

Ashok Kumar Pattanaik and Others

Vs

State of Orissa and Another

Review Petition (C) No. 279 of 1998 in Civil Appeal No. 2091 of 1990

(S. B. Majmudar, M. Jagannadha Rao JJ)

16.04.1998

ORDER

1. This review petition is moved by six applicants who belong to the ministerial staff attached to the Offices of the Director General, Inspector General and Deputy Inspector General of Police forming part of the police force of State of Orissa. They have felt aggrieved by the decision rendered in *Sisir Kumar Mohanty v. State of Orissa* ((1996) 7 SCC 120 : 1996 SCC (L&S) 754 : (1996) 32 ATC 791) by a Bench of two Judges of this Court to which one of us (S. B. Majmudar, J.) was a party. The said decision is reported in *Sisir* ((1996) 7 SCC 120 : 1996 SCC (L&S) 754 : (1996) 32 ATC 791). By the said decision it was held by this Court that the four appellants before this Court in the said civil appeal who were members of the ministerial staff in the Police Department of State of Orissa working as Lower Division Clerks in the Offices of the Superintendent of Police and other district-level offices, had to be treated as members of one and the same unified cadre of ministerial staff of the Police Department in the State. The review petitioners, who were not parties to the said appeal, submitted before us in support of the review petition that the aforesaid decision of this Court has adversely affected them and hence the order passed by this Court without hearing them being necessary parties was liable to be reviewed. While entertaining these review proceedings by an order dated 13-1-1998 we made it clear as under :

"It is also made clear that these proceedings will survive only on the question whether the order of this Court could have proceeded on the basis that there was fusion of two cadres. The question of equal pay for equal work does not survive for consideration as fairly conceded by the learned counsel for the applicants.

These review petitions will be placed for final disposal on a non-miscellaneous day after six weeks. In the meantime, the operation of the order under review will remain stayed to the limited extent of fusion of cadres. There will be no stay of the operation of the order so far as it results in granting benefit of equal pay for equal work or any other monetary benefit pursuant to the said order."

Pursuant to the aforesaid order, therefore, these review proceedings now survive on the question whether as per the order sought to be reviewed the ministerial staff working in the police force of the State of Orissa, whether at headquarters or in the districts, could be treated to be forming part and parcel of one single cadre or whether there were two separate cadres and there was no fusion of the two cadres pursuant to any order legally passed by the State of Orissa. So far as the question of equal pay for equal work made available to the original four appellants before this Court by the impugned order is concerned, the said part of the order will obviously not be affected by the present review proceedings. We are informed that the original four appellants have already been given

benefit of equal pay for equal work by the State authorities pursuant to the impugned order sought to be reviewed. That benefit obviously will remain untouched and unimpaired by the present review proceedings and the order to be passed therein.

2. We have heard learned counsel for the respective parties in these review proceedings. Learned Senior Counsel, Shri M. N. Krishnamani appearing for the review petitioners, submitted that this Court while disposing of the civil appeal had patently erred in treating the Government of Orissa resolution dated 7-9-1974 as one bringing about a fusion of two independent cadres of ministerial staff, one working at the headquarters in the Office of the DIG, IGP and DGP and another cadre of ministerial staff working in the district offices under the Superintendent of Police concerned. It was also submitted that when this Court treated this order as one bringing about a fusion of these two cadres at least up to 24-2-1995 by which date new rules came to be framed for both these cadres treating them as separate ones, relevant statutory rules holding the field in the meantime were unfortunately not brought to the notice of the Court. In this connection, our attention was invited to relevant provisions of the Orissa Police Manual, General Rules of 1963, General Rules of 1975 from which subsequently exemption was granted to the head offices of the Police Department by the Government of Orissa, Home Department by its order dated 16-2-1980. He also referred to the statutory rules of 1982 applicable to ministerial staff working at the district level in the Police Department and the exemption granted from the operation of these rules in 1983 w.e.f. 8-12-1983. Our attention was also invited to the Orissa Ministerial Officers of the Office of the Director General and Inspector General of Police and Certain Other Offices (Method of Recruitment and Conditions of Service) Rules of 1985 which were very much before this Court in the companion writ petition which was disposed of along with Civil Appeal No. 2091 of 1990 ((1996) 7 SCC 120 : 1996 SCC (L&S) 754 : (1996) 32 ATC 791). It was submitted that if these relevant rules were pointed out, this Court would not have arrived at the conclusion to which it reached while disposing of the aforesaid civil appeal.

3. On the other hand, learned Senior Counsel Shri P. P. Rao appearing for the original appellants (respondents before us in the review proceedings) submitted that whatever might be the situation prior to 1974, the 1974 resolution which could be treated to be a statutory resolution which could be treated to be a statutory resolution issued under Section 2 of the Police Act, 1861 read with Section 12 thereof did bring about fusion of these two cadres till the appropriate rules came to be framed by treating the ministerial staff as consisting of two separate cadres, one at the headquarters and another at the district level by Rules of 1995.

