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IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.C (OAC)No. 2645 of 2014

In the matter of an application under Section 19
of the Administrative Tribunals' Act, 1985.

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Santosh Kumar Mandal & Petitioners
Others

-versus-

State of Odisha & Others Opposite Parties

For Petitioner : M/s. Buddhadev Routray,
Sr. Advocate
M/s. Jayanta Rath, Sr. Advocate

For Opp. Parties : M/s. Ashok Ku. Parija,
Advocate General
R.N. Mishra, Addl. Govt. Advocate
M.K. Balabantaray, Standing Counsel
S.N. Pattnaik, Advocate(for O.P. No.6)

W.P.C(OAC) Nos.140,215,216,217,218 of 2013 & 2390 of 2014

Santosh Kumar Das Petitioner

-versus-

State of Odisha & Others Opposite Parties

For Petitioner : M/s. Gyanaloka Mohanty &
D. Rath, Advocate

For Opp. Parties : M/s. Ashok Ku. Parija,
Advocate General
R.N. Mishra, Addl. Govt. Advocate
M.K. Balabantaray, Standing Counsel
S.N. Pattnaik, Advocate(for O.P. No.6)

**W.P.C(OAC) Nos.404,517,586,1194 of 2013 & 2513,2514, 2515,
2750 of 2014 & 2070 & 2072 of 2015 &
4142,4144,4643,4752,4754,4762,4768,4769 of 2016 &
102,1324,3187,3188,3189,3190,3191,3192,3193 & 3345 of 2017**

Amiya Kumar Bahinipati **Petitioner**

-versus-

State of Odisha & Others **Opposite Parties**

For Petitioner : M/s. Shashi Bhusan Jena,
S. Behera & C.K. Sahu, Advocate

For Opp. Parties : M/s. Ashok Ku. Parija,
Advocate General
R.N. Mishra, Addl. Govt. Advocate
M.K. Balabantaray, Standing Counsel
S.N. Pattnaik, Advocate(for O.P. No.6)

W.P.C(OAC) Nos.2617,2618,2619,2620 & 2621 of 2014

Niranjan Behera **Petitioner**

-versus-

State of Odisha & Others **Opposite Parties**

For Petitioner : M/s. Srikanta Kumar Sahoo,
A.K. Sahoo, B.B. Biswal,
S. Mishra, Advocate

For Opp. Parties : M/s. Ashok Ku. Parija,
Advocate General
R.N. Mishra, Addl. Govt. Advocate
M.K. Balabantaray, Standing Counsel
S.N. Pattnaik, Advocate(for O.P. No.6)

**W.P.C(OAC) Nos.2975,3341,3343,3344,3406,3407,3408,3448,
3449, 3486,3487,3521,3522,3738,3739,4833,4834 of 2016
& 84,212 of 2017 & 1072 of 2019**

Jyotiranjana Nayak

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s. Sumanta Kumar Nayak,
S.K. Sahoo, A.B. Parida,
S. Dash, Advocate

For Opp. Parties : M/s. Ashok Ku. Parija,
Advocate General
R.N. Mishra, Addl. Govt. Advocate
M.K. Balabantaray, Standing Counsel
S.N. Pattnaik, Advocate(for O.P. No. 6)

W.P.C(OAC) Nos. 2751,2752 of 2014 & 1047 & 1048 of 2017

Smruti Samal

Petitioner

संयुक्त न्याये

....
-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s. Kali Prasanna Mishra,
S. Mohapatra, T.P. Tripathy,
L.P. Dwibedy, Advocate

For Opp. Parties : M/s. Ashok Ku. Parija,
Advocate General
R.N. Mishra, Addl. Govt. Advocate
M.K. Balabantaray, Standing Counsel
S.N. Pattnaik, Advocate(for O.P.No.6)

W.P.C(OAC) Nos. 1971 & 1972 of 2018

Mithun Kumar Kar ... **Petitioner**

-versus-

State of Odisha & Others **Opposite Parties**

For Petitioner : M/s. Dhuliram Pattnayak,
P.K. Das, N. Biswal,
L. Pattanayak, Advocate

For Opp. Parties : M/s. Ashok Ku. Parija,
Advocate General
R.N. Mishra, Addl. Govt. Advocate
M.K. Balabantaray, Standing Counsel
S.N. Pattnaik, Advocate(for O.P. No.6)

W.P.C(OAPC) No. 83 of 2017 & W.P.(C) No.17568 of 2019

Madhusmita Sahoo ... **Petitioner**

-versus-

State of Odisha & Others **Opposite Parties**

For Petitioner : M/s. Ajit Kumar Sahoo, A. Sahoo,
A.K. Biswal, R.K. Jena, R.K. Sahoo,
P. Sahu, Advocate

For Opp. Parties : M/s. Ashok Ku. Parija,
Advocate General
R.N. Mishra, Addl. Govt. Adv.
M.K. Balabantaray, Standing Counsel
S.N. Pattnaik, Advocate(for O.P. No.6)

WPC (OAC) Nos.1917 of 2017 & 18300 of 2019

Bharat Muduli

Petitioner

...

