

(2023) 05 OHC CK 0063

In the Orissa High Court

Case No : Writ Petition (C) No. 2548 Of 2021

Khirod Kumar Mishra & Others

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 03-05-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (2023) 05 OHC CK 0063

Hon'ble Judges : A.K. Mohapatra, J

Bench : Single Bench

Advocate : B.K. Mohanty, A. Behera

Final Decision : Allowed

Judgement

A.K. Mohapatra, J

1. Heard Mr. B.K. Mohanty, learned counsel appearing for the Petitioner and Mr. A. Behera, learned Additional Standing Counsel for the State-Opposite Parties. Perused the pleadings of the parties as well as materials placed before this Court.

2. The Petitioners who are working as Sub-Inspectors in Odisha Police have knocked the doors of justice by filing the present writ application for redressal of their grievances by directing the Opposite Parties to call for nomination in respect of the petitioners for its necessary consideration by CSB for promotion to the post of Inspectors of Police by treating them as Sub-Inspectors of Police with effect from 04.08.2021/10.05.2012 in terms of the order passed by the learned Odisha Administrative Tribunal under Annexure-4 which was ultimately affirmed by this Court vide its judgment dated 09.01.2017 under Annexure-5 series and to consider the case of the petitioner for promotion along with the nomination in respect of 98 selectees of 2000 batch whose nominations were called for promotion even though they were placed below the petitioners in the seniority list of A.S.I.s of 2000 batch. Further, a prayer has also been made to consider the case of the petitioners for promotion in a time bound manner by holding a

special CSB for consideration of the cases of the Petitioners.

3. The factual matrix, as culled out from the writ petitioner, is that on being selected by conducting a due selection process the petitioners were appointed as Constables and accordingly they joined under the Odisha Police between the year 1981-85. Subsequently, since the petitioners were found eligible as per the provisions of OMR 660, the petitioners were allowed to appear in a test conducted on 18.06.2000 to undergo A.S.I. Course of training. Due to illegal fixation of pass mark at 50 %, only 98 candidates were selected finally as per Annexure-1 and the other candidates including Petitioners who appeared in such test were not selected.

4. It has also been stated in the writ petition that the fixation of 50 % pass mark for the above noted test was assailed before the Tribunal. Finally, the learned Odisha Administrative Tribunal after hearing the learned counsels appearing for the respective parties vide order dated 04.11.2004 allowed the O.A. No.3036(c) of 2003 & O.A. No.3037(c) of 2003 by holding that 30 % marks in aggregate are required to pass the test as the qualifying mark to undergo A.S.I. training course. Pursuant to the aforesaid order 04.11.2004, the State Government in the Home Department vide letter no.47/02 dated 15.10.2005 rejected the proposal to go in appeal against the said order and directed to nominate Constables who have secured 30% on more marks in the aforesaid test to undergo A.S.I. training course. Accordingly, on the basis of the order of the Tribunal as well as Home Department letter No.15.10.2005, the Odisha Police Headquarters vide office order No.1152/Board dated 24.05.2006 was pleased to declare names of 2136 constables including the petitioners who have passed examination and eligible to undergo A.S.I. course of training.

5. That while the matter stood thus, again another round of litigation was started before the Odisha Administrative Tribunal by filing O.A. No.2071 (c) of 2006, O.A. No.2072 (c) of 2006, O.A. No.3104 (c) of 2006. Such original applications were filed before the Odisha Administrative Tribunal challenging the decision of the Odisha Police in publishing names of 174 candidates for undergoing A.S.I. Training Course vide order dated 13.10.2003. The learned Tribunal vide order dated 07.08.2008 was pleased to quash the said list of 174 candidates which was prepared on the basis of the examination held on 18.08.2002 with a further direction to implement the first list of 2136 candidates prepared on the basis of the result of the examination held in the year 2000 by immediately sending them to undergo A.S.I. course of training and for their eventual appointment as A.S.I..

6. While this was so, the first batch of 98 candidates of 2000 batch, those who were promoted as A.S.I. of Police on 27.07.2001, were again promoted to the cadre of S.I. of police on 27.07.2011. When these 98 candidates of 2000 batch and 174 candidates of 2002 batch were given promotion to the rank of S.I. of police in the year 2011, some candidates of 2000 batch including the petitioner approach the Tribunal by filing O.A. No.1061 (c) of 2011 and a batch of original applications. The learned Odisha Administrative Tribunal after hearing learned

counsels for parties vide order dated 27.09.2012 disposed of the above noted O.A. along with a batch of O.As. by holding that for no fault of the applicants they were deprived of the opportunity to undergo A.S.I. course of training from the date when initial batch of 98 candidates were allowed to undergo necessary training, accordingly, it was directed to consider their cases for promotion to the cadre of S.I. of Police from the date when the aforesaid 98 candidates who were declared pass and sent for training. The aforesaid order dated 27.09.2012 was challenged before a Division Bench of this Court in W.P.(C) No.22992 of 2012. A Division bench of this Court after hearing learned counsels for the parties vide judgment dated 09.01.2017 was pleased to dismiss the above noted writ application thereby confirming the order dated 27.09.2012 passed in O.A. No.1061(c) of 2011 and 26 other original applications.

