

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) No.141 of 2012

Ashok Kumar Panda

....

Petitioner

Mr.Ranjit Mohanty, Advocate

-versus-

State of Odisha & others

....

Opp.parties

Mr. Rajesh Tripathy, Addl. Standing Counsel

CORAM:

JUSTICE M.S.SAHOO

ORDER

20.04.2022

Order No.

- 3.** **1.** This matter is taken up through hybrid mode.
- 2.** When the matter was taken up on 23.02.2022, the following order was passed:

“The writ petition has been renumbered and registered before this Court on 06.08.2021 after being transferred, upon abolition of Odisha Administrative Tribunal, Bhubaneswar.

On perusal of the available order-sheet of the learned Tribunal, it is found that the matter was never taken up after 06.12.2017.

The original application was filed by the petitioner when he was 57 years of age before the learned Tribunal in the year 2012, seeking a direction to revise the gradation list of Senior Clerk and to re-fix the same, when the petitioner was working as Head Clerk in the office of Superintendent of Police, Ganjam at Berhampur.

Learned counsel for the petitioner submits that he has no up-to-date instruction from the petitioner and may be accommodated for some time.

Learned Addl. Government Advocate submits that considering the nature of lis, i.e., revision of gradation and fixing of inter se seniority, nothing survives for adjudication, after the petitioner had retired in the year 2015 on the attaining the age of superannuation.

To grant another opportunity to the petitioner, list on 24.03.2022.”

- 3.** Today, the matter is heard extensively.

4. The original application has been filed with the following prayer :

“(I) The Hon’ble Tribunal be pleased to declare and direct that the promotion given to the private respondent no.4 to the rank of Head Clerk and Office Superintendent by virtue of accelerated seniority without recasting and re-fixing the inter se seniority position in the gradation list in the rank of Senior Clerk in view of the judgments of the Hon’ble Apex Court and Hon’ble High Court of Orissa, is illegal and nonest in the eyes of law and accordingly the Hon’ble Tribunal be pleased to quash the same; and

(II) The Hon’ble Tribunal on such basis be pleased to direct the respondents to revise the gradation list of Senior Clerks by re-fixing the inter se seniority position of the applicant above the private respondent no.4 in view of the law laid down by the Hon’ble Apex Court and accordingly the case of the applicant may be considered for promotion to the rank of Head Clerk and Office Superintendent by constituting a review DPC and if found fit he may be extended with such promotions and all service benefits including financial benefits from the date the same has been given to the private respondent no.4.”

5. The original application has proceeded emphasizing that opposite party no.4 was given “*accelerated seniority without recasting and re-fixing the inter se seniority position in the gradation list in the rank of Senior Clerk in view of the judgments of the Hon’ble Apex Court and Hon’ble High Court of Orissa*”.

6. The petitioner started his career as Junior Assistant in the year 1980, got promotion to the post of Senior Clerk in the year 2002 and he became a Head Clerk in the year 2011. The opposite party no.4 started her career in the year 1985 as Junior Assistant in the category of Scheduled Tribe, in view of the specific provision of Orissa Reservation of Vacancies in Posts and Services (For Scheduled Castes & Scheduled Tribes)

Act, 1975 that provides for reservation for Scheduled Tribe persons up to Class-I posts up to the lowest rung thereof. For reference, the relevant provisions are quoted hereunder:-

“Section-3- Applicability: *This Act shall apply to all appointments to the Posts and Services under the State except.*

“(a) Class-I posts which are above the lowest rung thereof and meant for conducting or guiding or directing Scientific and Technical research.”

“4. Reservation and the percentage thereof-(1) *Except as otherwise provided in this Act, the vacancies reserved for the Scheduled Castes and the Scheduled Tribes shall not be filled up by candidates not belonging to the Scheduled Castes and Scheduled Tribes.*

(2) The reservation of vacancies in Posts and Services shall be at such, percentage of the total number of vacancies as the State Government may, from time to time, by order, determine:

[Provided that the percentage so determined shall in no case be less than the percentage of the persons belonging to the Scheduled Castes or the Scheduled Tribes as the case may be in the total population of the State :

Provided further that there shall be no reservation of vacancies to be filled up by promotion where—

- (a) the element of direct recruitment in the grade or cadre in which the vacancies have occurred is more than sixty-six and two third percent;*
- (b) the vacancies have occurred in Class I posts and are to be filled up by promotion, through limited departmental examination; or*
- (c) the vacancies have occurred in Class I posts which are above the lowest rung thereof, and are to be filled up on the basis of selection].*

Explanation– The expression "population" means the population as ascertained at the last census for which the relevant figures have been published."

