

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 3866 of 2019

State of Odisha and Ors.

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Petitioners

Mr. A.K. Mishra, AGA

Vs.

Smt. Mamata Ojha and Anr.

.....

Opposite Parties

Mr. Asok Mohanty, Sr. Counsel [O.P.No.1]

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE G. SATAPATHY

ORDER

16.08.2022

Order No.

08.

This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-petitioners and Mr. Asok Mohanty, learned Senior Counsel appearing for the opposite party no.1.

3. The State-petitioners have filed this writ petition seeking to quash the order dated 23.04.2018 passed in O.A. No. 3470 of 2017, by which Odisha Administrative Tribunal, Cuttack Bench, Cuttack has directed the State-petitioners to reconsider the grievance and fix the seniority of the opposite party no.1 taking into consideration her past service rendered as constable from 27.05.1997 to 23.10.2009 and extend all consequential benefits of promotion to the rank of Senior Clerk with effect from the date of her juniors got promotion, within a period of two months.

4. The factual matrix of the case, in brief, is that the father of the opposite party no.1 was working as Sepoy in OSAP 7th Bn. Bhubaneswar and while in service died in the year 1979. At the time of death, the opposite party no.1 was a minor, for which she applied for appointment under the Rehabilitation Assistance Scheme, as she was only eligible member of the family and her family was in distress condition, only after she became major. She was selected by the IG of Police, OSAP, Odisha, for appointment as Junior Clerk in the OSAP 3rd BN. Koraput under RA Scheme, subject to her suitability for the post and clearance by the State Police Headquarters, Cuttack to such appointment and she was also directed to appear before the Commandant, OSAP, 3rd Bn. Koraput with her original certificate and testimonials with a further direction to furnish

an undertaking that she will not ask for reposting to her home district or a better place of posting, as per order of the Commandant, SAP dated 24.12.1996. Pursuant to such order, opposite party no.1 submitted an undertaking before the authority and appeared before the Commandant, OSAP, 3rd Bn., Koraput with all original certificate and testimonial. Since no appointment order was issued, opposite party no.1 ventilated her grievance before the authorities with a prayer to provide her appointment and by order dated 27.05.1997, opposite party no.1 was issued with an order of appointment by the Superintendent of Police, Puri, as woman constable though she was selected for junior clerk. Finding no other way out and to save the distressed family, she joined as woman constable in pursuance of the order of appointment issued by Superintendent of Police, Puri. As opposite party no.1 was not physically fit to discharge the duty of constable, she filed a representation before the petitioner no.1 to consider her case for appointment as Junior Clerk, as both of her arms were fractured in an accident. Considering her representation, petitioner no.2 directed Superintendent of Police, Puri to check up her medical fitness. In pursuance of the said order, Superintendent of Police, Puri vide letter dated 24.02.2001 requested the CDMO, Cuttack to examine the opposite party no.1 by the Medical Board and to report if she is capable of undertaking a job of constable or not and to furnish necessary certificate to that effect. In the said letter, the opposite party no.1 was also directed to appear before the CDMO, Cuttack on 01.03.2001 for medical examination by the Medical Board. In pursuance of the said order, the Medical Board examined the opposite party no.1 and suggested that she cannot take up heavy work in her hands but she is fit for clerical job. The decision of the Medical Board was communicated to the Superintendent of Police, Puri vide letter dated 03.03.2001. It was the case of opposite party no.1 that in spite of such report, the authorities have not taken any steps to appoint her in the post of Junior Clerk though there are several posts of Junior Clerks lying vacant under Superintendent of Police, Puri and she could have been adjusted against any one of such posts. Thereafter, opposite party no.1 came to know that her case has not been considered by the authorities, in view of the clarification issued by petitioner no.1, as per Rule-6 of the