7. After disposal of the above noted writ application bearing W.P.(C) No.22992 of 2012 and W.P.(C) No.12069 of 2008 vide judgment dated 09.01.2017, the Opposite Parties promoted the applicants of O.A. No.1061(c) of 2011 and the batch as S.I. of police including the petitioner and they were sent to undergo S.I. course of training on 20.06.2017. After subsequent completion of the S.I. training the Petitioner were posted to various police stations as S.I. of police vide order dated 25.07.2018. Accordingly, pursuant to the direction of the Tribunal, the State Police Headquarter vide order No.77 dated 16.01.2019 has redrawn the inter se seniority of the Constables who appeared in the written examination in the year 2000 to undergo S.I. course examination by treating them as qualified in the examination held in the year 2000 along with 98 candidates who were declared passed by the authorities vide order under Annexure-1. Eventually, a final gradation list of A.S.I. of 2000 batch was also published.

8. While the matter stood thus, the Home Department, Govt. of Odisha vide order dated 11.01.2021 took a decision to relax the eligibility criteria of 10 years experience in the post of S.I. to 8 years. On the very same day that is 11.01.2021 office of DG and IG of Police, Odisha without considering the cases of the petitioners invited nomination of names of eligible S.I. of police latest by 21.04.2021 for further promotion to the rank of Inspector of Police. However, while sending such nomination the names of the present petitioners have been ignored by the authorities in violation of the order passed by the Tribunal and which was ultimately upheld by this Court. As a result of such discrimination the petitioners have been deprived of the opportunity for promotion to the post of Inspector of Police by the CSB. Being aggrieved by such conduct the Petitioners have approached this Court by filing the present writ applications.

9. Mr. B.K. Mohanty, learned counsel for the petitioners, in course of his argument, submitted before this Court that the grievance of the petitioners, involved in the present writ applications, is a very limited one and to the extent that the authorities have not considered the cases of the petitioners for promotion to the post of Inspector of police while sending nominations of the candidates for such promotion to the CSB vide letter dated 11.01.2021. He

further submitted that the CSB should have considered the cases of the petitioners for promotion to the post of Inspector of Police by treating them as S.I. of police with effect from 04.08.2011/10.05.2012 in terms of the order passed by the learned Odisha Administrative Tribunal which was eventually upheld by a Division Bench of this Court on 09.01.2017. He further contended that such conduct of the Opposite Parties is grossly illegal, arbitrary and discriminatory in as much as while considering the case of 98 selected candidates of 2000 batch, who were placed below the Petitioner in the seniority list of the S.Is. of 2000 batch, the names of the petitioners have not been considered for promotion to the rank of Inspector of Police.

10. Learned counsel for the petitioners further contended that it is an admitted fact that the petitioners were appointed on being duly selected by following a valid selection procedure. Accordingly, they joined as Constables between 1981-1985. Since they were found eligible in view of PMR 660, the Petitioners appeared in the test on 18.06.2000 to undergo A.S.I. training Course. However, due to illegal fixation of pass mark, only 98 candidates were declared selected and others who appeared in the test including the petitioner were not selected. Further, in view of the orders passed by the learned Odisha Administrative Tribunal holding that the pass mark should be 30 % in aggregate, the petitioners were subsequently declared selected and were accordingly appointed as A.S.I.s.

11. Thereafter, a common seniority list of 2000 batch was prepared by taking into consideration the inter se seniority of the petitioners as well as 98 candidates who were initially selected in respect of the 2000 batch. Learned counsel for the Petitioners referring to the order dated 27.09.2012 passed by the learned Odisha Administrative Tribunal submitted that the learned Odisha Administrative Tribunal while disposing of O.A. No.1061(c) of 2011 has come to a specific conclusion that for no fault of the applicants they were deprived of the opportunity to undergo A.S.I. course of training from the date when the 98 selected candidates of 2000 batch were sent for undergoing A.S.I. course of training. Accordingly, he further submitted that the Tribunal finally disposed of the matter by directing the Opposite Parties to consider the cases of the Petitioners for promotion to the cadre of S.I. of Police from the date when the aforesaid 98 candidates were declared pass and sent for training.