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s. Pramod Kumar Nayak, A.K.
Dalai, S. Aun, A.K. Mahakud, Adv.

For Opp. Parties : M/s. Ashok Ku. Parija,
Advocate General
R.N. Mishra, Addl. Govt. Advocate
M.K. Balabantaray, Standing Counsel
S.N. Pattnaik, Advocate(for O.P. No.6)

WPC (OAC) No.578 of 2014

Nandini Ray

Petitioner

...

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s. Manoj Kumar Khuntia, G.R.
Sethi, J.K. Digal, B.K. Pattnaik,
Advocate

For Opp. Parties : M/s. Ashok Ku. Parija,
Advocate General
R.N. Mishra, Addl. Govt. Advocate
M.K. Balabantaray, Standing Counsel
S.N. Pattnaik, Advocate(for O.P. No.6)

**W.P.C(OA) Nos.1891 of 2014 & W.P.C(OAC) No.4642 of 2016 &
W.P.(C) Nos.16840,17470,18359 of 2019 & 17075 of 2022**

Alok Mali

Petitioner

...

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner

: M/s. R. Mohanty, M. Mohanty,
P. Mohanty, Adv.

(for WPC(OA) No.1891 of 2014)

M/s. R.C. Roy, Adv.

(for WPC(OAC) No.4642 of 2016),

M/s. Budhadev Routray, Sr. Adv.

R.P. Dalai, K. Mohanty, S.K. Samal,

S.P. Nath, S.D. Routray, B.R. Pattnayak,

J. Biswal, Advocate

(for W.P.(C) No.16840 of 2019)

M/s. Debendra Ku. Sahoo 1,

S.N. Nayak, Adv.

(for W.P.(C) No.17470 of 2019)

M/s. Manoj Kumar Pati, R.

Mohapatra, S. Das, Adv.

(for W.P.(C) No.18359 of 2019)

M/s. Digambar Sethi & S.K. Dash, Adv.

(for W.P.(C) No.17075 of 2022)

For Opp. Parties

: M/s. Ashok Ku. Parija,

Advocate General

R.N. Mishra, Addl. Govt. Advocate

M.K. Balabantaray, Standing Counsel

S.N. Pattnaik, Advocate (for O.P. No.6)

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 21.7.2022 and Date of Judgment: 17.8.2022

Biraja Prasanna Satapathy

1. This matter is taken up by video conferencing mode.

2. Since the issue involved in all the aforesaid Writ Petitions are identical, all the matters were heard analogously and disposed of by this common order.

3. WPC(OAC) No.2645 of 2014 and batch of Writ Petitions were filed challenging the advertisement issued by the Orissa Staff Selection Commission on 4.8.2014 vide Annexure-6 inviting applications to fill up the post of Junior Engineer (Civil), under the Government of Odisha, Works Department & H & UD(PH) Department by way of direct recruitment. Similarly W.P.(C) No.16840 of 2019 has been filed challenging the advertisement issued by the self-same Orissa Staff Selection Commission on 29.8.2019 inviting applications to fill up 257 posts of Jr. Engineer (Civil) under the aegis of Engineer in chief (Water Resources),Govt. of Odisha.

4. Heard Mr. Buddhadev Routray and Mr. Jayanta Kumar Rath, learned Senor Counsels appearing on behalf of the petitioners in W.P.C (OAC) No.2645 of 2014 and W.P.(C) No.16840 of 2019 and other counsel appearing for the Petitioners in all the aforesaid Writ Petitions and Mr. Ashok

Kumar Parija, learned Advocate General along with Mr. R.N. Mishra, learned Addl. Government and Mr. M.K. Balabantaray, learned Standing Counsel on behalf of the Opp. Parties and Mr. S.N. Pattnaik, learned counsel appearing for the Orissa Staff Selection Commission and learned counsels appearing for the intervenor-petitioners.

5. All the aforesaid Writ Petitions were filed by the petitioners, who are admittedly Diploma Holders in Engineering in different disciplines. It is submitted that pursuant to the decision taken by the Government in the then Department of Planning and Coordination, Government of Odisha on 18.1.1972 it was decided to continue with the appointment/engagement of unemployed Engineering Personnel(Civil) both Graduates and Diploma Holders from the panel to be maintained by the said Department of Planning and Coordination. In the said communication dated 18.1.1972 under Annexure-2, Government decided to follow the procedure for absorbing engineering personnel in various posts in different Departments. The said procedure is enumerated below:

1. *Employment of engineering personnel i.e. Graduate Engineer and Diploma Holders should be made year wise in order merit. All candidates of*

particular year have to be observed first before candidates of the following years are considered.

2. The Planning and Coordination Department will continue to maintain a register of these candidates.

3. On receipt of requisitions for filling of posts under various Department, the Planning and Coordination Department should recommended candidates as many as four times the under of vacancies.

