

Prahallad Baral

Vs

Govt. of Orissa and Others

Civil Appeal No. 1827 of 1997

(K. Ramaswamy, G. T. Nanavati JJ)

03.03.1997

ORDER

1. Leave granted. We have heard the learned counsel on both the sides.
2. This appeal by special leave arises from the order of the Central Administrative Tribunal, Bhubaneswar, made on 8-2-1996 in Application No. 6 of 1991.
3. The respondent employees were appointed to the posts of LDC in 1970-71. The appellant was later appointed in 1972-73. The question of their inter se seniority had come up before the Government. The Government in its order dated 4-2-1971 prescribed the minimum educational qualification, viz., intermediate, for recruitment to the post of LDC in the district and subordinate offices. The contesting respondent employees are only Matriculates while the appellant has Intermediate educational qualification. On the basis of their educational qualifications, the Government have issued instructions for fixation of their inter se seniority as under :

"(a) All LD Clerks who have passed Matriculation or any equivalent examination shall be deemed to have been validly and regularly recruited and appointed as such and they shall not be required to pass the Recruitment Examination or any special qualifying test in lieu thereof prescribed by the Government.

(b) The seniority of the LD Clerks under category (a) above shall be fixed taking into account their services from the date of appointment as LD Clerks but in the gradation list of LD Clerks they shall rank immediately below the LD Clerks recruited during the same year with the minimum educational qualification prescribed by Government in Finance Department Resolution No. 3968-F dated 4-2-1971. According to the revised gradation list to be prepared as above, they may be confirmed against permanent posts if available, provided they fulfil all other conditions necessary for confirmation.

(c) Refixation of seniority of these clerks as mentioned in (b) above shall not entitle them to any promotional benefits retrospectively.

(d) The LD Clerks so regularised will be entitled to draw their pay as per the principles laid down in Finance Department Resolution No. 3968-F dated 4-2-1971 read with Finance Department Resolution No. 90-F dated 2-1-1973 from the date of their appointment to such posts."

4. A reading of it would clearly indicate that all LDCs who have passed Matriculation or any equivalent examination shall be deemed to have been validly and regularly recruited and appointed as such and they shall not be required to pass the Recruitment Examination or any special qualifying test. But in the matter of preparation of their seniority, it postulates that seniority will be given to those who have got the minimum educational qualification. In other words, those possessed of Intermediate qualification, will rank senior to Matriculates. As a consequence, the appellant, though appointed later, became senior to the respondents. The Departmental Promotion Committee constituted for the purpose of selection for promotion to the post of UDC had considered the appellant's claim and found him fit. It regularised his services and has given him the promotion as he was senior to the respondents. Subsequently, when the respondents' claim came up for consideration, the DPC recommended for demotion of the appellant and confirmation of the respondents. Consequently, in the gradation list, the respondents were placed above the appellant. On appeal, the Government reversed it. As a consequence, the respondents approached the Tribunal. The Tribunal in the impugned order has held thus :

"Petitioners who were regularised in service by Government Order dated 21-10-1981 in which all the LD Clerks who had passed Matriculation or equivalent examination were deemed to have been validly and regularly recruited and appointed as such and they were not required to pass the recruitment examination or any special qualifying a test in lieu thereof prescribed by Government. Opposite Parties 4 to 6 who came to be appointed much later than the petitioners were promoted without prejudice to the claims of their seniors (petitioners) to the rank of UD Clerk in the year 1980. Petitioners were promoted in the year 1981 to the post of UD Clerk. On their promotion as per the conditions, Opposite Parties 4 to 4 were reverted to the post of UD Clerk in the year 1981. From 1981 till this litigation was filed in the year 1991 petitioners are continuing uninterruptedly in the promotional post of UD Clerk and Opposite Parties 4 to 6 are continuing as LD Clerks. Nine years after in the year 1990 under the impugned order promotion given to the petitioners as UD Clerks was ordered to be set aside. Was it justified ? Even on the ground that the representation of the opposite parties was disposed of in the year 1990."

5. The appellant was regularised in service by Government Order dated 8-10-1981. All the LDCs who had passed Matriculation or equivalent examination were deemed to have been validly and regularly recruited and appointed as such. They were not required to pass the Recruitment Examination or any qualifying test in lieu thereof prescribed by the Government. On that basis, the direction was given in para 13 which reads as under :

"In the premise for the reasons stated above and discussions made, the orders at Annexures 9 and 10 are unsustainable and are, therefore, liable to be set aside, which are hereby set aside. Petitioners shall continue in the promotional post without any disturbance in the seniority list."

6. This direction is obviously inconsistent with the orders issued by the Government as indicated above. Since the respondent employees did not possess minimum educational qualification, viz., Intermediate, they are not entitled to rank senior to the qualified appellant. Thus, the contesting Respondents 4 and 5 in this appeal shall be junior to the appellant.

7. However, their continuance in the respective posts for promotion may not be disturbed since all the parties have been further promoted in which posts their inter se seniority would be fixed on the

condition that the appellant is senior to them for further promotions.

8. The appeal is accordingly allowed. But in the circumstances without costs.