

A KISHORE CHANDRA PANIGRAHI
v.
STATE OF ORISSA AND ORS.

OCTOBER 29, 1996

B [K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Service Law :

C *Orissa Ministerial Services (Method of Recruitment and conditions of Service of Clerks, Assistants in the District office and Office of Heads of Department) Rules, 1963:*

D *Promotion—Statutory Recruitment Rules—Temporary promotion contrary to—Employee temporarily promoted as junior clerk in Class III from post of peon in Class IV—Subsequently reverted to substantive post of peon—Held: such promotion being contrary to statutory rules and per se illegal did not confer any right on the employee to the promotional post—Hence, such reversion neither illegal nor punitive in nature.*

E *Orissa Ministerial Services (Regularisation of Recruitment and conditions of Service of Irregular Recruits in District Offices and Offices Subordinate thereto) Rules, 1986 :*

Regularisation—Applicability of—Held: not applicable in the case of promotion from Class IV to Class III post.

F **The appellant was appointed to the post of peon in Class IV and later on promoted to post of Junior Clerk which was a post in Class III. Subsequently, the appellant was reverted to his substantive post of peon of Class IV. The State Administrative Tribunal dismissed the petition filed by the appellant on the ground that the promotion of**
G **the appellant to the post of Junior Clerk was temporarily made without prejudice to the claim of seniority of others and that the said promotion was contrary to the Orissa Ministerial Services (Method of Recruitment and conditions of Service of Clerks, Assistants in the District Office and Office of the Heads of Department) Rules, 1963 and, therefore, did not confer any right on the appellant. Being aggrieved the**
H **appellant preferred the present appeal.**

On behalf of the appellant it was contended that the appellant should have been regularised under the Orissa Ministerial Services (Regularisation of Recruitment and conditions of Service of Irregular Recruits in the District Offices and offices Subordinate thereto) Rules, 1986. A

On behalf of the respondent it was contended that the Regularisation Rules regulated only direct recruits and did not govern the case of promotion like that of the appellant. B

Dismissing the appeal, this Court

HELD : 1.1. The Orissa Ministerial Services (Method of Recruitment and conditions of Service of Clerks, Assistants in the District Office and Office of the Heads of Department) Rules, 1963 do not contemplate any promotion from Class IV to Class III. Under the said Recruitment Rules it is not permissible for a peon in Class IV to be promoted to the post of Junior Clerk in Class III. Consequently promotion of the appellant to the post of Junior Clerk in Class III was *per se* illegal being contrary to the statutory Recruitment Rules and did not confer any right on the appellant who holds the said post. Therefore, the order of reversion passed by the employer reverting the appellant to the substantive post must be held to be legal and does not suffer from any illegality and not penal in nature. [119-E-F] C D E

1.2. The Orissa Ministerial Services (Regularisation of Recruitment and conditions of Service of Irregular Recruits in the District Offices and Offices Subordinate thereto) Rules, 1986 no doubt regularise irregular recruits to the post of Junior Clerks and Assistants in Class III. But such Regularisation Rules do not bring within their sweep the case of promotion of an employee in Class IV to that of Clerk in Class III. Hence, the appellant's case is not covered by the Regularisation Rules. [119-GH, 120-A-B] F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13360 of 1996. G

From the Judgment and Order dated 3.9.90 of the Orissa Administrative Tribunal at Bhubneshwar in M.P. No.786 of 1990.

P.N. Misra for the Appellant. H

A Radha Shyam Jena for the Respondents.

The Judgment of the Court was delivered by

PATTANAİK. J. Leave granted.

B This Appeal by Special Leave is directed against the order of the Orissa Administrative Tribunal dated 19th April, 1990, passed in O.A. No. 134 of 1986 as well as the order of the said Tribunal dated 3.9.1990 passed by the said Tribunal on an application for review.