4. Recruitment to all post i.e. J.E, S.A.E, Surveyor, Tracer, Drafts man embankment inspector, and works sarkar is to be made though his department as being being done now.

6. It is submitted that subsequently the appointment of Diploma Engineers continued and sponsoring of candidates from the panel was vested with the Committee of Chief Engineers and Engineer in Chief(Civil) was declared as the sponsoring authority. It is submitted that the Diploma Engineers in different disciplines were being provided with appointment after due sponsoring of their names by the Committee of Chief Engineers and Engineer-in-Chief(Civil) Odisha in different Departments coming under the State Government as well as public sector undertakings. It is submitted that while the appointment of Diploma Holders was so continuing, Government in the Department of Water Resources for the first time came up with a notification on 29.12.2012 by framing the Rules namely The Odisha Diploma Engineers Services (Method of Recruitment and

Conditions of Service) Rules, 2012 under Annexure-3. It is submitted that the said Rules were framed in order to provide appointment in the grade of Junior Engineer and Asst. Engineer by way of direct recruitment to be conducted by the Orissa Staff Selection Commission, in respect of Junior Engineer and by the self-same Commission with consultation of Orissa Public Service Commission in case of Assistant Engineer. It is further submitted that pursuant to the said notification and framing of the Rules issued vide Notification dated 29.12.2012 when it was felt that recruitment through Orissa Staff Selection Commission will take some time and various Departments coming under the State Government are in urgent need to fill up the vacancies in the cadre of Jr. Engineer, Government in the Department of Water Resources vide its order dated 5.10.2013 under Annexure-4 passed the following order.

“ NOW, THEREFORE, in exercise of the powers conferred by rule-19 of the said “Odisha Diploma Engineers’ Service (Methods of Recruitment and Conditions of Service) Rules, 2012 and in exigencies of public interest, Government after careful consideration, do hereby relax the provisions of the aforesaid rules 31st March, 2014 and as such all appointments to the existing vacancies of Junior Engineer shall be made as were being made prior to commencement of those rules i.e. from out of the panel maintained by the Committee of Chief Engineers and Engineer-in-Chief(Civil) Odisha.

7. It is submitted that as per the said order, the State Government took the decision in exercise of the power conferred under Rule 19 of the aforesaid 2012 Rules and decided that till 31st March, 2014 all appointments to the existing vacancies of Jr. Engineer shall be made as were being made prior to the commencement of these Rules i.e. from out of the panel maintained by the Committee of Chief Engineers and Engineer in Chief(Civil), Odisha.

8. Learned counsel for the Petitioners submitted that in view of the said order issued on 5.10.2013 under Annexure-4, all the vacancies as on 31st March, were to be filled up from amongst the empanelled Diploma holders maintained by the Committee of Chief Engineers and Engineer in Chief(Civil), Orissa. It is submitted that without following that order and without filling up of the existing vacancies as on 31st March, 2014, when the first advertisement was issued by the Commission on 4.8.2014, O.A. No.2645(C) of 2014 along with batch of Original Applications were filed before the learned Tribunal challenging the action of the Government in filling up the post of Jr. Engineer by way of direct recruitment instead of filling up those posts from out of the panel in terms of the order issued on 5.10.2013 under

Annexure-4. It is submitted that learned Tribunal vide its order dated 26.4.2017 disposed of in O.A. No.2645 (C) of 2014 and batch. Learned Tribunal in the said order while was not inclined to interfere with the advertisement and held that the Original Applications are not maintainable, but observed as herein below:

21. Accordingly, the grievance of the applicants to quash the impugned advertisement and the statutory rule is not allowed and the O.As are not entertain able and maintainable.

However, keeping in view the fact that the applicants are waiting for long years for appointment, it is desirable that Government as a model employer may take a decision as one time measure and consider to relax the relevant provision under the rule for appointment of the applicants and for that purpose, if necessary, may fix certain quota in future recruitment.

9. Mr. B. Routray, learned Senior Counsel submitted that since learned Tribunal did not interfere with the matters and only observed as indicated hereinabove, the said order was challenged before this Court in W.P.(C) NO.8877 of 2017 and batch of Writ Petitions. This Court vide its judgment dated 28.2.2019 disposed of all those Writ Petitions by remitting the matter to the learned Tribunal for fresh disposal. Para 8 & 9 of the aforesaid judgment is quoted herein below:

8. Keeping in view the fact that the petitioners are eagerly waiting for their absorption since long, learned

Tribunal held that it is desirable that Government being an ideal and model employer, may take a decision as one time measure and consider to relax the relevant provision under the Rules, 2012 for appointment of the applicants and for that purpose, if necessary, may fix certain quota in future recruitment. In our considered opinion, the Tribunal while making such direction, has committed error in not ascertaining the vacancy position as on 31st March, 2014. Further, the materials now produced before us in view of the exercise made by this Court, learned Tribunal should give a relook into the matter.

