(1972) 01 OHC CK 0013

In the Orissa High Court

Case No : O.J.C. No. 43 of 1969

Baidyanath Pani — APPELLANT

Vs

State of Orissa and Another — RESPONDENT

Date of Decision : 19-01-1972

Acts Referred:

Orissa Ministerial Services (Method of Recruitment and Conditions of Service of Clerks and Assistants in the District Offices and Offices of the Head of Departments) Rules, 1963 — Rule 21(1), 24, 24(1), 24(2), 24(3)

Citation : (1972) 38 CLT 221

Hon'ble Judges : G.K. Misra, C.J;B.K. Ray, J

Bench : Division Bench

Advocate : C.V. Murty, for the Appellant; A.G., for the Respondent

Judgement

G.K. Misra, C.J.—By an order (Annexure-B) dated 27-6-1969 Petitioner was promoted from Grade II Assistant in the Office of the Revenue Divisional Commissioner, Central Division, Cuttack, to the post of Grade I with effect from that date. The order runs thus:

Revenue Divisional Commissioner C.D.) Cuttack has been pleased to appoint Sri Baidyanath Pani, Grade II Assistant of this office to officiate as Grade I Assistant with effect from 27-6-1966.

This promotion is subject to the condition that the Assistant will pass the Preliminary examination in the Accounts in next chance and final examination in Accounts within the prescribed time limit.

In paragraph 4 of the counter affidavit there is an assertion that the Petitioner did not pass either the preliminary or the final examinations in Accounts. Such a statement has not been controverter. On the admitted position that the Petitioner did not pass any of the examinations in Accounts in terms of Annexure-3, he in ours the liability of being reverted to the post from which be was promoted. This was an integral part of the terms of appointment.

2. Mr. Murty, however, places strong reliance on Rule 21(1)(b) and Rule 24 of the Orissa Ministerial Service (Method of Recruitment and Conditions of Service of Clerks and Assistants in the District Offices and offices of the Heads of Departments) Rules, 1963 (hereinafter to be referred to as the Rules) in support of the contention that the condition imposed in Annexure-3 is contrary to the Rules and is liable to be struck down.

Rule 21(1)(b) runs thus:

3....(b) promotion to the posts of Upper Division Grade I Assistants shall be made from amongst the Upper Division Grade II Assistants who have passed the Final Accounts Examination laid down in Rule 24. Rule 24, so far as relevant is as follows:

24. The lower Division Clerks of the District Offices and the Lower Division Assistants of the Offices of the Heads of Departments shall be required, to pass the preliminary Accounts Examination which is held by the Board of Revenue, within five years from the date of their appointment.

It is not disputed that these two rules have been made applicable to assistants serving in the office of the Revenue Commissioner sometime in 1966 earlier than Annexure-3. These two rules taken together may now be considered. Rule 24(1) in terms applies to cases of promotion from the rank of Lower Division Clerks or Assistants. Rule 24(2) applies to cases of Grade II Assistants. Rule 24(3) says that no one shall be exempted from passing the departmental examinations. None of these rules reduces the rigor of Rule 21(1)(b) which clearly prescribes that there can be no promotion from Grade II to Grade I unless a particular assistant has passed the final Accounts. Examination as laid down in Rule 24. In conformity with Rule 21(1) (b) and 24(3), condition was imposed in Annexure-3 that the promotion was subject to the passing the examination in Accounts. On the undisputed case that the Petitioner has failed to pass any examination ill Accounts, the opposite parties were justified in reverting the Petitioner from Grade I to Grade II in terms or the order of appointment.

4. Mr. Murty also places reliance on Rule 25 which says down that where any Clerk or Assistant in the Lower Division or Upper Division fails to pass the Preliminary or Final Accounts Examination as the Case may be within the required period, he shall not be allowed to cross the efficiency bar in the time-scale of pay. This rule does not in any way restrict the scope of Rule 21(1)(b) and cannot render illegal the condition subject to which promotion was made. Annexure-14 dated 5-12-1964 is a clarification of Rule 24. It answers the question as to what should be the consequence if a junior U.D. Clerk or Assistant does not pass the final Accounts Examination. The reference raised the question whether the failure to pass the examination will entail replacement of clerks or assistants by qualified personnel who have passed the final Accounts Examination and whether their increments will be withheld in the time-scale or whether it will he withheld beyond the stage of 5th increment. The answer given

was that failure to pass the examinations will entail with holding of their crossing the Efficiency Bar and they will get their normal annual increment till they reach the stage of Efficiency Bar where further increment will not be allowed and the question of their eplacement by qualified clerk or stoppage of increment does not arise.

This clarification does not cover a case where the promotion is itself made subject to a particular condition. The promotion and the condition subject to which the promotion is made go hand in hand. On failure of the condition being fulfilled, the promotion becomes vulnerable. It is open to the appointing authority to direct the reversion.

5. We find no merit in this application which is accordingly dismissed, but in the circumstances, without costs.

B.K. Ray, J.

6. I agree.