

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 14769 of 2017

Nishakara Mishra

.....

Petitioner

Mr. N. Rath, Advocate

Vs.

State of Orissa and Others

.....

Opposite Parties

State Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

Mr. JUSTICE S. K. MISHRA

ORDER

28.07.2022

Order No.

07.

This matter is taken up through hybrid mode.

2. Heard Mr. N. Rath, learned Counsel for the Petitioner and Mr. S. Rath, learned Additional Standing Counsel appearing for the State-Opposite Parties.

2. The Petitioner has filed this Writ Petition seeking to quash the Order dated 27.04.2016 under Annexure-4, by which the Tribunal has disposed of the O.A. No. 3861 of 2012 stating that no illegality has been committed in reverting the Petitioner, as he was promoted against a reserved post which is in violation of the Government Circular No. 1114 dated 25.03.2007.

3. The factual matrix of the case, is that the Petitioner was initially appointed as Junior Clerk on 28.08.1996 and while working as such he was promoted to the post of Senior Clerk on provisional basis vide Order dated 16.06.2003 as per the recommendation of the DPC and the Petitioner also joined on the same day. The Petitioner was given provisional promotion to the post of Senior Clerk against a reserved vacancy due to non-availability of the candidates belonging

to the reserved category in the cadre of the circle and as the Petitioner belonged to the General Category, he was given promotion pending receipt of the approval of the competent Authority for de-reservation. On 19.05.2012, a DPC was conducted, wherein it was proposed to cancel the order of promotion of the Petitioner and issue fresh promotion orders to promote him as against general category. Pursuant to such decision, the Petitioner was reverted to his original post even though he had rendered for more than 9 years of service in the promotional post and also received promotional benefits.

4. Mr. N. Rath, learned Counsel appearing for the Petitioner contended that it is not the fault of the Petitioner to get promotion to the post of Senior Clerk. Rather if the Petitioner was given promotion against reserved category, he should be allowed to continue in the promotional post. Therefore, subsequent decision to revert the Petitioner to the lower post is illegal, arbitrary and contrary to the Provisions of law. He has relied upon Rule 5(2) and Rule-7 of the ORV Rules, which stipulates that in case of promotion on the basis of seniority subject to fitness, the vacancies reserved for Scheduled Castes and Scheduled Tribes and remaining unfulfilled on the ground of no availability of candidates belonging to these communities, shall not be filled up without being de-reserved by the appointing authority by taking orders of the next higher authority. It is contended that if the Petitioner was given promotion, that *ipso facto* cannot be considered to be illegal rather promotion was given to the Petitioner in consonance with the Rules. As such, the benefit should be given to the Petitioner.

5. Mr. S. Rath, learned Additional Standing Counsel for

the State contended that the Petitioner was given promotion against the reserved category post without getting prior approval of the competent Authority and as such, the Petitioner was continuing quite for a long period in the promotional post. Therefore, the promotion is illegal, arbitrary and contrary to the provisions of the ORV Act. Thereby the Authority is well justified in reverting the Petitioner to his original post.

6. Challenging the order of reversion the Petitioner approached the Odisha Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A No. 3861(C) of 2012 and the Tribunal vide Order dated 27.04.2016 rejected the claim of the Petitioner on the ground that he was promoted to the post of Senior Clerk against the reserved vacancy.

7. Considering the contentions raised by learned Counsel for the parties and after going through the records, it appears that there is no dispute with regard to promotion of the Petitioner to the post of Senior Clerk against the reserved vacancy and after such illegal promotion, he continued in the in the promotion post near about 9 years and he was extended promotional benefits. But the subsequent DPC did not allow the Petitioner to continue against the reserved post and recommended to revert him to the original post. In view of such action, steps were taken by the Authority to revert the Petitioner to the Original Post as the he was given promotion without adhering the provisions of ORV Act. Needless to say, promotion which has been given to the Petitioner against the reserved vacancy is not permissible in view of provisions contained in ORV Act.

8. In that view of the matter, the Tribunal has not

committed any error in passing the Order dated 27.04.2016 in O.A. No.3861(C) of 2012 dismissing the claim of the Petitioner so as to warrant interference of this Court.

9. Accordingly, the Writ Petition merits no consideration and the same is dismissed.

(DR. B.R. SARANGI)
JUDGE

(S. K. MISHRA)
JUDGE

Alok/Ananta