9. *In that view of the matter, we are of the considered opinion that the matter is required to be remitted back to the Tribunal and we direct the same. Learned Tribunal is directed to dispose of the matter on a consolidated application being moved by a single petitioner on behalf of all these petitioners, represented by Sri Budhadev Routay, learned Senior Advocate (on consent of the panel of advocates appearing in these writ petitions), who will present matter in seriatim and in detail and will give a consolidated statement. The matter is to be disposed of within a period of twelve months from the date of filing of such consolidated application before learned Tribunal.*

10. It is submitted that this Court while remitting the matter for fresh disposal observed that without ascertaining the vacancy position as available on 31.3.2014, since the matter has been disposed of, it needs a fresh relook by the learned Tribunal. While directing so, the petitioners in WP(C) No.8877 of 2017 were also permitted through Mr. B. Routay, learned Sr. Counsel to place all the matters so produced before this Court. After such remand of the matter and due to the abolition of the learned Tribunal in the State of Odisha, the matter was transferred to this Court and accordingly all the matters were taken up for hearing and

disposal. Basing on the permission granted by this Court, necessary documents were also brought on record by way of amendment in W.P.(C) No.8877 of 2007.

11. Mr. Routray along with Mr. Rath, learned Senior Counsel strenuously urged before this Court that since as per order dated 4.10.2013 under Annexure-4, all the existing vacancies as on 31.3.2014 were to be filled up from out of the panel, the action of the Government in allowing the Commission to go for direct recruitment without filling up the vacancies from out of the panel is illegal. It is also submitted that since without following the stipulation contained in the said order, subsequent advertisement were issued on 29.8.2019, the same was challenged in W.P.(C)16840 of 2019. This Court vide order dated 18.9.2019 passed an interim order to the effect that the process of selection pursuant to the said advertisement may continue but the same shall not be finalized without the leave of this Court.

12. It is submitted that in view of the stipulation contained in order dated 5.10.2013, the State Government is duty bound to fill up all the existing vacancies as available on 31.3.2014 from out of the panel and since that was not

followed prior to issuance of the advertisement on 4.8.2014 and subsequent advertisement on 29.8.2019, the recruitment process pursuant to those two advertisements is liable to be interfered with by this Court and with a direction on the Opp. Parties to fill up those posts from out of the panel as against the vacancies available up to 31.3.2014.

13. Mr. Routray further submitted that even if some of the petitioners have made their application pursuant to the advertisement issued on 4.8.2014 and 29.8.2019 and taken part in the recruitment process, they are not stopped from challenging the impugned advertisements. In support of such stand, learned Senior Counsel relied on the decision of the Hon'ble Apex Court rendered in the case of Dr.(Major) Meeta Sahai Vs. State of Bihar & Others (Civil Appeal No.9482 of 2019 disposed of on 17.1.2.2019 & Krishna Rai & Others Vs. Benaras Hindu University through Registrar & Others (Civil Appeal No.4578-4580 of 2022, disposed of on 16.6.2022).

14. Mr. Ashok Kumar Parija, learned Advocate General along with Mr. R.N. Mishra, learned AGA and Mr. M.K. Balabantaray, learned Standing Counsel made their submission basing on the counter filed by the State-Opp.

Parties and the documents filed pursuant to the order passed by this Court.

15. It is submitted by the learned Advocate General that pursuant to the order dated 4.10.2013 and by following the panel system prevalent in the State, the State Government considering the requisition made by different Department functioning under the State Government decided to fill up 1612 number of posts from out of the panel out of the total 1869 requisitions received till 31.3.2014. It is further submitted that even though by 31.3.2014, 1869 requisitions were received by the Committee of Chief Engineers and Engineer in Chief(Civil), Orissa from different Departments and Public Sector undertakings but the State Government decided to fill up 1612 posts from the panel and the rest 257 Diploma Holders belonging to ST (Men) and S.C (Women) could not be filled up as there were no candidate in the said category as per the requisition. But, this Court while dealing with the matter and after going through the order passed by the Division Bench of this Court when found that both the sides have not produced any document showing the vacancy as on 31.3.2014, it directed the learned State Counsel to produce the total number of vacancies available as on

31.3.2014. Pursuant to the said direction of this Court, an additional affidavit was filed on 18.7.2022 indicting therein that as on 31.3.2014, the total number of vacancies in different Departments of the Government was 2723. But it is submitted that since requisitions were received to the extent of 1869 posts, the Government had no occasion to fill up the total vacancies in absence of such requisitions. Mr. Parija, learned Advocate General also brought to the notice of this Court the stipulation contained in the guideline issued on 18.1.1972 under Annexure-2. It is submitted that unless and until requisitions are received for filling up the posts from various Departments, no name from out of the panel can be sponsored by the Committee of Chief Engineers for appointment of such Diploma Holders.

