

(1971) 03 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 70 of 1968

Chitrananda Praharaj

APPELLANT

Vs

Director of Health Services and Another

RESPONDENT

Date of Decision : 31-03-1971

Acts Referred:

Citation : (1971) 37 CLT 430

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

Bench : Division Bench

Advocate : A.B. Misra, for the Appellant; Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A. Misra, J.—Petitioner was appointed to the post of & Gr. III Stenographer in the office of the Principal, S.C.B. Medical College on 5-11-1954 and confirmed therein with effect from 6-8-1955. On 3-12-1959, he was temporarily appointed & 8 a Gr. II Stenographer in the office of the Director of Health Services (Opposite party No. 1) and was promoted to officiate as a Gr. I Stenographer in the said office on 10-5-1961. On a representation made by him, opposite party No. 1 by his letter dated 6-1-1967 communicated a copy of his order dated 24-12-1962 showing the position of the Petitioner as the senior-most in the list of officiating Stenographers on the establishment. He was appointed as a Gr. I Stenographer to the Labour Commissioner by his order dated 29.8.1964, but opposite party No. 1 declined to spare his services on the ground that suitable substitutes were not available and that his promotion to higher posts in the Department would be considered when vacancies occurred in future. Thus, all along the Petitioner was recognised and given higher rank in the order of seniority vis-a-vis some of the other Stenographers including opposite party No. 2 on that establishment. Opposite party No. 2 started his service as a Typist in the year 1952, promoted to officiate as a Gr. II Stenographer in 1958, as a Gr. I. Stenographer in 1963 and after filing of the writ as confirmed in Gr. II wit

retrospective effect from 28-8-1965. While matters stood thus, by an order passed on 22-11-1967 as at Annexure 5, the Petitioner was reverted from his officiating post of Grade I Stenographer to the post of Grade II Stenographers a consequent of reversion of one Bhagirathi Padhi from the post of Grade I Assistant to his substantive post of Grade II Stenographer. The Petitioner has filed this writ application to quash the impugned order on the ground that he being senior in the officiating Grade I post, his reversion while allowing opposite party No. 2 to continue in a higher rank is discriminatory as well as arbitrary.

2. Opposite parties have resisted this application mainly on the ground that the Petitioner is borne on the permanent establishment of the Principal, S.C.B. Medical Collage where he still continues to hold his lien, and therefore, so far as the establishment of opposite party No. 1 is concerned, he is deemed to be? junior to opposite party No. 2 who became a Grade II Stenographer in 1958, while the Petitioner was appointed to that rank temporarily in 1959. It is further stated that in determining the inter se seniority of the personnels the establishment of opposite party No. 1, the case of Petitioner cannot be taken into consideration as he belongs to the establishment of a subordinate office though employed temporarily in opposite party No. 1's office.

3. During the course of hearing, it was conceded before us that the scales of pay of different grades of Stenographers whether they be serving in subordinate offices or Heads of Departments, are the same. Learned Government Advocate also conceded before us that so far as efficiency, ability and suitability of the Petitioner are concerned, there is nothing adverse against him. From that point of view, he is in no manner less suitable to continue to hold the officiating post of a Grade I Stenographer in the office of opposite party No. 1 as compared with opposite party No. 2. Thus, there being no difference between the parties regarding the aforementioned facts, the point for consideration is whether reversion of the Petitioner from his officiating post of Grade I Stenographer by the impugned order, while showing opposite party No. 2 to continue to officiate in the post of Grade I Stenographer, is arbitrary and discriminatory.

