IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 17780 of 2012

Purna Chandra Das ….. ***Petitioner***
Mr. A.K. Pattnaik., Advocate

Vs.

State of Odisha & Others ….. ***Opposite parties***
Mr. A.K. Mishra, A.G.A.

CORAM:
DR. JUSTICE B.R. SARANGI
MISS JUSTICE SAVITRI RATHO

ORDER
10.03.2022

Order No. 15.

This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Pattnaik, learned counsel for the petitioner and Mr. A.K. Mishra, learned Additional Government Advocate.

3. The petitioner has filed this writ petition seeking to quash the order dated 26.04.2012 under Annexure-5 passed by the Odisha Administrative Tribunal, Bhubaneswar in O.A. No.257 of 2010, by which the said O.A. has been dismissed having no merits, and to issue direction to the opposite parties to promote him to the rank of Section Officer level-II and Section Officer level-I with effect from 01.01.1996 and 01.01.1999 respectively with all consequential benefits.

4. The factual matrix of the case, in brief, is that initially the petitioner was recruited as a Lower Division Clerk in the office of the Collector, Koraput. While he was

working in the said office he passed final Accounts examination and thereafter promoted to the rank of Sr. Clerk. While he was working as Sr. Clerk in Koraput Collectorate, the Government of Orissa set up a new organization called Controller of Accounts (Educational Employees Pension and Provident Fund) under the Directorate of Treasuries and Inspection and accordingly, applications from in-service candidates were invited to man the said new office, pursuant to which, the petitioner applied for the post of Accountant and he was selected by the selection committee as Accountant as per the order of the Directorate of Treasuries dated 20.08.1992 and he joined in his new assignment on 14.09.1992. The common gradation list of the Accountants so selected was not prepared and the inter se seniority of the petitioner vis-a-vis the other candidates, who were selected as Accountants, was not fixed. The opp. parties in Finance Department resolution dated 06.12.1991 have laid down principle for fixation of inter se seniority in the new cadre of Accountant. Paragraph-4 (1) of the said resolution lays down that Accountants drawn from among the Senior Assistants of Directorate of Treasuries shall be placed first, those drawn from among Treasury Auditors under Directorate of Treasuries shall be placed second, those drawn from among the Junior Assistants under the Directorate of Treasuries shall be placed third and those drawn from among the Senior Clerks of Treasuries /Collectorates/Range Cadres of Sales Tax shall be placed fourth.

5. There is no dispute that the petitioner had come from District Cadre post under fourth category and accordingly, the inter se seniority was determined and the gradation list was prepared. The petitioner did not assail the gradation list and as such, this Court has upheld the validity of the gradation list vide common judgment dated 31.07.2007 in OJC Nos.8670, 10835, 12252 of 1999 and 2133 of 2000 and this Court categorically held that in the office of the opp. party no.2, which came into existence by resolution dated 06.12.1991of the Finance Department, the service conditions of the employees shall be guided by the terms and conditions, as have been envisaged in resolution dated 06.12.1991, and the G.A. Department resolution dated 01.01.1995 shall not be made applicable.

6. In view of such position, the petitioner claimed for higher benefit by approaching the Tribunal, but the same was rejected by the impugned order, which is the subject matter of challenge before this Court.

5. Mr. A.K. Pattnaik, learned counsel for the petitioner contended that the Tribunal has not taken into consideration the observation made by this Court in the common judgment dated 31.07.2007 passed in O.J.C. Nos. 8670, 10835, 12252 of 1999 and also O.J.C. No.2133 of 2000, which was to the following effect:-

> *"In view of the above, the Resolution dated 06.12.1991 of the Finance Department shall be applicable in respect of all the employees working in the office of the Controller of Accounts from the*

> *date of its creation on 06.12.1991 till the date when it was declared as a Heads of the Department i.e. 06.07.1994 and since the Resolution dated 11.04.1994 of the General Administration Department was already in existence as on 06.07.1994 when the office of the Controller of Accounts was declared as a Heads of the Department, the 1994 Resolution shall be applicable in respect of those employees from the very date the organization "Controller of Accounts" became a Heads of the Department and as such, O.M.S. Rules of 1994 shall also be applicable to those employees in so far as recruitment/promotion to different posts including the posts of Section Officer, Level-I is concerned."*

6. Mr. A.K. Mishra, learned Addl. Govt. Advocate for the State contended that the contention raised by the learned counsel for the petitioner is not correct and, as such, the tribunal, while passing the order dated 26.04.2012 in O.A. No.257 of 2010, has taken note of the judgment passed by this Court in paragraph-5 & 6, which read as follows:-

> *"5. Learned counsel for the applicant submitted that the provision contained in para 4(i) of annexure-1 dated 06.12.1991 is discriminatory as undue advantage were given to the candidates who were brought to the office of respondent no.2 from the office of the Directorate of Treasuries. This matter has already been decided by the Hon'ble High Court once and for all. The Hon'ble High Court have upheld the validity of annexure-1 in their common Judgment dated 31.07.2007 in O.J.C. Nos. 8670, 10835, 12252 of 1999 and 2133 of 2000. Their Lordships categorically held that in the office of the respondent no.2 which came into existence by resolution dated 06.12.1991 of the*