12. Mr. Mohanty, further submitted that the aforesaid order dated 27.09.2012 passed by the learned Odisha Administrative Tribunal has attained finality as a writ petition challenging the said order of the Tribunal has been dismissed by a Division Bench of this Court vide judgment dated 09.01.2017. He further submitted that after disposal of the writ petition by this Court, the State Police Headquarter vide order dated 16.01.2019 prepared a common inter se seniority list of A.S.I. of 2000 batch. Accordingly, the petitioners were given promotion to the post of A.S.I. of Police pursuant to the direction of the Tribunal. At this juncture, learned counsel for the petitioners referring to Annexure-7 to the writ application submitted that the above noted 98 selected candidates belonging to

2000 batch were placed below the petitioners in the seniority list prepared and published vide order dated 16.01.2019.

13. Learned counsel for the Petitioners further contended that while the Opposite Parties complied with the first part of the direction given by the Tribunal vide order dated 27.09.2012 under Annexure-4, the second part of the order that is giving promotion to the petitioner to the post of S.I. of police from the date when the above noted 98 selected candidates of 2000 batch were promoted to the post of S.I. of Police was not carried out. Therefore, the petitioners approached the DG of police by submitted a detailed representation. The said representation, however, was not considered till the petitioners approached the Tribunal again in O.A. No.1910 of 2019. The Tribunal vide order dated 21.06.2019 disposed of the said O.A. by directing the Opposite Party Nos.2 & 3 to consider the case of the petitioner in view of the earlier order passed by the Tribunal as well as by this Court.

14. After disposal of the aforesaid O.A., the Home Department, Govt. of Odisha vide letter dated 31.07.2020 under Annexure-8 also directed the DG of Police to dispose of the grievance of the petitioners as early as possible. However, despite the aforesaid orders, the Opposite Party Nos.2 & 3 did not consider the representation of the Petitioners as of now, on the contrary invited nominations from S.I. of police by 21.01.2021 for consideration of their cases by the CSB for promotion to the post of Inspector of Police. He further contended that although nominations were sent pursuant to the order of the Opposite Party Nos.2 & 3, however, it was found from the list of the nominated candidates that most of them are juniors to the Petitioner and were placed below the Petitioners in the seniority list of A.S.I. of Police.

15. With regard to the legal issues involved in the present writ petition, the learned counsel for the petitioners advanced his argument by submitting, at the outset, that the contention of the State-Opposite Parties in the counter affidavit that the Petitioners are not eligible for consideration for promotion to the post of Inspector of Police as they were not having the required experience of 8 years in the post of S.I. of police in terms of relaxation of rule 650 of PMR, such a ground taken by the Opposite Parties in the counter affidavit is unsustainable in law. In view of the specific finding of the learned Odisha Administrative Tribunal as observed in paragraphs-11, 14 and 15 of the order under Annexure-4 which was eventually affirmed by a Division Bench of this Court. He further contended that the order dated 27.09.2012 under Annexure-4 which was affirmed by a Division Bench of this Court vide judgment dated 09.01.2017 under Annexure-5 has attained finality as the same has not been challenged any further, therefore, the order of the Tribunal dated 27.09.2012 is binding on the opposite parties and the Opposite Parties are legally bound to implement the said order in its letter and spirit.

16. Mr. Mohanty, learned counsel appearing for the petitioner further contended that treating the Petitioners were promoted to the cadre of S.I. of Police with

effect from 27.07.2011 as has been directed by the learned Odisha Administrative Tribunal in its order dated 27.09.2012 under Annexure-4, it cannot be said that the petitioners do not have required experience of 8 years as per the amended PMR 650 of Odisha Police Manual. In such view of the matter, learned counsel for the Petitioner emphatically submitted that the Petitioners were having such experience to be eligible for promotion to the next higher rank that is Inspector of Police. Hence, by not considering the cases of the Petitioners for promotion to the rank of Inspector of Police, the Opposite Parties have committed a serious illegality and they have grossly discriminated the petitioner by violating Article 14 and 16 of Constitution of India.

17. Finally, the learned counsel for the Petitioners contended that in the meantime, the petitioner Nos.2 & 7 have retired from service and some others are going to retire very soon. Therefore, he also submitted that unless this Court directs the authorities to constitute a review CSB to consider the cases of the remaining Petitioners for promotion, the matter would become infructuous and the Petitioners will be highly prejudiced. Moreover, despite the direction by the Tribunal which was ultimately upheld by this Court, the petitioners will be deprived of the Opportunity to get the benefit arising out of the orders passed by the Tribunal in their favor. Further, it was also argued that delay in disposal of the present writ application would only perpetrate the injustice that has been caused to the petitioner by not implementing the direction of the Tribunal vide order dated 27.09.2012 under Annexure-4 which was upheld by this Court vide judgment dated 09.01.2017.

