

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 1437 of 2019

Niranjan Sahu and others

.....

Petitioners

Mr. M. Mishra, Sr. Adv.
along with T. Mishra, Adv.

Vs.

State of Odisha and others

.....

Opposite parties

Standing Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

23.02.2022

Order No.

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This matter is taken up by hybrid mode.

2. Heard learned counsel for the parties.

3. The petitioners have filed this writ petition seeking to quash the gradation list dated 28.02.2019 under Annexure-15, and to issue direction to the opposite parties to recast the final gradation list by placing them being selection and promotion recruits, above the direct recruits (Private- opposite parties) and give them due seniority along with all consequential service and financial benefits.

4. Mr. M. Mishra, learned Senior Counsel appearing along with Mr. T. Mishra, learned counsel for the petitioners contended that the matter relating to the inter-se seniority between the promotees and direct recruits is governed under the Orissa Administrative Service (Method of Recruitment and Conditions of Service) Rules, 2011 and as per the Rule-11, the inter se seniority has to be determined. The said provision is quoted below:

“Rule-11, Inter se seniority:- (1) The inter se seniority of OAS Group ‘A’ (JB) officers in respect of a particular recruitment year shall be in the following

order and in each category the inter se seniority shall be determined in the following manner : (i) Promotee officers shall be ranked inter se in the order in which their names appear in the select list. (ii) Direct Recruit officers shall be ranked inter se in the order in which their names appear in the merit list prepared by the commission. (2) The inter se seniority of the officers in other grades shall be in the order in which their names appear in the select list.”

5. It is further contended that the Rule is very clear with regard to the fact that inter se seniority of OAS Group-A (Junior Branch) Officer in respect of a “particular recruitment year” shall be in the following order and has been mentioned under the rules itself. Thereby, similar question had come up for consideration by the apex Court in ***K. Meghachandra Singh & Ors. Vs. Ningam Siro & Ors.***, (2020) 5 SCC 689. In paragraph-40 of the said judgment, the apex Court held that the judgment in ***Union of India and Ors. V. N.R. Parmar***, (2012) 13 SCC 340 relating to the Central Government employees cannot in opinion of the apex Court, automatically apply to the Manipur State Police Officers, governed by MPS Rules, 1965. the Apex Court felt that ***N.R. Parmar*** (supra) had incorrectly distinguished the long-standing seniority determination principles propounded in *inter alia* ***Jagdish Chandra Pattnaik v. State of Orissa***, (1998) 4 SCC 456, ***Suraj Prakash Gupta and Ors v. State of J & K and others***, (2000) 7 SCC 561 and ***Pawan Pratap Singh and others v. Reevan Singh and others*** 92011) 3 SCC 267. These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under Service Jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. Therefore, it is contended that since the petitioners were recruitee of 2012, the recruitee of 2018 cannot have march over them as they were not borne out in the cadre. It is further contended that the petitioners

may be permitted to approach the opposite party no.1- Principal Secretary to Revenue & Disaster Management Department by filing fresh representation ventilating their grievances along with all the judgments so that the same can be considered in accordance with law.

6. Learned Standing Counsel for the State-opposite parties contended that if the petitioners are desirous to approach the appropriate authority by filing fresh representation, let them do so and the same shall be considered in accordance with law.

7. Having heard learned counsel for the parties, since the petitioners make a limited nature of grievance, instead of deciding this matter on merit, this Court disposes of this writ petition granting liberty to the petitioners to file a fresh representation ventilating their grievances along with all the judgments within a period of two weeks. If such representation is filed within two weeks, the same shall be considered and disposed of by the opposite party no.1- Principal Secretary to Revenue & Disaster Management Department, taking into consideration Annexure-2, within a period of four months thereafter by affording opportunity of hearing to all the parties.

8. With the above observation and direction, the writ petition stands disposed of.

Issue urgent certified copy as per rules.

Ashok

(DR. B.R. SARANGI)
JUDGE