"5. Model roster :- (1) The State Government shall prescribe model rosters indicating the number of vacancies to be reserved for the Scheduled Castes and the Scheduled Tribes and the number to be left unreserved.

(2) The appointing authorities shall maintain rosters in the prescribed form.

(3) The rosters shall be consulted for ascertaining the number of reserved vacancies but the appointments shall be made in accordance with the order of precedence as shown in the select list."

"10. Promotion based on seniority-cum-fitness :- (1) Where promotion is to be made on the basis of seniority subject to fitness, the Scheduled caste and Scheduled Tribe officers shall be promoted to the next higher post or grade against reserved vacancies provided they possess the minimum qualifications and experience required for such promotion.

(2) The number of reserved vacancies shall be determined on the basis of the reserved points shown in the roster maintained under Section 5.

[(3) There shall be no zone of consideration in respect of promotions based on seniority subject to fitness.]"

The relevant Rules of the Orissa Reservation of Vacancies in Posts and Services (For Scheduled Castes & Scheduled Tribes) Rules, 1976, i.e., Rules-3, 4(1) & 4(2), are quoted hereunder :

"3. Model roster-The "mode roster" for initial recruitment and promotion shall be as prescribed in 'the Schedule' [***]

4. Maintenance of Roster, Register, etc (1)

Registers shall be maintained in the Forms prescribed in Appendix and every appointing authority shall treat vacancies as reserved and unreserved as indicated in the model rosters prescribed in Rule-3.

(2) Separate registers shall be maintained for initial recruitment and promotion as well as for each type of recruitment separately for each grade or service or a group of posts.

7. Learned counsel for the petitioner, on being specifically asked to point out where he has stated that the opposite party no.4 has got accelerated seniority draws attention of this Court to the averments made in paragraph-6.8 of the original application. The said paragraph-6.8 is quoted herein:-

*“That, in the present case as the resolution dated 20.03.2022 of GA Department conferring the benefit of accelerated/consequential seniority on the SC & ST roster point promotes was governing the filed from the date of its issue till it was quashed by the Hon’ble High Court in the case of Lagnajit Ray as stated above, therefore by virtue of such resolution the private respondent no.4 on the basis of her accelerated seniority in the rank of Sr.Clerk got further promotion to the rank of Head Clerk, as per office order bearing No.4576 dated 24.12.2008 of the D.I.G. of Police (Admn.) Odisha, Cuttack. In the said promotion order the name of the private respondent no.4 appears at Sl.No.14, a copy of which is marked herewith as **Annexure-4**. Thereafter she got further promotion to the rank of office superintendent on the basis of the benefit of accelerated/consequential seniority as per the office order bearing No.530 dated 13.04.2011 of I.G. of police (personnel), Odisha, Cuttack, a copy of which is marked herewith as **Annexure-5**. In the said order of promotion the name of respondent no.4 appears at sl.no.6.”*

8. On perusal of the pleadings of the original application, including the paragraph-6.8, it is evident that opposite party no.4 was given promotion as per the prevailing Rules, i.e., ORV

Act 1975 and Rules framed thereunder, up to the level of Office Superintendent, which is below the lowest rung of Class-I.

9. There has been no statement by the applicant that any roster point vacancy, for getting promotion up to the level of Office Superintendent, was violated nor is there any statement/allegation that the opposite party no.4 was given promotion not adhering to the 80 point roster.

10. Apart from the bald assertions made in the original application to the effect that the petitioner, having joined as Junior Assistant in the year 1980, should have been given seniority at the level of Head Clerk, there is no other indication that how the original applicant/petitioner is aggrieved by the promotion of a Scheduled Tribe person, who entered into service as a Scheduled Tribe person, by getting benefit of reservation, and continues to get promotion to the post of Senior Clerk, Head Clerk and Office Superintendent in the said category adhering to the roster meant for giving promotion to different categories such as UR, SC & ST.