18. In course of his argument, learned counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court in the case of Amarjeet Singh and others vs. Devi Ratan and others reported in AIR 2010 SC 3676. Referring to the said judgment, it was contended by learned counsel for the Petitioners that in the facts and circumstances of the case involved in the above referred judgment, the Supreme Court of India came to the final conclusion that the Courts are under an obligation to undo the wrong done to a party by the Act of the Court. Thus, any undeserved and unfair advantage claimed by a party invoking the jurisdiction of the Court must be neutralized, as the institution of the litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the Court. By applying the aforesaid principle to the facts of the present case, learned counsel for the Petitioners argued that the order of the Tribunal dated 27.09.2012 and the direction contained in para-11, 14 & 15 of the said order could not be implemented by the authorities in view of the interim orders passed in W.P.(C) No.12069 of 2008 and W.P.(C) No.22992 of 2011 by this Court. However, both the above noted writ applications were dismissed by a judgment dated 09.01.2017 affirming the order of the Tribunal dated 27.09.2012. Since, considerations of the cases of the Petitioners were delayed due to the interim order passed by this Court and they were not given appointment in view of the interim order passed by this Court, the Petitioners cannot be made to suffer on such ground. Thus, it was submitted that this Court is duty bound to undo the

wrong done to the petitioners by taking advantage of the impugned order passed in the above noted writ application.

19. Learned counsel for the petitioner referred to a judgment of this Court in the matter of Narayan Chandra Malla vs. State of Odisha and others reported in 2017 (II) OLR 404 to impress upon this Court that even if some of the Petitioners have retired in the meantime they were entitled to get notional promotion and accordingly their financial benefits will also be calculated with such notional promotion. In the above referred reported judgment, the Petitioner who was an A.S.I. could not get promotion to the post of S.I. of police and consequently to the post of Inspector of police. While holding that the Petitioner was eligible to such post, this Court has held that he is entitled for actual financial benefits. Similarly, the Petitioners also referred to the judgment of the Hon'ble Supreme Court in Union of India & ors vs K.B. Rajoria reported in AIR 2000 SC 1819 to submit before this Court that the Petitioners are entitled to be considered for promotion by the review CSB for promotion to the post of Inspector of Police.

20. Additionally, learned counsel for the Petitioners submitted that the judgments reported in (1996) (4) SCC 416 and (2016) (6) SCC 647 cited on behalf of the Opposite Parties by the learned Addl. Standing Counsel in the context of the law that a person not having required experience not eligible for promotion, is not applicable to the facts of the present case and the same is distinguishable on the factual background in which the above noted two judgments were rendered. So far, the cases of the petitioners are concerned, he further submitted that it would be completely illegal and erroneous to infer that the petitioners were not having required experience to be eligible for consideration for promotion to the rank of Inspector of Police along with the persons who were placed below the Petitioner in the seniority list.

21. He also contended that had the order of the Tribunal dated 27.09.2012 been given effect to in its letter and spirit, then such a scenario would not have arisen and the Petitioners after getting promotion from the date the above referred 98 selected candidates of the batch of 2000 were given promotion would also have been considered for promotion along with such 98 selected candidates of 2000 batch. Under such a scenario, it was argued that the question of lack of experience of the petitioners do not arise at all for consideration on the face of the order passed by the Tribunal under Annexure-4.

22. In his additional written note of submission, learned counsel for the petitioners has specifically raised a ground that in a recent cases involving the Odisha Police and the issue regarding relaxation of experience from 10 years to 6 years and 11 months came up before this Court for judicial scrutiny. Grant of such relaxation from 10 years to 6 years and 11 months was challenged by some S.I. of police having experience of more than 6 years but less than 6 years 11 months in W.P.(C) No.17055 of 2021 and W.P.(C) No.17053 of 2021. This Court upon hearing the learned counsels appearing for the Parties in the above noted two writ applications, vide order dated 02.12.2021 was inclined to interfere with

the aforesaid two writ applications and accordingly directed to relax/ reduce the required experience from 10 years to 6 years instead of 6 years 11 months. A copy of the said order dated 02.12.2021 has been filed before this Court along with the additional written note of submission by the petitioner.