16. Therefore, it is submitted that since by 31.3.2014, requisitions to the extent of 1869 posts were received by the Committee, Government decided to fill up 1612 number of posts and the rest 257 posts could not be filled up as sufficient number of candidates in the reserved category were not available for such sponsoring from the panel. It is also submitted that since as per order dated 5.10.2013, existing vacancies as on 31.3.2014 were required to be filled

up from out of the panel, but in view of the requisition received to the extent of 1869 posts, no illegality can be found at the level of the Government for not filling up the entire 2773 vacancies available as on 31.3.2014. It is also submitted that the order dated 5.10.2013 is very clear as it indicates that all appointments to the existing vacancies as on 31.3.2014 shall be made from out of the panel. But in absence of requisition from different Departments, the Committee had no occasion to sponsor the names of candidate beyond 1869 Diploma Holders from out of the panel. It is also submitted that filling up the post by the Government as against available vacancies is the prerogative of the Government and no direction can be issued compelling the State Government to fill up all the vacancies as available. Mr. Ashok Parija, learned Advocate General in support of the aforesaid submission relied on the decision of the Hon'ble Apex Court passed in the case of **Anurag Sharma and others Vs. State of Himachal Pradesh and others (2022 S.C.C, OnLine S.C 860)**. Relying on the said decision, it is submitted that even though the vacancies as on 31.3.2014 was to the extent of 2773, but the State Government cannot

be compelled to fill up all those posts. Hon'ble Apex Court in

Para 7,11,15 to 25,73 and 75 held as follows:-

7. *The solitary argument advanced on behalf of Respondents No. 1 to 3, which was accepted by the Division Bench was that the vacancies which arose prior to the promulgation of New Rules were to be filled only as per the 1966 Rules and not as per the New Rules. The High Court formulated the issue and proceeded to allow the Writ Petition on the ground that it is covered by the decision of this Court in Y.V. Rangaiah v. J. Sreenivasa Rao (supra). The operative portion of the judgment is extracted herein for ready reference: "The question whether the vacancies occurring before the amendment to the Recruitment and Promotion Rules are to be filled up as per the old Recruitment and Promotion Rules or by way of new Recruitment and Promotion Rules is no more res integra in view of the law laid down by their Lordships of this Court in Y.V. Rangaiah v. J. Sreenivasa Rao, (1983) 3 SCC 284."*

11. *The real question is whether the vacancies which arose prior to the promulgation of the new rules are to be filled only as per the old rules and not as per the amended rules? It is argued that this principle is no more res integra as the Supreme Court recognised such a right in Rangaiah's case and it has been followed in a large number of subsequent decisions. A list of such judgments was forwarded to the Court by the Respondents. On the other hand, while submitting that there is no such right, an even larger list of decisions of this Court that distinguished Rangaiah was forwarded to us on behalf of the State.*

15. *The question that arose in Rangaiah's case related to the mandatory obligation under the old rules to prepare an approved list of candidates and also the number of persons to be placed in the list as per the vacancies available. It is in this context that the Court observed that the vacancies would be governed by the old rules. This decision is not to be taken to be laying down an invariable principle that vacancies occurring prior to the amendment of the rules are to be governed by old rules. It is important to note that the Court has not identified any vested right of an employee, as has been read into this judgment in certain subsequent cases.*

16. *However, as the observation in Rangaiah's case has been construed as a general principle that vacancies arising prior to the amendment of rules are to be filled only as per the old rules, it is necessary for us to examine the correct position of law. For this purpose, we will examine the constitutional position and the status that governs the relationship between an employee and the State. Status of persons serving the Union and the States:*

17. *The relationship between the State and its employees is provisioned in Part XIV of the Constitution. The provisions of this Part empower the Union and the States to make Laws and*

executive Rules, to regulate the recruitment, conditions of service, tenure and termination of persons serving the Union or the States.

18. Article 310 provides that, except as expressly provided in the Constitution, every person serving the Union or the States holds office during the pleasure of the President or the Governor.

19. The legislative power conferred on the Parliament or a State Legislature, to make Laws, or the executive power conferred on the President or the Governor to make Rules under Article 309 is controlled by the doctrine of pleasure embodied in Article 310. This is clear from the fact that Article 309 opens with the restrictive clause, 'subject to the provision of the Constitution. It is for this reason that the power of the legislature to make laws and the executive to make Rules, for laying down conditions of services of a public servant is always subject to the tenure at the pleasure of the President or the Governor under Article 310.

20. The Constitutional provision to provide public employment on the basis of tenure at pleasure of the President or the Governor is based on 'public policy', 'public interest' and 'public good'. The concept of holding public employment at pleasure is explained in Constitution Bench decision of this Court in *Union of India v. Tulsiram Patel*. The relationship between the Government and its employees, as explained in this judgment can be formulated as under :—

I. Unlike in the United Kingdom, in India it is not subject to any law made by Parliament but is subject only to what is expressly provided by the Constitution.

II. The pleasure doctrine relates to the tenure of a Government servant..., ... means the period for which an incumbent of office holds it.

III. The position that the pleasure doctrine is not based upon any special prerogative of the Crown but upon public policy has been accepted by this Court in *State of U.P. v. Babu Ram Upadhyaya and Moti Ram Deka v. General Manager, N.E.F., Railways, Maligaon, Pandu*.

