Posts (Contractual Appointment) Rules, 2013. In 2022, the above Rules were repealed vide Odisha Group-B, C & D Posts (Repeal and Special Provisions) Rules, 2022, with the proviso that “the employee whose services have been so regularised shall be allowed service benefits like promotion etc. in the cadre on notional basis to which they would have been entitled as per rules, had they been recruited on regular basis.”.

Therefore, the above 8 direct recruit ALOs are deemed to be recruited as ALOs in the year 2016 itself. As such, they are deemed to be existing ALOs inducted to the Cadre prior to commencement of the OLS (MR&CS) Rules, 2019; the sub-rule (2) of rule-13 shall not be applicable to the existing ALOs inducted to the Cadre prior to commencement of the OLS (MR&CS) Rules, 2019, and therefore they are qualified for promotion u/r 7(1) of OLS (MR&CS) Rules, 2019. Their names are in the Annexure-I.

Of the 80 promoted ALOs, 41 were promoted only in January, 2023 and therefore are not eligible for want of qualifying service of 3 years excluding the probation period, and for not having passed the requisite departmental examination. Of the remaining 39 ALOs promoted from RLI during 2020-21, their date of promotion was the subject matter in the W.P.(C) No. 6005 of 2023. As per order dated 13.03.2023 of the Hon’ble High Court in 6005/ 2023, their date of promotion was to be ante-dated. Accordingly, it was carried out by the Order No. 5468/LESI dated 30.05.2023, according to which, 29 nos. of ALOs are deemed to be notionally promoted to the rank of ALO w.e.f. 01.01.2019

and 10 nos. ALOs are deemed to be notionally promoted to the rank of ALO w.e.f. 01.01.2020.

Those 29 ALOs who are deemed to have been promoted notionally on 01.01.2019 need not appear in the Departmental examination, nor have to submit two case records, as per the sub-rule (2) of rule-13, as noted above.

However, this Amendment Rules, 2021 is not applicable to those ALOs who are deemed to have been promoted notionally on 01.01.2020; they must appear in the departmental examination and submit two case records for promotion. Since they have not done so till now, they are not eligible for consideration.

Therefore, as on date, of the ALOs promoted from RLI cadre, only 29 ALOs are eligible to the rank of DLO. Their names are in the Annexure-II.

As for deciding their inter-se seniority issues, it is stipulated in rule-3(b) of OCS (Criteria for Promotion) Rules, 1992, that **“Selection for promotion to the posts shall be made on the basis of merit and suitability in all respects with due regard to seniority and the names of persons included in the Select list shall be arranged in order of seniority in the feeder service or grade.** Provided that any junior officer of exceptional merit and suitability may be assigned a place higher than his seniors and in such cases the assignment of higher position to the junior officer shall be limited to the same batch or year of allotment except where an officer of the earlier batch or year of allotment is found unsuitable for promotion. Provided further that where promotion is made from different services or posts and no common seniority among such officers exists, their names in the Select List shall be arranged on the basis of their merit adjudged during selection.”

It is the administrative practice to have one gradation list published before the DPC, to decide the order in which the employees are to be promoted. However, there is no bar for having two or more gradation lists as per the feeder cadres, without deciding the inter-se seniority among the groups. It is possible to argue that if the number of vacancies is more than the number of available eligible candidates, it is highly likely that all of them may be promoted, in which case, the inter-se seniority need not be decided at the feeder cadre level before promotion and can be decided after promotion.

Thirty-seven (37) ALOs (8 directly recruited + 29 promoted) have completed three years of service as ALOs, excluding the probation period of three years, and are eligible for promotion to the cadre of DLO. The number of vacancies in the DLO cadre is 40 - more than 37. The provisions of ORV Act and principles of reservation of posts are applicable for filling up of the posts of DLO.

Now, therefore, in compliance of the order dated 17.08.2023 of Hon'ble High Court of Orissa, it is proposed to convene a meeting of the DPC to consider suitability of these 37 ALOs for promotion to the posts of DLO without finalizing a single gradation list of ALOs; instead, it is proposed to use two separate gradation lists, one for the 8 Direct Recruits as given in Annexure I and one for those 29 promoted from among the RLIs, as given in Annexure II. This promotion shall be in no way deemed to have settled the inter-se seniority of the promoted officers. In other words, the issue of the inter-se seniority of the Direct Recruit ALOs and Promoted ALOs shall remain undecided, and shall be subject to the W.P.(C) No. 5753 of 2023 and W.P.(C) 11586 of 2023.

Since such a step is taken for the first time, a notice is hereby given to all the Assistant Labour Officers to furnish objection / suggestion on the proposed promotion within a period of fifteen days from the date of issue of this order. It is made clear that the recommendations of the DPC and consequential orders of promotion, if any, shall be subject to final outcome of W.P.(C) No. 5753 of 2023 and W.P.(C) 11586 of 2023.


25 Sep 23

[R.S. GOPALAN, IAS]

Commissioner-cum-Secretary to Government

Annexure-I

No.	Name of the directly recruited Assistant Labour Officer	Date of joining as ALO
1	Akash Bisoyi	01.08.2016
2	Subhadaisini Nayak	08.08.2016
3	Pragyan Paramita Sahoo	01.08.2016
4	Barsarani Jena	04.08.2016
5	Soumya Ranjeeta Dalai	10.08.2016
6	Chhotrai Tudu	03.08.2016
7	Rashmita Nayak	29.07.2016
8	Sadananda Hembram	06.12.2016

No.	Name of the promoted Assistant Labour Officer	Deemed to have been notionally promoted to ALO w.e.f.
1	Merry Sunita Lakra	01.01.2019
2	Ananta Padmanav Mahamansingh	01.01.2019
3	Priyambada Swain	01.01.2019
4	Sudhasmita Das	01.01.2019
5	Satrujit Sahoo	01.01.2019
6	Niranjan Nayak	01.01.2019
7	Bharati Behera	01.01.2019
8	Smrutirekha Nayak	01.01.2019
9	Sudhir Ku Sahoo	01.01.2019
10	Sashmita Biswal	01.01.2019
11	Gopal Krushna Mangaraj	01.01.2019
12	Dipti Ranjan Sahoo	01.01.2019
13	Lirika Ray	01.01.2019
14	Prem Manjari Nayak	01.01.2019
15	Monalisha Jena	01.01.2019
16	Anita Biswabandita Nayak	01.01.2019
17	Priti Bandhan Ghadei	01.01.2019
18	Sabita Kumari Nayak	01.01.2019

19	Padamabati Marandi	01.01.2019
20	Pravakar Biswal	01.01.2019
21	Gagan Ku Gadanayak	01.01.2019
22	Chandan Majhi	01.01.2019
23	Jasabanta Amat	01.01.2019
24	Tapan Ku Sutar	01.01.2019
25	Dibya Sankar Dharua	01.01.2019
26	Biswa Ranjan Kanhar	01.01.2019
27	Rasmita Kumari Patra	01.01.2019
28	Chaitanya Prasad Majhi	01.01.2019
29	Ashok Kumar Murmu	01.01.2019