23. Finally, learned counsel for the petitioners argued that the promotion of the petitioners to the rank of S.I. of police be antedated to 04.08.2011 as directed by the Tribunal vide order dated 27.09.2012 under Annexure-4 and accordingly, the Opposite Parties be directed that the Petitioners are having the requisite experience for promotion to the rank of Inspector and the cases of the Petitioners be considered as expeditiously as possible by constituting the review CSB and the Petitioners be extended all service and financial benefits upon such promotion to the next higher post.

24. Mr. A. Behera, learned Addl. Standing Counsel for the State-Opposite Parties, at the outset, submitted that on 20.06.2017 in compliance to order dated 27.09.2012 passed in O.A. No.1061(c) of 2011 by the learned Odisha Administrative Tribunal, the applicants of the O.A. including the Petitioners were given promotion to the post of Sub-Inspector and were sent for undergoing S.I. training course. After successful completion of training as S.I., the Petitioners were posted as Sub-Inspector on 15.07.2018 at various police stations. He further contended on

11.01.2021 nominations were invited for promotion to the post of Inspector. Such promotion to the rank of Inspector is to be governed by Rule 650 of the Odisha Police Manual wherein the eligibility criteria has been fixed for promotion to the post of Inspector of Police. Referring to the rule 650 (II), it was submitted that Sub-Inspector having rendered a minimum period of 10 years of continuous service after passing the S.I. course of training will be eligible for consideration for promotion to the rank of Inspector. He also submitted that letter dated 11.01.2021 further provides that by invoking the power under Police rules, the requirement of having rendered a minimum period of 10 years of continuous service after passing of the S.I. course of training, has been reduced to 8 years. However, he further contended that since the petitioners were not having the required experience to make them eligible for consideration for promotion to the post of Inspector of Police, their cases have not been considered by the CSB.

25. Learned Addl. Standing Counsel further elaborated his argument by submitted before this Court that since rule 650 governs the promotion of S.Is. to the rank of Inspector of Police and the same lays down the eligibility criteria, the petitioners to become eligible for promotion must satisfy the eligibility criteria provided under Rule 650 (II) of the Odisha Police Manual. Such requirement of 10 years of continuous service after passing of S.I. course was also reduced to 8 years vide letter dated 11.01.2021 granting relaxation to the candidates and to make them eligible for consideration for promotion to the post of Inspector of Police. Despite grant of such relaxation the petitioners fail to meet the eligibility requirement and therefore, the authorities have not committed any illegality at

all in not considering the cases of the Petitioners for promotion to the post of Inspector of Police.

26. Additionally, he also contended that the retrospective seniority will not satisfy the requirement of statute since the petitioners were appointed as Sub-Inspector of Police with effect from 15.07.2018. Accordingly, they have not rendered the minimum period of service required for promotion to the next higher post. Finally, it was submitted that the judgments relied upon by the petitioners are not applicable to the facts of the present cases as the stipulation made in Rule 650 of the Odisha Police Rule have not been taken into consideration in the judgments relied upon by the learned counsel for the Petitioners. In such view of the matter, learned Addl. Standing Counsel submitted that the writ petition filed by the Petitioner are devoid of merit and accordingly the same should be dismissed.

27. Having heard the learned counsels for the respective parties and upon a careful consideration of the pleadings of the respective parties and contentions raised by the learned counsels appearing for the parties and the upon a careful scrutiny of the materials placed before this Court for consideration, this Court observed that the most pertinent question that is required to be adjudicated in the present writ application is whether the order of the Tribunal dated 27.09.2012 under Annexure-4, which was confirmed by a Division Bench of this Court in the judgment dated 09.01.2017 under Annexure-5, has been fully complied with or not ? Secondly, whether the petitioners were eligible for being considered for promotion to the post of Inspector of Police when the 98 selected candidates of 2000 batch were given promotion to the post of Inspector of Police in the year 2021 ?

28. With regard to the first question formulated hereinabove, this Court at this juncture would like to deal with the order of the Tribunal dated 27.09.2012 under Annexure-4. In its order under Annexure-4, the Tribunal in para-11(d) of the order has held as follows:-

"Admittedly, in the first list published by the respondents on 1.3.2001, 98(ninety-eight) candidates were declared to have passed the written examination on the interference of the High Court and the Tribunal. The State respondents published another list on 24.6.2006 of 2136 Constables to have passed this written examination held in the year 2000. If the respondents had published this list on 1.3.2001 along with other 98 candidates who were declared to have passed on that date, then the applicant would have been sent for training when his juniors were sent for such training. Due to the fault of the State respondents the applicant was not deputed to undergo the A.S.I. training course along with other 98 candidates. The applicant, therefore, should not suffer for the fault of the State respondents. Accordingly, I hold that the applicant in O.A. No.1061(c) of 2011 along with other similarly situated persons is also entitled to be treated to have passed the written test of the year 2000. Their seniority in the cadre of A.S.I. of Police is to be fixed accordingly by inclusion of their names for the select

list of the year 2000 and they shall be considered for further promotion to the post of S.I. of Police counting the date of their joining as A.S.I. of Police with effect from the date of joining of Officers placed in the original list published in 2001. The gradation list of A.S.Is. selected for S.I. of training course on being temporarily promoted as S.I. of Police in the list dt.27.10.2011, therefore, needs to be redrawn accordingly."