IV. The only fetter which is placed on the exercise of such pleasure is when it is expressly so provided in the Constitution itself, that is when there is an express provision in that behalf in the Constitution. Express provisions in that behalf are to be found in the case of certain Constitutional functionaries in respect of whose tenure special provision is made in the Constitution as, for instance, in clauses (4) and (5) of Article 124 with respect to Judges of the Supreme Court, Article 218 with respect to Judges of the High Court. Article 148(1) with respect to the Comptroller and Auditor-General of India, Article 324(1) with respect to the Chief Election Commissioner, and Article 324(5) with respect to the Election Commissioners and Regional Commissioners.

V. Clauses (1) and (2) of Article 311 impose restrictions upon the exercise by the President or the Governor of a State of his pleasure under Article 310(1). These are express provisions with respect to termination of service by dismissal or removal as also with respect to reduction in rank of a civil servant and thus come within the ambit of the expression Except as otherwise provided by this 'Constitution' qualifying Article 310(1). Article 311 is thus an exception to Article 310 and was described in *Parshotam Lal Dhingra v. Union of India*, as operating as a proviso to Article

310(1) though set out in a separate Article. VI. Article 309, is however, not such an exception. It does not lay down any express provision which would derogate from the amplitude of the exercise of pleasure under Article 310(1). It merely confers upon the appropriate legislature or executive the power to make laws and frame rules but this power is made subject to the provisions of the Constitution. Thus, Article 309 is subject to Article 310(1) and any provision restricting exercise of the pleasure of the President or Governor in an Act or rule made or framed under Article 309 not being an express provision of the Constitution, cannot fall within the expression 'Except as expressly provided by this Constitution' occurring in Article 310(1) and would be in conflict with Article 310(1) and must be held to be unconstitutional.

VII. Clauses (1) and (2) of Article 311 expressly restrict the manner in which a Government servant can be dismissed, removed or reduced in rank and unless an Act made or rule framed under Article 309 also conforms to these restrictions, it would be void. The restrictions placed by clauses (1) and (2) of Article 311 are two- (i) with respect to the authority empowered to dismiss or remove a Government servant provided for in clause (1) of Article 311, and (ii) with respect to the procedure for dismissal, removal or reduction in rank of a Government servant provided for in clause (2). (emphasis supplied)

21. Regardless of its origin, the doctrine of pleasure incorporated under our constitutional scheme is to subserve an important public purpose. In Para 44 and 45 of *Tulsiram Patel (supra)*, this Court has explained the purpose and object of incorporating this principle: "44. Ministers frame policies and Legislatures enact laws and lay down the mode in which such policies are to be carried out and the object of the legislation achieved. In many cases, in a Welfare State such as ours, such policies and statutes are intended to bring about socio-economic reforms and the uplift of the poor and disadvantaged classes. From the nature of things the task of efficiently and effectively implementing these policies and enactments, however, rests with the civil services. The public is, therefore, vitally interested in the efficiency and integrity of such services. Government servants are after all paid from the public exchequer to which everyone contributes either by way of direct or indirect taxes. Those who are paid by the public and are charged with public administration for public good must, therefore, in their turn bring to the discharge of their duties a sense of responsibility. The efficiency of public administration does not depend only upon the top echelons of these services. It depends as much upon all the other members of such services, even on those in the most subordinate posts. For instance, railways do not run because of the members of the Railway Board or the General Managers of different railways or the heads of different departments of the railway administration. They run also because of engine-drivers, firemen, signalmen, booking clerks and those holding hundred other similar posts. Similarly, it is not the administrative heads who alone can see to the proper functioning of the post and telegraph service. For a service to run efficiently there must, therefore, be a collective sense of responsibility. But for a Government servant to discharge his duties faithfully and conscientiously, he must have a feeling of security of tenure.

Under our Constitution, this is provided for by the Acts and rules made under Article 309 as also by the safeguards in respect of the punishments of dismissal, removal or reduction in rank provided in clauses (1) and (2) of Article 311. It is, however, as much in public interest and for public good that Government servants who are inefficient, dishonest or corrupt or have become a security risk should not continue in service and that the protection afforded to them by the Acts and rules made under Article 309 and by Article 311 be not abused by them to the detriment of public interest and public good. When a situation as envisaged in one of the three clauses of the second proviso to clause (2) of Article 311 arises and the relevant clause is properly applied and the disciplinary inquiry dispensed with, the concerned Government servant cannot be heard to complain that he is deprived of his livelihood. The livelihood of an individual is a matter of great concern to him and his family but his livelihood is a matter of his private interest and where such livelihood is provided by the public exchequer and the taking away of such livelihood is in the public interest and for public good, the former must yield to the. These consequences follow not because the pleasure doctrine is a special prerogative of the British Crown which has been inherited by India and transposed into our Constitution adapted to suit the constitutional set-up of our Republic but because public policy requires, public interest needs and public good demands that there should be such a doctrine.

