

A

PRAHALLAD BARAL

v.

GOVERNMENT OF ORISSA AND ORS.

MARCH 3, 1997

B

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Service Law :*

C

*Seniority—Lower Division Clerks in Government of Orissa—Government Order dated 4.2.1971 prescribing Intermediate as minimum educational qualification—However Lower Division Clerk with matriculation though treated validly and regularly recruited, but they would rank junior to LD Clerk with Intermediate qualification recruited during the same year—Later L.D. Clerks with matriculation claiming for seniority—Held, since the respondent employees do not possess minimum educational qualification, viz. Intermediate, they are not entitled to rank senior to appellant who possesses the required qualification—Respondents shall be junior to the appellant.*

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1827 of 1997.

E

From the Judgment and Order dated 8.2.96/19.4.93 of the Orissa Administrative Tribunal, Bhubaneswar in M.P. No. 1309/93 and O.A. No. 6 of 1991.

B.A. Mohanty and Ms. Kirti Mishra for the Appellant.

F

A.K. Panda and P.N. Misra for the Respondents.

The following Order of the Court was delivered :

Leave granted. We have heard learned counsel on both sides.

G

This appeal by special leave arises from the order of the Central Administrative Tribunal, Bhubaneswar, made on February 8, 1996 in Application No. 6/91.

H

The respondents-employees were appointed to the posts of L.D.C. 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 Govern-

ment in its order dated February 4, 1971 prescribed the minimum educational qualification, viz., intermediate, for recruitment to the post of L.D.C. in the district and subordinate offices. The contesting respondents-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 L.D. Clerks who have passed Matriculation or any equivalent examination shall be deemed to have 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 Government.

(b) The seniority of the L.D. Clerks under category (a) above shall be fixed taking into account their services from the date of appointment as L.D. Clerks but in the gradation list of L.D. Clerks they shall rank immediately below the L.D. Clerks recruited during the same year with the minimum educational qualification prescribed by Government in Finance Department Resolution No. 3968F dt. 4.2.71. 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 L.D. Clerks so regularised will be entitled to draw their pay as per the principles laid down in Finance Department Resolution No. 3968F dt. 4.2.71 read with Finance Department Resolution No. 90F dt. 2.1.73 from the date of their appointment to such posts."

A reading of it would clearly indicate that all L.D.Cs. 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

A educational qualification. In other words those possessed of Intermediate qualification, will rank as 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 U.D.C. 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 D.P.C. 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, Government reversed it. As a consequence, the respondents approached the Tribunal. The Tribunal in the impugned order has held thus:

D "Petitioners who were regularised in service by Govt. order dated 21.10.81 in which all the L.D. 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 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 U.D. Clerk in the year 1980. Petitioners were promoted in the year 1981 to the post of U.D. Clerk. On their promotion as per the conditions, Opposite Parties 4 to 6 were reverted to the post of U.D. 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 U.D. Clerk and Opposite Parties 4 to 6 are continuing as L.D. Clerks. Nine years after in the year 1990 under the impugned order promotion given to the petitioners as U.D. 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.":

G The appellant was regularised in service by Government Order dated 8.10.1981. All the L.D.Cs. 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 Govern-

ment. On that basis, the direction was given in paragraph 13 which reads as under : A

"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." B

The 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. C

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. D

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

R.P.

Appeal allowed.