

SUPREME COURT OF INDIA

State of Orissa and Another

Vs

Surendranath Mallick and Others

Appeal (Civil) 3203 of 2007; Civil Appeal No. 3203 of 2007 (Arising Out of Slp (C) No. 20247 of 2003)

(Arijit Pasayat and D. K. Jain, JJ)

23.07.2007

JUDGMENT

DR. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a Division Bench of Orissa High Court upholding the view taken by the Orissa Administrative Tribunal (in short the 'Tribunal').
3. The respondent No.1 had questioned the order of the appellants reverting him to the former post of Senior Assistant because of joining of one Antaryami Acharya, Section Officer Level-I after the expiry of his leave, before the Tribunal.
4. The Original Application was allowed by the Tribunal. The order of the Tribunal was questioned before the High Court which as noted above dismissed the same.
5. Learned counsel for the appellants submitted that both the Tribunal and the High Court did not consider the basic issues and erroneously proceeded to deal with a question of reservation and the

applicability of Orissa Reservation of Vacancies Act, 1975 (in short the 'ORV Act') and Orissa Reservation of Vacancies Rules, 1975 (in short the 'ORV Rules'). According to the appellants those questions were not relevant.

6. Learned counsel for respondent No.1 submitted that though the Tribunal and the High Court referred to the ORV Act and the ORV Rules, in reality they had no relevance, but the basic issues have not been addressed by the Tribunal and the High Court.

7. The Tribunal in para 9 of its order noted as follows:

"The main issue to be decided is whether the applicant was to be reverted to his former post of Senior Assistant consequent on return of Antaryami Acharya, Section Officer Level-I after expiry of his leave. The learned Counsel for the applicant has contended that the promotion of the applicant by annexure-4 order dated 16.4.1990 was not made against any leave vacancy nor was there any stipulation in the said order that the applicant would be reverted to his former post consequent on the post/vacancy ceasing to exist"

8. But while deciding the application it held as follows:

"12. Following the above dictum of the Supreme Court, the reversion of the applicant by annexure-5 order consequent on return from leave of Antaryami Acharya is not sustainable as it will cause depletion in the percentage of S.C. candidates in the rank of Section Officer Level-II. Since Antaryami Acharya is a general category candidate, the junior most candidate belonging to that category is to be reverted to make room for the candidate who faces reversion consequent on expiry of leave of Antaryami Acharya, Section Officer Level-I and not the applicant who is a reserved category candidate. We, therefore, set aside annexure-5 order of reversion of the applicant and direct that he be deemed to be continuing in the post of Section Officer Level- II and his differential salary from 1.6.1990 till date or till the date of his subsequent promotion to the rank of Section Officer Level- II made in the meantime whichever is earlier, be drawn and paid to him within three months from the date of receipt of a copy of this order. As regards annexure-6 order, since the promotion was made on adhoc basis for 44 days and the provisions of reservation are not applicable to the same according to Section 3(g) of said Act, we make no comments on the same."

9. The High Court also lost sight of the basic challenge and dismissed the writ petition with the following observations:

"4. the question for determination is whether in such a situation when a general category candidate returns from leave, reserved category candidate whose promotion was not made against a leave vacancy should be reverted. It is the case of opposite party No.1 that there were several representations of reserved category candidates in the rank of Section Officer Level-II in the - Directorates of Agriculture, Horticulture and Soil Conservation alleging violation of the provisions of Orissa Reservation of Vacancies Act and non-maintenance of reservation roster. As the opposite

party No.1 was promoted against a reserved category post as per the roster, his reversion to accommodate a general candidate cannot be sustained. Therefore, the Tribunal rightly set aside the reversion and restored him to his previous post."

10. Though the Tribunal formulated the right issues, it gave a wrong answer without considering the basic issues involved. The High Court has also lost sight of the basic dispute and has made observations as quoted above. Above being the position, we set aside the order of the Tribunal and the High Court and remit the matter to the Tribunal to decide the matter afresh after considering the basic issues and the respective stand of the parties.

11. The appeal is allowed with no order as to costs.