45. It is thus clear that the pleasure doctrine embodied in Article 310(1), the protection afforded to civil servants by clauses (1) and (2) of Article 311 and the withdrawal of the protection under clause (2) of Article 311 by the second proviso thereto are all provided in the Constitution on the ground of public policy and in the public interest and are for public good.”

22. The principle of a public servant holding office at the pleasure of the President or the Governor is incorporated in the Constitution itself (under Article 310). This has a direct bearing on the powers of the Parliament or the legislature to make Laws or the executive to make Rules for specifying conditions of service provided under Article 309. This position is clearly explained in the above-referred passages. In *B.P. Singhal v. Union of India* this Court explained the consequence of holding the office during the pleasure of the President or the Governor: “33. The doctrine of pleasure as originally envisaged in England was a prerogative power which was unfettered. It meant that the holder of an office under pleasure could be removed at any time, without notice, without assigning cause, and without there being a need for any cause. But where the rule of law prevails, there is nothing like unfettered discretion or unaccountable action. The degree of need for reason may vary. The degree of scrutiny during judicial review may vary. But the need for reason exists. As a result, when the Constitution of India provides that some offices will be held during the pleasure of the President, without any express limitations or restrictions, it should however necessarily be read as being subject to the “fundamentals of constitutionalism”.

23. It is in this background that the employment of a public servant is to be understood. Though the relationship between the employee and the State originates in contract, but by virtue of the

constitutional constraint, coupled with the legislative and executive rules governing the service, the relation attains a unique position. Identifying such a relationship as being a 'status', as against a contract, this Court in *Roshan Lal Tandon v. Union of India*, explained what such a 'status' constitutes. We have extracted hereinbelow the exposition of the concept of 'status' as explained by the Constitution Bench for ready reference. In this case, the petitioner Roshan Lal Tandon was appointed as Train-Examiner - Grade 'D'. At the time when he joined the service, the promotion to the next post in Grade 'C' was governed by certain rules which later came to be amended. Questioning the amendment, he contended that he had a right to be promoted to Grade 'C' when he joined the service and such a right could not have been altered by way of a subsequent amendment. Rejecting this argument, this Court explained the relationship of Government employment as a 'status' as under:

"6. We pass on to consider the next contention of the petitioner that there was a contractual right as regards the condition of service applicable to the petitioner at the time he entered Grade 'D' and the condition of service could not be altered to his disadvantage afterwards by the notification issued by the Railway Board. It was said that the order of the Railway Board dated January 25, 1958, Annexure 'B', laid down that promotion to Grade 'C' from Grade 'D' was to be based on seniority-cum suitability and this condition of service was contractual and could not be altered thereafter to the prejudice of the petitioner. In our opinion, there is no warrant for this argument. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall mark of status is the attachment to **a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties.** The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be **unilaterally altered** by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties, society has an interest...

7. We are therefore of the opinion that the **petitioner has no vested contractual right in regard to the terms of his service** and that Counsel for the petitioner has been unable to make good his submission on this aspect of the case."

24. The principle laid down in Roshan Lal Tandon's case is followed in a number of decisions of this Court. The following are the propositions emanating from the principles laid down in these precedents.

(i) Except as expressly provided in the Constitution, every person employed in the civil service of the Union or the States holds office during the pleasure of the President or the Governor (Article 310). Tenure at pleasure is a constitutional policy for rendering services under the state for public interest and for the public good, as explained in *Tulsiram Patel (supra)*.

(ii) The Union and the States are empowered to make laws and rules under Articles 309, 310 and 311 to regulate the recruitment, conditions of service, tenure and termination. The rights and obligations are no longer determined by consent of the parties but by the legal relationship of rights and duties imposed by statute or the rules. The services, thus, attain a status.

(iii) The hallmark of status is in the legal rights and obligations imposed by laws that may be framed and altered unilaterally by the Government without the consent of the employee.

(iv) In view of the dominance of rules that govern the relationship between the Government and its employee, all matters concerning employment, conditions of service including termination are governed by the rules. There are no rights outside the provision of the rules.

(v) In a recruitment by State, there is no right to be appointed but only a right to be considered fairly. The process of recruitment will be governed by the rules framed for the said purpose.

(vi) Conditions of service of a public servant, including matters of promotion and seniority are governed by the extant rules. There are no vested rights independent of the rules governing the service.

(vii) With the enactment of laws and issuance of rules governing the services, Governments are equally bound by the mandate of the rule. There is no power or discretion outside the provision of the rules governing the services and the actions of the State are subject to judicial review.

25. In view of the above principles, flowing from the constitutional status of a person in employment with the State, we have no hesitation in holding that the observations in *Rangaiah* that posts which fell vacant prior to the amendment of Rules would be governed by old Rules and not by new Rules do not reflect the correct position of law. We have already explained that the status of a Government employee involves a relationship governed exclusively by rules and that there are no rights outside these rules that govern the services. Further, the Court in *Rangaiah's* case has not justified its observation by locating such a right on any principle or on the basis of the new Rules. As there are a large number of judgments which followed *Rangaiah* under the assumption that an overarching principle has been laid down in *Rangaiah*, we have to necessarily examine the cases that followed *Rangaiah*. We will now examine how subsequent decisions understood, applied or distinguished *Rangaiah*. Decisions that followed *Y.V. Rangaiah v. J. Sreenivasa Rao*.