OCS (RA) Rules, 1990, which provides that when the member of the family has been appointed to a particular post, no further claim can be entertained for appointing the same person to a higher post. But fact remains, the post of Junior Clerk is not a higher post and she was initially selected for appointment as Junior Clerk but she was offered with appointment of constable and she had accepted the post of constable, as there was no vacancy in the rank of Junior Clerk. The authorities have deliberately ignored the legitimate grievance of the opposite party no.1 without any rhyme or reason. Therefore, she approached the tribunal to allow her to continue as Junior Clerk instead of constable. After due adjudication, the tribunal passed order on the basis of the affidavit filed by the opposite party no.1 that she will not claim her seniority in the post of Junior Clerk, if she is posted as Junior Clerk with protection of her pay with continuity of service. As such, on the basis of such affidavit, the tribunal disposed of the original application directing the petitioners to adjust the opposite party no.1 in the post of Junior Clerk, which is not a higher post as the pay structure in both the posts is one and same. Such benefit has been extended in view of the affidavit filed by the opposite party no.1 and, as such, the direction of the tribunal has also been complied with by the petitioners by passing the order on 20.10.2009 under Annexure-7. As such, opposite party no.1 is still continuing as a Junior Clerk pursuant to such order. But after she joined in the said post, now claimed that she should be granted seniority and allowed to continue as senior clerk with all benefits. Even though the tribunal passed the order on 30.01.2009 under Annexure-4, the same was challenged by the opposite party no.1 before this Court by filing W.P.(C) No. 1363 of 2017, which was disposed of granting liberty to opposite party no.1 to approach the tribunal for redressal of her grievance, if so advised. Thereafter, again the petitioner approached the tribunal by filing O.A. No. 3470 of 2017 claiming seniority as senior clerk along with all consequential benefits, which the tribunal allowed, vide order dated 23.04.2018, which is the subject matter of challenge before this Court in the present writ petition.

5. As it appears, opposite party no.1 was initially appointed as a constable as against the selection made to the post of Junior Clerk since no

post of Junior Clerk was available. But fact remains, if the petitioner was selected for the post of Junior Clerk, there was no justification to give her appointment as constable and after joining in the post of constable, opposite party no.1 made grievance that she was not able to discharge her duty as constable because of handicapness due to fracture of her both arms, which fact was medically examined and confirmed. Therefore, on receipt of the certificate from the competent authority, namely, Medical Board, the authority should have considered the same and posted her as junior clerk. But the opposite party no.1 claimed that she should be posted as senior clerk and the benefit should have been granted to her as admissible to the post. But as a matter of fact, posting of the opposite party no.1 as junior clerk was done on the basis of affidavit filed by her before the tribunal in O.A. No. 2051 of 2006, giving consent that she will not claim the seniority in the post of junior clerk if she is posted as junior clerk with protection of her pay with continuity of service. But fact remains, she was allowed to continue in service as junior clerk vide order dated 20.10.2009 as at Annexure-7. Even though the order dated 30.01.2009 passed in O.A. No. 2051 of 2006 was challenged by the opposite party no.1 before this Court W.P.(C) No. 1363 of 2017, the same was not considered by this Court and ultimately the said writ petition was disposed of vide order dated 31.10.2017 under Annexure-5 at page-69 of the writ petition, granting liberty to the opposite party no.1 to approach the tribunal for redressal of her grievance, if she is so advised. In pursuance of the said order, the opposite party no.1 filed O.A. No. 3470 of 2017, which was disposed of with an observation that she should be given promotion to the rank of senior clerk with effect from the date opposite party no.1 foregone the seniority by filing affidavit before the tribunal. Such order of the tribunal is not legally tenable, as with eyes wide open and knowing the position fully well, opposite party no.1 filed affidavit before the tribunal and the tribunal acted on the same vide order dated 30.01.2009 in O.A. No. 2051 of 2006. Therefore, subsequent claim made by the opposite party no.1 for giving the benefit of senior clerk is contrary to the affidavit filed before the tribunal. More so, since such affidavit was filed before the tribunal and basing upon which the tribunal

passed the order, opposite party No.1 tactfully and in a deceitful manner approached this Court and as per the liberty granted by this Court, she approached the tribunal, that itself cannot be a ground to pass subsequent order in the original application. Thereby, the tribunal has committed gross error in passing the order impugned.

6. In the above view of the matter, this Court is of the considered view that the order dated 23.04.2018 passed by the tribunal in O.A. No. 3470 of 2017 cannot sustain in the eye of law, as the same has been passed without any application of mind. Accordingly, the order dated 23.04.2018 passed by the tribunal in O.A. No. 3470 of 2017 is hereby quashed. Needless to say the case of the opposite party no.1 for promotion to the post of senior clerk shall be considered by the authority, when her term will come, with regard to which this Court has not expressed any opinion.

7. Accordingly, the writ petition stands allowed.

(DR. B.R. SARANGI)
JUDGE

(G. SATAPATHY)
JUDGE

Ashok/Kishore