Finance Department, the service conditions of the employees shall be guided by the terms and conditions as has been envisaged in resolution dated 06.12.1991 (annexure-1) and the G.A. department resolution dated 01.01.1995 shall not be made applicable. Annexure-1 in its para-4(i) categorically lays down that Accountants drawn from Senior Assistants of Directorate of Treasuries shall be placed first; those drawn from among Treasury Auditors under Directorate of Treasuries shall be placed second; those drawn from among the Junior Assistants under the Directorate of Treasuries shall be placed third and those drawn among the Senior Clerks of Treasuries/Collectorates/Range Cadres of Sales Tax shall be placed forth. Since the applicant was drawn from among the Senior Clerks of Collectorates he was rightly placed in the fourth category. The matter having been already decided by the Hon'ble High Court, it is no more open to the applicant to say that the provision made in the paragraph 4(i) of annexure-1. This final gradation list at annexure -6 was also submitted before the Hon'ble High Court and was upheld by the Hon'ble Court.

6. The learned counsel for the applicant submitted that as per the order of the Hon'ble Court the gradation list should have redrawn in accordance with the Rule- 20 of the O.M.S. Rules 1994. Such an argument does not stand to reasons. By the time respondent no.2 became a Head of Department, the position of the applicant in the gradation list had already been fixed in accordance with para4(i) of annexure-1. The Hon'ble Court their judgment have nowhere stated that such gradation list should be disturbed and redrawn after the O.M.S. Rule, 1994 came into force. Learned standing counsel rightly submitted that only those candidates recruited after *respondent no.2 became a Head of Department by the Govt. Resolution dated 06.07.1994 would be governed by the provisions of O.M.S. Rules 1994. The applicant having been absorbed in the office of respondent No.2 in the year 1991 he cannot claim to be governed under the O.M.S. Rules 1994 which came into forces subsequent to his appointment. O.M.S. Rules 1994 can only be applied prospectively and cannot have any retrospective effect. Therefore, after coming into force of the O.M.S. Rules 1994 the position of the applicant already fixed in the year 1991could not have been changed. The Government was given liberty to prepare and maintain the gradation list as per the Rules and circulars in this regard. Their Lordships also gave the liberty to the Government to take a decision as to how the promotion to the next higher post is to be effected from out of the eligible personnel of the seniority list. The applicant, therefore, at best, can claim to be governed by the O.M.S. Rules 1994, after the organization of respondent no.2 became Head of Department by government resolution dated 6.7.1994. It is not the case of the applicant that after 6.7.1994 any other Accountant junior to the applicant was promoted to the next higher rank in contravention of the provisions of O.M.R. Rules 1994. Admittedly the applicant's position in the gradation list was fixed at 91 as he belongs to fourth group of the employees selected as Accountant under the provisions of annexure-1. The applicant retired from Govt. service on superannuation with effect from 31.1.2004. IN between 6.7.1994 till 31.1.2004 there was no promotion to the post of Section Officer Level-II. The D.P.C. for promotion to the post of Section Officer Level-II in the organization of respondent No.2 was held for the first time on 14.8.2007. By then the applicant had retired from government service. Therefore, there was no scope* *for the respondents to consider the case of the applicant for promotion. By the time the judgment of the Hon'ble Court was passed the applicant had retired from government service. Since, no promotion to the rank of Section Officer Level-Ii was given to anybody before the retirement of the applicant the latter cannot claim any right to be promoted to the rank of Section Officer Level-II and Section Officer Level-I with retrospective effect. After the retirement of the applicant from govt. service on superannuation the question of considering his case for promotion simply did not arise. Since his seniority in the cadre of accountant had already been fixed in the year 1991 as per Annexure-1 such seniority could not have been refixed and the gradation list of Accountants could not have been redrawn in the year 1994 after respondent No.2 became a Head of Department. The O.M.S. Rules 1994 was applicable only to those persons who were appointed, absorbed or promoted after 1994. The contention of the learned counsel for the applicant on this score therefore is not tenable."*

Therefore, the Tribunal has not committed any error in passing the order impugned, so as to cause interference of this Court at this stage.

7. Having heard learned counsel for the parties and after going through the records, it appears that the petitioner was brought from amongst the Sr. Clerk of Koraput Collectorate and therefore he has been rightly placed in the forth category, as has already been decided by this Court. It is no more open to the petitioner to contend that the provisions made in paragraph 4(1) of the resolution dated 06.12.1991 of the Finance Department is discriminatory. Rather, the inter se seniority of the

petitioner has been fixed in the gradation list, as per the said resolution of the Fin ance Department, and the final gradation list was also submitted to the Court, which has also been upheld by this Court. Once the final gradation list has been upheld by this Court, there is no justifiable reason to say that any illegality or irregularities was committed in the final gradation list.

8. In that view of the matter, this Court does not find any illegality or irregularity in the order dated 26.04.2012 passed by the Tribunal in O.A. No.257 of 2010 so as to cause interference by this Court. Accordingly, the writ petition merits no consideration and the same is dismissed.

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(**DR. B.R. SARANGI**)
JUDGE

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(**SAVITRI RATHO**)
JUDGE

Alok /Sukanta