11. Learned counsel for the petitioner, referring to paragraph-4 of the counter affidavit, submits that no gradation list of Ministerial Officers in the District Police Office Cadre has been published after 01.04.2001.

In fact, the said averments in the counter affidavit goes to show that the inter se seniority between the reserve category person, i.e., petitioner and the opposite party no.4 has not been determined in a common gradation list.

12. Regarding the fact of giving promotion to the opposite party no.4 in the ST category, it has been stated in the counter affidavit as follows :

“As mentioned in the foregoing para as per the instruction of the Government vide ST/SC Development Department letter No.11124/SSD dated 15.03.2007, the post specific roster is in operation. Accordingly, the vacancies in the rank of Head Clerk and Office Superintendent have been filled up from their respective category against the vacancies meant for each category. At the time of promotion to the still higher rank i.e., in the rank of Office Superintendent, the vacancies meant for the reserve category has been filled by the selected candidates of respective category without causing any encroachment for the General Category Candidates.”

13. Learned Additional Standing Counsel, referring to the counter affidavit, reiterates the submissions on behalf of the State.

14. The decisions rendered by the Hon’ble Supreme Court in **Ajit Singh Januja & others v. State of Punjab & others : (1996) 2 SCC 715, Ajit Singh & others v. State of Punjab and others : (1999) 7 SCC 209, M. Nagraj v. Union of India; (2006) 8 SCC 212** (decision rendered by a Bench of five Hon’ble Judges) and the judgment rendered by Division Bench of this Court in **Lagnajit Ray v. State of Orissa & others : 112 (2011) CLT 172 : (2010) SCC OnLine Ori 232** (upheld by the Hon’ble Supreme Court in **Pravakar Mallick v. State of Orissa (2020) 15 SCC 297 : AIR 2020 SC 2122**), have been cited by the petitioner to put forth the point of law that the roster point promotes belonging to SC & ST categories cannot be granted consequential seniority in absence of any Rule.

15. It is observed that the petitioner has not laid any factual foundation to bring to the notice of the Court that any promotion was given to SC & ST persons in contravention of the roster point as notified by the Government vide ST/SC Development Department letter no.11124/SSD dated

15.03.2007 that is in accordance with the ORV Act and the ORV Rules.

It has to be taken note that the State of Odisha has not made any Rule granting consequential seniority to roster point promotees.

16. Further having not pleaded regarding the violation of roster point or excessive of percentage of reservation, the petitioner further has also not shown that any roster point promotee belonging to SC & ST categories has been given consequential seniority because of his promotion. Rather, the petitioner's averment is to the effect that the petitioner is aggrieved by granting promotion to SC & ST persons as per the roster point which is constitutionally guaranteed, upheld by the decision of the Hon'ble Supreme Court in ***Indraswney v. Union of India and others : 1992 Supp. (3) SCC 217; AIR 1193 SC 477***, decision rendered by a Bench of nine Hon'ble Judges and also in ***M. Nagraj (supra)***.

17. The promotion granted to the SC/ST candidates up to the level of lowest rung of Class-I service as per ORV Act and Rules is in terms of the constitutional mandate of Articles 16.4 and 16.4-A and therefore, is valid. Further the promotions are given as per the roster point to keep the quantum of reservation within the percentage prescribed by the statute.

18. As a matter of fact, there has been no allegation that the roster maintained for filling up of the post giving promotion has been violated at any level while granting promotion to the opposite party no.4, nor there is any averment that there was a vacancy meant for the UR category, which was usurped by the opp.party no.4/any other candidate of the reserved category.

19. In view of the above discussions, this Court has to come to a conclusion that the petitioner is no way affected, as far as his career progression/promotion is concerned, inasmuch as, the opposite party no.4 has got benefit of reservation by following the 80 point roster, as per the notification dated 15.03.2007 of SC & ST Development Department for keeping percentage of reservation within the prescribed quantified limit.

20. Accordingly, the writ petition is dismissed being devoid of any merit, however, in the facts and circumstances of the case there shall be no order as to costs.



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