29. Further, on a careful analysis of the para-14 of the order dated 27.09.2012 under Annexure-4, This Court observed that the Tribunal has categorically held that the Petitioner could not be sent for A.S.I. Course of training in the year 2011 owing to the fault of the State-Respondents and as such the Petitioners cannot be allowed to suffer for no fault of theirs and further it has been observed that as per the order of this Court and Tribunal all the Petitioners are deemed to be selectees of the year 2000 along with the first batch of the 98 candidates and therefore, they should be deemed to have completed a period of 7 years of training when the batch of 98 candidates had completed the said course of training for better understanding of the direction given by the Tribunal and the findings arrived at which has direct bearing on the facts of the present case, para-14 and 15 of the order under Annexure-4 is also quoted hereinbelow:-

"I have already held that the applicants could not be sent for A.S.I. course of training in the year 2001 owing to the fault of the State respondents and cannot be allowed to suffer for no fault of theirs. As per the order of the Hon'ble High Court and the Tribunal all these applicants are deemed to be the selectees of the year 2000 along with the first batch of 98 candidates. Therefore, they should be deemed to have completed the period of seven years of training when the first batch of 98 candidates had completed the said course of training. The fact that the applicants have not worked as A.S.Is. for less than seven years is attributable to the fault of the State respondents. Since all these applicants are deemed to have passed the written examination held in the year 2000 along with 98 candidates, whose results were declared at the first instance, the nomination rolls of all the constables, who had passed the written examination held in the year 2000 should be arranged according to seniority. The applicants, therefore, are entitled to be assigned their proper position treating them as qualified in the written examination held in the year 2000. Therefore, all these applicants should be deemed to have completed seven years of continuous service after having passed A.S.Is. course of training through they actually completed the training much later. Rule-31 of the Orders, 2006 provides for relaxation and lays down that where the Govt. on a reference made by the DG & IG of Police or otherwise are satisfied that it is necessary or expedient to do so it may by order, for reasons to be recorded in writing relax any of the provisions of this order with respect to any class or category of persons. The peculiar facts and circumstances of this case, therefore, entitle the applicants to be given the benefit of relaxation as provided under Rule-31 of the Orders.

In the fault, all the O.As. are allowed. The respondents are directed to assign

proper position of the applicants in the seniority list in accordance with the principle laid down in the order passed in O.A. No.3036(c) of 2003 and 3037(c) of 2003. The respondents are further directed to consider the case of the applicants to nominate them for promotion to the post of S.I. of Police in accordance with their seniority and other relevant factors along with the 98 candidates, who had been declared to have passed the written examination held in the year 2000. The gradation list dtd.27.10.2011 of A.S.Is. selected for S.I. training course of being temporarily promoted as S.I. of Police be redrawn accordingly.

30. Thus, on a careful scrutiny of the para-11(d), 14 and 15, it appears that the Tribunal while considering the promotion of the Petitioner to the post of A.S.I. of police, has categorically held that even though the petitioners have not completed 7 years of training when the first batch of 98 candidates had completed the said course of training and the fact that the Petitioners had not worked as A.S.I.s for the required number of years, such deficiency is attributable to the fault on the part of the State-Opposite parties. On further analysis it is seen that the Tribunal has also come to a finding that the Petitioners are deemed to have written the examination held in the year 2000 with the 98 other candidates referred to hereinabove and whose results were declared at the first instance and accordingly it was directed to rearrange the nomination role of the Constables who have passed the written examination in the year 2000. Thus, the Tribunal has treated the present petitioners at par with the first batch of 98 candidates who were declared passed in the examination held in the year 2000 and accordingly it was also directed to rearrange their position in the seniority list as per law by holding that the Petitioners were qualified in the examination held in the year 2000. Thus, by applying the deeming provision the Tribunal has held that the Petitioners have completed 7 years of continuous service after having passed A.S.I. Course of training although they had actually completed the training much letter. Further, referring to rule 31 of the orders, 2006, which provides for relaxation and lays down that where the Government under reference made by DG and IG of police or otherwise are satisfied that it is necessary or expedient to do so, it may by order, for reasons to be recorded in writing, relax any of the provisions of this order with respect to any class, category or persons. Finally, the Tribunal has held that the Petitioners are entitled to be given the benefit of relaxation as provided under Rule 31 of the orders, 2006.