73. *The consistent findings in these fifteen decisions that Rangaiah's case must be seen in the context of its own facts, coupled with the declarations therein that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of rules which existed on the date which they arose, compels us to conclude that the decision in Rangaiah is impliedly overruled. However, as there is no declaration of law to this effect, it continues to be cited as a precedent and this Court has been distinguishing it on some ground or the other, as we have indicated hereinabove. For clarity and certainty, it is, therefore, necessary for us to hold;*

(a) The statement in Y.V. Rangaiah v. J. Sreenivasa Rao that, "the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules", does not reflect the correct proposition of law governing services under the Union and the States under part XIV of the Constitution. It is hereby overruled.

(b) The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services.

75. *We have already held that there is no right for an employee outside the rules governing the services. We have also followed and applied the Constitution Bench decisions in Union of India v. Tulsiram Patel (supra) and more particularly the decision in Roshan Lal Tandon v. Union of India (supra) that the services under the State are in the nature of a status, a hallmark of which is the need of the State to unilaterally alter the rules to subserve the public interest. The 2006 rules, governing the services of the Respondents came into force immediately after they were notified. There is no provision in the said rules to enable the Respondents to be considered as per the 1966 Rules. The matter must end here. There is no other right that Respondents no. 1 to 3 can claim for such consideration.*

17. It is also submitted that in view of Annexure-2, unless and until sufficient requisitions are received by the Committee from various Department of the Government, the Committee cannot and is not in a position to sponsor any candidate from the panel. Even though by 31.3.2014, requisitions to the extent of 1869 posts were received and sponsored, but Government decided to fill up 1612 posts. Accordingly, it is submitted that after filling up those posts

by 31.3.2014 in compliance to order dated 5.10.2014, no illegality has been committed by the Commission in issuing the advertisement on 4.8.2014 and subsequent advertisement on 29.8.2019 inviting applications to fill up posts of Jr. Engineer by way of direct recruitment. Mr. Parija, learned Advocate General also submitted that as provided in the relevant recruitment Rules, 2012, Diploma holders, who are in the panel and due to abolition of the appointment from out of the panel, all those candidates as per the said Rules were allowed exemption for their appearing in three successive recruitment tests with relaxation of upper age limit and some of the petitioners by availing that benefit have also appeared the recruitment test pursuant to the aforesaid two advertisements. It is submitted that since the Diploma Engineers who could not avail the benefit of their appointment through the panel system which was in force up to 31.3.2014 were allowed the benefit of age relaxation in their appearance in three successive recruitment test to be conducted by the Orissa Staff Selection Commission, they should have participated in the said selection process instead of approaching this Court in the aforesaid Writ Petitions.

18. Making all these submissions, Mr. Parija, learned Advocate General submitted that the prayer made in the Writ Petition are not entertainable by this Court.

19. Mr. S.N. Pattnaik, learned Counsel appearing for the Commission on the other hand submitted that both the advertisements have been issued strictly in accordance with the 2012 Rules and no illegality has either been raised or committed by the Commission while issuing both the advertisements.

20. Heard learned counsel for the parties. Perused the materials available on record.

21. This Court after going through the same finds that though as on 31.3.2014, the total vacancies available was 2773, but since in terms of Annexure-2, requisitions were received in respect of 1869 posts, no direction can be issued to the State Government to fill up the rest vacancies from out of the panel maintained by the Committee of Chief Engineers and Engineer in Chief(Civil), Orissa.. This Court also finds no illegality on the part of the State Government in not filling up all the available vacancies as State Government in view of the decision relied on by the Advocate General in the case of Anurag Sharma and Others(supra) cannot be compelled to

fill up all those posts. The decisions relied on by Mr. B. Routray, learned Sr. Counsel appearing for the petitioners are not germane to the issue involved in all these Writ Petitions. Accordingly, this Court is not inclined to entertain all these Writ Petitions and the same are accordingly dismissed.

22. However, before parting with the case, this Court feels it proper to make an observation that since learned Tribunal while disposing the matter vide its order dated 26.4.2017 observed that Government as an employer may take a decision as one time measure and to consider the relevant provision under the Rule for appointment of the petitioners and for that purpose, if necessary, may fix certain quota in future recruitment, this Court observes that if Government so likes, it can consider the case of the present petitioners in future recruitments by providing them some reservation as against the vacancies to be advertised. However, this Court has expressed no opinion on such course of action if will be undertaken by the State.

23. With the aforesaid observations and directions, all the Writ Petitions are disposed of.

24. There is no order as to costs.

25. The photocopy of this order be placed on the connected cases.

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Biraja Prasanna Satapathy, J.

Orissa High Court, Cuttack
Dated the 17th August, 2022.

