

(1972) 11 OHC CK 0004
In the Orissa High Court
Case No : O.J.C. No. 612 of 1972

Hrushikesh Mohapatra

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 07-11-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1973) 39 CLT 359

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : S.B. Nanda and J.K. Tripathy, for the Appellant; Additional Government Advocate, for the Respondent

Judgement

R.N. Misra, J.—This is an application under Article 226 and 227 of the Constitution for quashing the order superannuating the Petitioner from service on 2-9-1970 and for a writ of mandamus to treat the Petitioner to be in service unaffected by the order of superannuation.

2. The Petitioner alleges that he was born on 3rd of September, 1915 and on 4-10-1935, he was appointed as a permanent Librarian in ministerial cadre in the service of the ex-State of Keonjhar. With effect from 13th of September, 1934, the Bihar and Orissa Service Code was extended to the employees of the ex-State of Keonjhar by an order of the Ruling Chief and with effect from 1st of April, 1942, the Orissa Service Code was made applicable to such employees by an order of the ex-Ruling Chief published in the Keonjhar State Gazette on 7th of March, 1942. Upon merger of the State of Keonjhar with the Province of Orissa with effect from 1-1-1948, the Petitioner's service was taken over by the Provincial Government and with effect from 1-1-1948 the Petitioner was confirmed as U.D. Assistant. The Petitioner was entitled to be in service until 2-9-1975 when he is due to attain the age of sixty subject to continuing to be suitable and efficient. While the Petitioner was serving as Superintendent in the Mayurbhanj Collectorate on permanent basis, he was however retired with effect

from 3-9-1970 on the basis of the order dated 2-9-1970 issued by Government holding that the Petitioner was to superannuate.

3. The learned Additional Government Advocate appearing for the opposite parties does not dispute the aforesaid allegations of fact. No counter affidavit has also been filed in this case. In view of the decisions of this Court resolving similar disputes it has to be held that the order of superannuation is bad and it cannot be sustained. See *Lingaraj Patnaik Vs. District Judge of Cuttack and Others*, and *Bhagirathi Shaw Vs. Member, Board of Revenue and Another*, .

The learned Additional Government Advocate contended that no relief can be granted to the Petitioner in view of the absence of any allegation in his writ petition that at the time of superannuation the Petitioner was a ministerial servant. Admittedly the Petitioner was a Superintendent of the Collectorate. We have no doubt that the post of such Superintendent is a ministerial one. What is a ministerial post has been explained at length by this Court in the case of *Section Vaikuntham v. Registrar Orissa High Court Cuttack and Anr.* ILR 1972 Cutt. 44. We would accordingly conclude that the Petitioner was holding a ministerial post at the time when he was required to superannuate. On the aforesaid basis, the petition must succeed.

4. We would accordingly allow the writ application, quash the order of superannuation and hold that the Petitioner must be deemed to be continuing in service unaffected by the impugned order unless the appropriate authority requires him to retire in accordance with law before he attains the 60th year. The writ petition is allowed, but without costs.

B.K. Ray, J.

5. I agree.