31. On a close scrutiny of the order dated 27.09.2012 under Annexure-4 this Court is of the view that the same provides for the foundation so far the petitioners are concerned accordingly the present petitioners who could not qualify in the written test held in the year 2000 due to wrong fixation of pass mark were subsequently declared to be passed and the Tribunal by its order dated 27.09.2012 has also directed for restoration of the seniority of the petitioner by treating them at par with the 98 selected candidates whose results were published initially in respect of the selection held in the year 2000. Further

taking into consideration the fact that such 98 candidates as well as the present petitioners belong to the 2000 batch, therefore, it would not be fair and proper and judicious to treat them separately. Moreover, such discrimination would be hit by the principles contained in Article 14 and 16 of the Constitution of India. Thus, this Court has no other option but to affirm the finding of the Tribunal treating the Petitioners at par with those 98 selected candidates of the 2000 batch. Further, the finding of the Tribunal with regard to grant of the relaxation to the Petitioners in respect of the eligibility criteria by granting relaxation under Rule 31 of the orders, 2006 they are to be treated at par with the 98 selected candidates whose result were published initially in respect of the examination held in the year 2000. Moreover, the order of the Tribunal dated 27.09.2012 having been affirmed by this Court and the same having not been challenged further, has attained the finality in the meantime. Accordingly, the same is binding of the State-Opposite parties. Therefore, by applying the findings of the Tribunal as contained in para-11(d), 14 & 15 of the order dated 27.09.2012 under Annexure-4, this Court is of the considered view that the present petitioners are to be treated at par with the 98 candidates whose results were published initially in respect of the examination held in the year 2000.

32. In view of the aforesaid conclusion arrived at by this Court, it is held that the order dated 27.09.2012 under Annexure-4 passed by the Tribunal is final and binding on the State-Opposite Parties. Accordingly, in reply to the question no.1 formulated hereinabove, this Court is of the considered view that the order dated 27.09.2012 under Annexure-4 has not been fully implemented by the State-Opposite Parties as the Petitioners have not been given promotion to the post of S.I. of Police with effect from the date the above noted 98 selected candidates of the 2000 batch were given such promotion. Therefore, the stand of the Opposite Parties that the Petitioners having been given promotion to the post of S.I. with effect from the date 15.07.2018 is not in terms of the order passed by the Tribunal. Further, keeping in view the direction of the Tribunal under Annexure-4 in para-14 of the order dated 27.09.2012, the Petitioners should have been given promotion to the post of A.S.I. and S.I. with effect from the date when the above noted 98 selected candidates were given such promotion. Accordingly, it is further held that the Petitioners were promoted to the post of A.S.I. with effect from the date 01.03.2001 and thereafter, they are to be given promotion to the post of S.I. of police with effect from 04.08.2011/10.05.2012 in terms of the order passed by the Tribunal under Annexure-4 and not from the date on 15.07.2018 as has been done by the State-Opposite Parties. In such view of the matter, this Court has not hesitation in coming to a conclusion that the order passed by the Tribunal dated 27.09.2012 under Annexure-4 has not been given effect to fully by the State-Opposite Parties.

33. In reply to the second question formulated by this Court upon a careful consideration of the contentions raised and the pleadings of the parties i.e. whether the Petitioners were eligible for promotion to the post of Inspector of Police at par with 98 selected candidates of the 2000 batch referred to

hereinabove or not ? No doubt, Rule 650 (II) of the Odisha Police order, 2006 lays down the eligibility criteria by providing that for promotion to the post of Police Inspector a person must have worked for 10 years after undergoing training for Sub-Inspector of Police. Admittedly, the Petitioners have not worked for 10 years as Sub-Inspector of Police as they were given promotion to the said post by the State-Opposite Parties with effect from 15.07.2018. Although, the aforesaid stipulation in PMR 650 (II) of the Odisha Police Order, 2006, the stipulation of 10 years experience was reduced to 8 years by virtue of the letter dated 11.01.2021.

