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**(1993) 11 OHC CK 0005**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 4647 of 1990**

Chitaranjan Biswal

APPELLANT

Vs

Orissa Construction Corpn. Ltd. and Others

RESPONDENT

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**Date of Decision :** 26-11-1993

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

**Citation :** (1994) 2 LLJ 1178

**Hon'ble Judges :** L. Rath, J;D.M. Patnaik, J

**Bench :** Division Bench

**Advocate :** Manoj Mishra and Sangram Das for O.P. No. 1, for the Respondent

**Final Decision :** Allowed

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## Judgement

L. Rath, J.—The reliefs claimed by the petitioner are for regularisation of his service under the opp. party No. 1 Corporation with effect from the date of his initial appointment, to treat him as senior to opp. parties 3 to 6 in cadre of Assitant Store Keeper and to quash the order dated April 24, 1990 regularising the services of opp. parties 3 to 6 as also his own retrenchment order, vide Annexure-2. The admitted facts are that the petitioner was initially engaged on October 18, 1976 as an Assistant Store Keeper at the Rengali Dam site in the work- charged establishment of opp.Party No. 1 and he continued as such till May 25, 1979 when he was retrenched from service due to mass strike but was reinstated on August 3, 1979. The period from May 25, 1979 to August 3, 1979 was not treated as discontinuance in service but was treated as duty. The opp. parties 3, 4 5 and 6 respectively joined on N.M.R. basis as Assistant Store Keepers on December 17, 1979, May 8, 1980, June 12, 1980 and July 1, 1980. Later on, opp. parties 3 and 4 were brought under the work- charged establishment on February 5, 1981 and February 5, 1983 respectively. On August 11, 1983 the Deputy Project Engineer, Rengali Dam Project issued a certificate to the petitioner that he had joined the work-changed establishment and was continuously working as such since October 18, 1976. The services of the

petitioner were retrenched on March 12, 1984, vide Annexure-2 as being no longer required, with effect from March 15, 1984 offering him to join the Regional Workshop, Mahanadi-Birupa Gate Works Project at Jagatpur. The petitioner was retrenched on March 15, 1984 and was given posting in Mahandi Birupa Gate Works Project on March 22, 1984. On October 31, 1989 the Board of Directors of opp. party No. 1 passed a resolution approving creation of posts and the staffing pattern under work-charged establishments in the Corporation, vide Annexure-8. The resolution in its Annexure-1 shows ten posts of Assistant Store Keeper to have been created under the Corporation. On April 21, 1990 opp. parties 3 to 6 were absorbed in regular establishment. The petitioner made a representation for having been left out which was also recommended by the Senior Manager, Mechanical, stressing on the fact that he had been working: under the Rengali Dam Project in the work-charged establishment from October 18, 1976 and that when the Jagatpur Project was started he was retrenched from Rengali Dam Project establishment and was offered to join at Jagatpur. At the time of his retrenchment from Rengali Dam his juniors were retained there but the petitioner was retrenched to join at Jagatpur with pay protection made available to him. Even so, in April, 1990 when the Corporation brought: some Assistant Store Keepers to regular establishment and the juniors to the petitioner who were retained at the Rengali at the time of the petitioner's retrenchment were made regular, the case of the petitioner was not considered. On March 15, 1991 a seniority list of the regular employees was prepared vide Annexure-7 but the petitioner's name did not find place there. Even though in the writ petition non-disposal of the representation of the petitioner is not pleaded, yet grievance is made of regularisation of the services of opp. parties 3 to 6 in non-consideration of his name in spite of his seniority.

2. In the counter affidavit filed, such action has been justified on the basis of a tripartite settlement between the opposite party Corporation and its workmen as also the Assistant Labour Commissioner. As such grievance having been made against admitted action of the opposite party Corporation taken to the detriment of the petitioner, the reliefs claimed by him become available for consideration.

3. The admitted seniority of the petitioner over opposite parties 3 to 6 is not disputed but it is contended that since the petitioner was retrenched from the Rengali Dam Project on March 15, 1984 and was absorbed in Mahanadi-Birupa Gate Works Project on March 15, 1984 and the Corporation has no common seniority list of persons borne in its different projects, the petitioner's seniority is to be counted from March 22, 1984 as the tripartite settlement dated November 12, 1977 stipulated project-wise seniority list and service books of those employees to be maintained for each category of work charged establishment, and that as opposite parties 3 to 6 were continuing in the work-charged establishment, they were treated as senior to the petitioner and were absorbed in regular posts.

4. A resume of facts manifestly shows gross discrimination to have been

practiced against the petitioner. Law was settled as early as in 1979 in *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, that retrenchment of service of seniors while retaining those of juniors is hit by Articles 14 and 16 of the Constitution of India. Even an earlier decision of this Court-O.J.C. 835/1969 decided on May 3, 1972 had decided similarly. Thus, if any retrenchment in the cadre of Assistant Store Keepers became necessary in March, 1984, it was for one of opp. parties 3 to 6 to have suffered retrenchment and not the petitioner. As it is, the petitioner's service was retrenched vide Annexure-2 for joining the Mahanadi - Birupa Gate Works Project which was started then. Hence when the question of regularisation of services came, as was decided by the Board in its resolution dated October 31, 1989, the petitioner's case was to have been first considered particularly when he had been engaged in the Mahanadi-Birupa Gate Works Projects with his pay protected. The Board's resolution was to effect regularisation of services and posts were also created. Hence, seniority of an incumbent for the purpose was to be taken into account. The tripartite settlement was of September 12, 1977. As on that date the petitioner was admittedly in the Rengali Project and was senior to opp. parties No. 3 to 6. His seniority was hence to be counted as he was not liable to have been sent to the Mahanadi Birupa Project to his disadvantage. To treat a person who was- senior in a project and later on absorbed in another project as junior when the matter of regularisation comes on a central basis is an extreme form of discrimination and can never be upheld. The petitioner had no cause of action to challenge his retrenchment in 1984 since he was absorbed in the other Project with pay protection. There being then no question of regularisation of his service, he could not have also urged that question. The petitioner hence has rightly been aggrieved by the consequence of the discrimination for which he has approached this Court.

5. In the result, the writ petition succeeds. The opposite parties are directed to treat the petitioner as having been regularly absorbed as an Assistant Store Keeper in the Corporation with effect from April 21, 1990 and to treat him as senior to opp. parties 3 to 6 in the cadre. For the purpose of such regularisation readjustment of opp. parties 3 to 6 would be necessary and it is made clear that the junior-most of them, if necessary, shall suffer the effect of non-regularisation. Hearing fee is assessed at Rs. 500/-