4. Having given our anxious consideration to these rival contentions we find that the decision rendered in Sisir ((1996) 7 SCC 120 : 1996 SCC (L&S) 754 : (1996) 32 ATC 791) had not noticed the relevant rules to which our attention was invited by the learned Senior Counsel for the review petitioners. Unfortunately these rules do not seem to have been pointed out to the Court while it passed the said order. Whether these rules had any bearing on the ultimate decision or not is not a question for our consideration at this stage. However, we do find that all relevant aspects of the matter which had a direct bearing on the result of the civil appeal were not placed for consideration of the Court when it decided the aforesaid civil appeal. On this short ground and without expressing any opinion on the merits of the controversy between the parties, we deem it fit to recall the order of this Court in Sisir ((1996) 7 SCC 120 : 1996 SCC (L&S) 754 : (1996) 32 ATC 791) and restore the civil appeal to the file of this Court for a fresh decision on the limited question whether by virtue of Government of Orissa resolution dated 7-9-1974 any fusion of two erstwhile cadres of ministerial staff working in the Offices of DIG, IGP and DGP at headquarters and the ministerial staff working in the districts under the District Superintendents of Police was effected till 24-2-1995 when the

subsequent rules came into force treating them as separate cadres and if so, what would be its consequences. It is made clear that so far as the question of equal pay for equal work made available to the four appellants in the said appeal is concerned, the decision in the civil appeal in their favour will not be open for reconsideration as review proceeding on this aspect has already been rejected by our aforesaid order dated 13-1-1998, meaning thereby, whatever monetary benefits on the ground of equal pay for equal work are already made available to the original four appellants in Sisir ((1996) 7 SCC 120 : 1996 SCC (L&S) 754 : (1996) 32 ATC 791) will not get adversely affected even if ultimately they lose in the civil appeal restored to the file of this Court pursuant to the present order. It is also made clear that even if ultimately the civil appeal of the original four appellants gets dismissed and if it is held that there was no fusion of the two cadres of ministerial staff aforesaid and still on the ground of equal pay for equal work the original four appellants remain entitled to the monetary benefits as indicated hereinabove, the right, if any, of other similarly situated ministerial staff employees working in district establishments for being treated alike on the question of equal pay for equal work despite belonging to a separate cadre will obviously remain subject to scrutiny in any appropriate legal proceedings that such ministerial staff members of the district cadre may think fit to pursue against the State authorities. We may also note that as the order in Sisir ((1996) 7 SCC 120 : 1996 SCC (L&S) 754 : (1996) 32 ATC 791) will be recalled for the aforesaid limited purpose, the consequential order dismissing Writ Petition (C) No. 692 of 1993 as infructuous on account of the order passed in the civil appeal will also necessarily have to be recalled as the writ petition was not decided on merits but was disposed of by the very same common order by which Civil Appeal No. 2091 of 1990 ((1998) 1 SCC 665 : JT (1997) 10 SC 194, CCE v. Wood Polymers Ltd.) was allowed.

5. In the result this review petition succeeds and is allowed. The common order passed in Sisir ((1996) 7 SCC 120 : 1996 SCC (L&S) 754 : (1996) 32 ATC 791) with Writ Petition (C) No. 692 of 1993 decided on 28-11-1995 is recalled. Civil Appeal No. 2091 of 1990 ((1998) 1 SCC 665 : JT (1997) 10 SC 194, CCE v. Wood Polymers Ltd.) and Writ Petition (C) No. 692 of 1993 are restored to the file of this Court for being proceeded further in accordance with law. It is obvious that Writ Petition (C) No. 692 of 1993 will now be decided on all the grounds raised therein after hearing the parties concerned. But so far as Civil Appeal No. 2091 of 1990 ((1998) 1 SCC 665 : JT (1997) 10 SC 194, CCE v. Wood Polymers Ltd.), it will be decided on the limited question of fusion of two cadres as indicated in this order.

6. As the civil appeal is being restored to the file of this Court on account of the review proceedings filed by the present petitioners, they will be treated to be respondents in the civil appeal and will be entitled to be heard in the said proceedings. The office is directed to obtain appropriate orders from Hon'ble the Chief Justice of India for placing the civil appeal and the writ petition for disposal before an appropriate Bench after summer vacation. No order as to costs.

7. In the restored writ petition, Shri P. N. Misra, learned counsel for the respondents, appears for State of Orissa and Director General of Police and waives service of notice. He is granted four weeks' time to file counter-affidavit and three more weeks will be available to the original writ petitioners for filing rejoinder, if any.