C The appellant had been appointed to the post of a peon in Class IV in the year 1976 in the office of the Special Treasury, Berhampur. He was promoted to the post of Junior Clerk in the year 1982 which is a post in class III. By order dated 18.10.1986 he was reverted to his substantive post of peon in class IV. He therefore, challenged the order of reversion before the Orissa Administrative Tribunal. The Tribunal came to hold that the promotion of the appellant to the post of junior clerk was temporarily made without prejudice to the claim of seniority of others and the said promotion being contrary to the statutory rules and not having conferred any right on the appellant the order of reversion cannot be challenged and as such cannot be interfered with by the Tribunal. The appellant, therefore, has approached this Court in this appeal.

E Mr. Mishra, learned counsel for the appellant did not challenge the finding of the Tribunal that the promotion of the appellant to the post of Junior Clerk was in contravention of the provisions of the Statutory Recruitment Rules called Orissa Ministerial Services (Method of Recruitment and conditions of service of clerks, assistants in the District office and office of the Heads of Department) Rules 1963, (hereinafter referred to as 'the Recruitment Rules'). He however contended that the State Government having come forward with a set of Rules called Orissa Ministerial Services (Regularisation of Recruitment and Conditions of Service of Irregular Recruits in the District Offices and Offices Subordinate thereto) Rules, 1986 (hereinafter referred to as "The Regularisation Rules") and thereunder having regularised all the recruitments made to the post of clerks prior to 8th October, 1982 and the appellant having been promoted to the post of Junior Clerk in Class III on 8th September, 1982, his services must be held to be regularised under the Regularisation Rules and therefore, the order of the Tribunal is erroneous. The learned counsel appearing for
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H the respondents on the other hand contended, that the Regularisation Rules

regularises only those direct recruitments made contrary to the Statutory Rules and does not govern the case of promotion like that of appellant. According to him though under the Administrative instructions an employee from Class IV can be promoted only to some special post in Class IV like that of diarist and despatcher and could not have been promoted direct to the post of Junior Clerk, and therefore, his case is not covered by the aforesaid Regularisation Rules. In view of the rival submissions two questions really arise for consideration:-

1. Whether the promotion of the appellant to the post of Junior Clerk can be held to be valid promotion conferring any right on the appellant, and therefore, whether the order of reversion to the substantive post of peon in Class IV can be held to be penal.
2. Whether the Regularisation Rules cover the case of Appellant.

So far as the first question is concerned it is well settled law that temporary promotion of an employee to a higher post contrary to the Provisions of the Recruitment Rules does not confer any right on the employee against the said promoted post and, therefore, reversion to the substantive rank cannot be held to be penal in nature. It is an admitted fact that the posts of junior clerks in the District Offices are filled up by a set of rules framed by the Governor in exercise of power under Article 309 of the Constitution which is the Recruitment Rules. The said rules do not contemplate any promotion from Class IV to class III excepting to a category of post like Diarist, Despatcher. In other words under the Recruitment Rules it is not permissible for a peon in Class IV to be promoted to the post of Junior Clerk in Class III. Consequently the promotion of the appellant to the post of Junior Clerk in Class III was *per se* illegal being contrary to the statutory Recruitment Rules and did not confer any right on the appellant who holds the said post. Therefore, the order of reversion passed by the employer reverting the appellant to the substantive post must be held to be legal and does not suffer from any illegality.

So far as second question is concerned, the Rules no doubt, purports to regularise irregular recruits to the post of junior clerks and assistants in Class III but the history of the aforesaid Regularisation Rules indicates that where in several departments direct recruitments were made by the Departmental Authorities without filling up the post in accordance with the Statutory Recruitment Rules and such employees continued to occupy

- A the post for a considerable length of time and were to face termination. The appointment being contrary to the Statutory Rules, the Governor in exercise of power under Article 309 of the Constitution came forward with the Regularisation Rules. Such Regularisation Rules does not bring within its sweep the case of promotion of an employee in Class IV to that of a Clerk in Class III. We are unable to agree with the submission of Mr. B Mishra, the learned counsel that the appellant's case is covered by the Regularisation Rules.

In the premises, as aforesaid, we do not find any infirmity with the decision of the Tribunal warranting interference by this Court under Article 136 of the Constitution. The appeal is accordingly dismissed. But in the

- C circumstances, there will be no order as to costs.

V.S.S.

Appeal dismissed.