4. Whatever the respective positions the Petitioner and opposite party No. 2 occupied, while officiating in the posts of Grade II Stenographers, the incontrovertible fact remains that Petitioner was promoted to officiate in the post of a Grade I Stenographer with effect from 10-5-1961 while opposite party No. 2 was given officiating promotion to Grade 1 only in 1963. At the time of giving these promotions, both the Petitioner and opposite party No. 2 were serving in the establishment of opposite party No. 1, though the former still continued to hold his lien in the permanent establishment of the Principal, S.C.B. Medical College, and as such, must be deemed to have been only working in the office of opposite party No. 1 temporarily. If in those circumstances, Petitioner was promoted to officiate in the rank of Grade I in 1961 undoubtedly, he was treated as senior to opposite party No. 2 considered more efficient. That he was considered senior to opposite party No. 2 by the Head of Department finds

confirmation from the communication of opposite party No. 1 at Annexure. 4 in reply to Petitioner's representation wherein it is stated his position has already been indicated in opposite party No. 1's order dated 24-12-1968, a copy of which was enclosed. Annexure 3 is that copy which shows Petitioner as the senior-most among the officiating Stenographers; while the position of opposite party No. 2 is shown as No. 3 in the order of seniority. A decision about their inter Se seniority was taken as early as 1962 and was adhered to till 6.1-1967, the date of Annexure-4. Petitioner was considered senior also finds support from Annexure. 2, a letter written by opposite party No. 1 on 19-9-1964, wherein it is stated that his promotion to higher posts will be considered when vacancies occur in future. Lastly that Petitioner was recognised as the senior most Stenographer in the Directorate is conclusively established by the recitals in the order of opposite party No. 1 dated- 14.4.1969 (Annexure 8 to the further affidavit filed by Petitioner on 1-3.1971).

5. From the aforesaid materials, the following conclusions are irresistible: (1) Petitioner is still borne on the permanent establishment of the Principal, S.C.B. Medical College where he continues to hold his lien; (2) so long he continues, to hold that lien or the lien has not been terminated by the permanent absorption in the establishment of opp. party No. 1 in accordance with rules, it may be open to him to revert to the post where he has got the lien or if his tenure in the establishment of Opp. party No. 1 is terminated, he may have to revert to the post where he has got the lien; (3) on the establishment of opp. party No. 1, the Petitioner's seniority over opposite party No. 2 has all along been recognised; (4) opposite party No. 2 never objected to Petitioner being treated as senior to him either at the time when officiating promotion was given to the Petitioner-in 1961 or at any time subsequently when Petitioner's seniority was being recognised; (5) Petitioner is not less suitable than opp. party No. 2 to continue to hold the officiating post of a Gr. I Stenographer; (6) Petitioner has not been superseded on the ground of opposite party No. 2 being relatively more meritorious and (7) promotion to the officiating post of Grade I Stenographer is on the basis of seniority for the time being subject to the elimination of the unfit. On the aforesaid analysis, it is to be considered whether the impugned order can be sustained.

6. The impugned order reverting the Petitioner appears to have been passed only on the ground that opposite party No. 2 is senior to him. This assumption is obviously incorrect as on the earlier occasion of promotion in 1981 as well as all along thereafter till the date of the impugned order, Petitioner's seniority over opposite party No. 2 had been recognised and acted on. There is no ostensible reason for alteration of the inter Se seniority previously recognised. Such an alteration is nothing but capricious and arbitrary. By this alteration of seniority, the legal rights of the Petitioner to continue officiating in the post of a Grade I Stenographer in preference to opposite party No. 2 has been adversely affected. Therefore, the impugned order is not only arbitrary but is discriminatory, inasmuch as, in the matter of continuance in the officiating Grade I post, the

Petitioner has been discriminated against or no, fault of his. In our opinion, such an order cannot be sustained and must be quashed,.

7. In the result, we allow the writ application and direct that the order dated 22-11-1967 reverting the Petitioner from the officiating post of 0. Grade 1 Stenographer to Grade II be quashed and he be deemed to be continuing to hold the officiating post of a Grade I Stenographer in, spite of the impugned order. Hearing Fee Rs. 100/(One hundred).

G.K. Misra, C.J.

8. I agree.