34. Further, such stipulation of experience in PMR 650(II) has been reduced to 6 years in a case referred to by the learned counsel for the petitioner by this Court vide order dated 02.12.2021 in Prakash Chandra Majhi & others vs. State of Odisha & ors. in W.P.(C) No.17055 of 2021 and W.P.(C) No.17053 of 2021. In a similar scenario a Coordinate Bench of this Court has approved of the decision of the State-authorities in granting relaxation of experience from 10 years to 6 years for promotion from the rank of Sub-Inspector to Inspector of Police as provided under Rule 650(II) of the Odisha Police Order, 2006. On further perusal it appears that the State authorities in exercise of their power provided under Rule 31 of the Police order, 2006 have granted such relaxation. Moreover, the Tribunal in its order dated 27.09.2012 in para-14 had also directed the authorities to grant such relaxation to the petitioner by exercising power under Rule 31 of the orders, 2006 to the Petitioner for their promotion from A.S.I. to S.I. Keeping in view the fact that the Petitioners were not given promotion to the post of S.I. from the date the above noted 98 selected candidates of the 2000 batch were given in view of interim order passed by this Court before disposing of the writ applications bearing W.P.(C) No.22992 of 2012 and W.P.(C) No.12069 of 2008 vide judgment dated 09.01.2017.

35. Thus, the delay in implementing the order of the Tribunal in granting promotion to the Petitioner to the post of S.I. of Police along with 98 other selected candidates cannot be attributed to the Petitioner. Furthermore, this Court is of the considered view that such delay in giving promotion to the petitioner to the post of A.S.I. along with 98 other candidates is solely attributable to the inaction on the part of the opposite parties or to the interim order passed by this Court in W.P.(C) No.22992 of 2012 and W.P.(C) No.12069 of 2008. Therefore, for the delay in giving promotion to the Petitioners to the post of S.I., the Petitioners are no way responsible. Rather the conduct of the Opposite Parties in giving them promotion to the post of S.I. with effect from 18.05.2018 is not in consonance with the order passed by the Tribunal dated 27.09.2012 under Annexure-4.

36. In view of the aforesaid analysis, this Court has not hesitation in coming to a conclusion that for inaction in giving promotion to the petitioners along with 98 other selected candidates of 2000 batch, the Petitioners cannot be made to suffer. Moreover, there was a specific direction by the Tribunal to consider the

case of the petitioner for promotion to the post of S.I. by granting them relaxation under Rule 31 of the Odisha Police order, 2006. Such facts coupled with the fact the Petitioners are no way responsible for such delay and they are not at fault, on the contrary, the inaction of the Opposite Parties in implementing the order of the Tribunal in terms of the order dated 27.09.2012 has rendered the Petitioners ineligible for being considered for promotion to the post of Inspector of Police in the year 2021 along with 98 other selected candidates of their batch. On a scrutiny of the seniority list appended to the writ application it appears that the aforesaid 98 selected candidates of the batch 2000 were placed below the Petitioners in seniority. In such view of the matter, this Court has no hesitation to hold that the petitioners have suffered and have been discriminated against by the Opposite Parties for none of their fault and the direction of the Tribunal dated 27.09.2012 has not been fully implemented so far the petitioners are concerned. Therefore, it would be fair, proper and in the larger interest of justice to direct the Opposite Parties to exercise the power to grant relaxation under Rule 31 of the Police order, 2006 in the case of the petitioners and accordingly, the desired relaxation in experience as has been provided under Rule 650(II) be granted to the Petitioners by the State-Opposite Parties thereby making them eligible for promotion to the post of Inspector of Police along with 98 other selected candidates of the 2000 batch.

38. Accordingly, it is further directed that the Opposite Parties after granting relaxation in respect of eligibility with regard to experience, convene a review CSB meeting to consider the case of promotion to the Petitioners to the post of Inspector of Police at par with such promotion granted to the 98 other selected candidates whose names were published initially in respect of the examination held in the year 2000 wherein the Petitioners also participated and subsequently declared qualified by the authorities with the intervention of the Odisha Administrative Tribunal. The aforesaid exercise be carried out within a period of six weeks from the date of communication of this Judgment. It is further made clear that the petitioners who have retired from service in the meantime on attaining the age of superannuation, their cases are to be considered for promotion to the post of Inspector of police and in the event, there is no other legal impediment and subject to satisfaction of other eligibility conditions they may be promoted to the post of Inspector of Police notionally and accordingly the financial benefits accruing upon such promotion be also calculated, sanctioned and disbursed in favor of the petitioners, who have retired from service in the meantime. Further, it is directed that so far those petitioners who have retired from service in the meantime, their pensionry benefits be also calculated upon re-fixation of their pay in the scale of Inspector of Police subject to recommendation of the review CSB meeting within a period of eight weeks from the date of communication of this judgment.

39. Accordingly, the writ petitions stands allowed. However, there shall be no order as to cost.

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