(2009) 07 OHC CK 0092

In the Orissa High Court

Case No : O.J.C. No. 14949 of 1999

Lakshmidhar Mahalik APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:

Citation : (2009) 2 OLR 157 Supp

Hon'ble Judges : L. Mohapatra, J;B.N. Mahapatra, J

Bench : Division Bench

Advocate : G.A.R. Dorak, J.K. Lenka and S.P. Mishra, for the Appellant; D.N. Mishra, Central Govt. Counsel for O.Ps. 1 and 2, for the Respondent

Judgement

L. Mohapatra, J.—This writ application is directed against the order of the Central Administrative Tribunal Cuttack Bench, Cuttack passed in O.A. No. 448 of 1993 disposed of on 15th September, 1999. The Petitioner was the Applicant before the Tribunal.

2. The case of the Petitioners is that he was directly recruited as Inspector of Income Tax and joined in the post on 17.7.1969. Opposite party No. 4 arid one R.N. Prusty joined as Inspectors on 18.11.72 and 10.3.71 respectively. The next higher post is Income Tax Officer (I.T.O.) Class If. The appointment to the grade of I.T.O. is made by promotion from the post of Inspector as per 1969 Recruitment Rules subject to the condition that the Officer must have passed the departmental examination and completed three years of service in the grade of Inspector. The Petitioner cleared the departmental examination in 1980 and became eligible for consideration when the D.P.C. met on 6.1.1981 to consider the cases of Inspectors for appointment as I.T.P, Class-II. The name of the Petitioner was also considered and he was found suitable. Accordingly, the D.P.C. recommenced his case for being appointed as I.T.O. Class- II. Basing on such recommendation, the Petitioner was promoted to the post of I.T.O. vide order dated 13.1.1981 and he started officiating from 27.1.1981. The conditions imposed for promotion were that such promotion is provisional and is liable for

reversion, if after a review of vacancy, it is found that such promotion is in excess of the vacancy. The second condition is with regard to probation for a period of two years. Another D.P.C. was held in February, 1982 and the names of D.R. Dev, M.P. Rama Rao, S.C. Kanungo (opposite party No. 4) and R.N. Prusty were recommended in February 1982. The name of R.N. Prusty was recommended on 21.1.1983. They joined as Inspectors on 16.3.1971. 1.4.1970, 18.11.1972 and 10.3.1971 respectively and as such were juniors to the Petitioner in the Grade of Inspector. Opposite party No. 4 was promoted to I.T.O. Class-II on the basis of recommendation of the D.P.C. on 10.8.1982.

R.N. Prusty and G.B. Chhatar filed two writ applications before this Court challenging recommendation of the D.P.C. on the basis of which the Petitioner was promoted on 6.1.1981 to the post of I.T.O. Class-II and also challenged the Inter-se-seniority in the grade of Inspector. These two writ applications were transferred to the Tribunal and were reregistered as T.A. No. 214 of 1986 and T.A. No. 215 of 1986. In T.A. No. 214 of 1986 the writ Petitioner was Respondent No. 6 and in T.A. No. 215 of 1998 the writ Petitioner was Respondent No. 5. T.A. Nos. 214 and 215 of 1986 were dismissed and the review filed against the order was also dismissed on 3.11.1992. However, during pendency of the said cases, opposite party No. 3 passed an order on 28.1.1983 directing that the period of service of the Petitioner as I.T.O. from 27.1.1981 to 27.1.1983 would be treated as ad hoc service as he had been given promotion wrongly on the basis of incorrect determination of seniority in the grade of Inspectors at the time the D.P.C. recommended his case in 1981 and his name should appear in the grade of I.T.O. below R.N. Prusty, who was promoted on 21.1.1983. The judgments delivered in both the transfer applications and the review was not challenged and they attained finality. The Petitioner filed O.A. No. 448 of 1993 challenging the order dated 28.1.1983 passed by opposite Party No. 3 treating the aforesaid period as ad hoc in the promotional post and also prayed for a direction to implement the judgment delivered in T.A. No. 215 of 1986. The said Original Application was dismissed. Challenging the same, this writ application has been filed.

3. Shri G.A.R. Dora, the learned senior counsel appearing for the Petitioner submitted that the Petitioner was senior to opposite party No. 4 as he was appointed a Inspector with effect from 17.7.1969 whereas opposite party No. 4 joined as Inspector on 18.11.1972. Petitioner was promoted to the post of I.T.O. Class-II on 27.1.1981 whereas opposite party No. 4 was promoted to the said post on 10.8.1982. Therefore, in the promotional post also the Petitioner was senior to opposite party No. 4. Because of the order in Annexure-3 which was subject matter of challenge before the Tribunal even opposite party No. 4 who was junior to the Petitioner was promoted as Assistant Commissioner in 1993 ignoring the case of the Petitioner and similarly R.N. Prusty who was also junior to the Petitioner got promotion and retired from service. The learned Counsel assailing the impugned judgment submitted that the Petitioner being senior to opposite party No. 4 in both the ranks i.e. Inspector as well as I.T.O. Class-II and

his case having been illegally ignored, he should be given promotion to the post of Assistant Commissioner from the date opposite party No. 4 was promoted by implementing the judgment of the Tribunal delivered in T, A. No. 215 of 1986.

Learned Counsel appearing for the departmental submitted that the Original Application filed by the Petitioner was grossly time barred and, therefore, the Tribunal was justified in dismissing the same on the ground of limitation. A counter affidavit has been filed by the department taking the very same ground as has been taken before the Tribunal.

4. From the order in Annexure-1. It appears that the Petitioner was one of the three Inspectors of Income Tax, who were promoted and appointed to officiate as Income Tax Officers, Class-II (Group-B) subject to the condition that their promotion is purely provisional and they will be liable for reversion, if after a review of the vacancies, it is found that their promotion is in excess of the vacancies available and that they will be on probation for a period two years and the said period may be extended. It was also stipulated that they would also be liable for reversion, if their performance during the said period is not found to be satisfactory. This order was passed on 13th January, 1981. In Annexure-2, O.P. No. 4, who was working as Inspector of Income Tax, was promoted provisionally to the post of Income Tax Officer, Class-II (Group-B) on the very same conditions. Annexure-3 is the order in which the Commissioner of Income Tax held that promotion of the Petitioner was wrong due to incorrect determination of seniority in the grade of Inspector of Income Tax when D.P.C. was held on 6.1.1981 and, therefore, the period for which he was worked as Inspector of Income Tax, Group-B shall not be counted for the purpose of seniority, confirmation etc- This order in Annexure-3 was challenged before the Tribunal. Though the order was passed in the year 1983, the Petitioner approached the Tribunal in the year 1993. The other prayer before the Tribunal was for a direction to the department to implement the judgment delivered in T.A. No. 215 of 1986. In order to find out as to whether the Original Application filed by the Petitioner before the Tribunal was barred by time or not, it is necessary to consider the relevancy of the judgment delivered by the Tribunal in T.A. Nos. 214 and 215 of 1986. Opposite party No. 4 and some Ors. , who were appointed as Income Tax Inspectors on different dates in the year 1971-1972, challenged the recommendation made by D.P.C. held on 6.1.1981, on the basis of which, the Petitioner had been given promotion to the post of Inspector of Income Tax Class-II (Group ''B''). The Tribunal in the earlier T.A. having declined to quash the promotion of the Petitioner in the aforesaid Transfer Application in its order dated 27th June, 1991 and the review filed against the judgment having been rejected on 3.11.1992, it was contended by the learned Counsel for the Petitioner that the Original Application had been filed in the time. There is no dispute that the promotion of the Petitioner to the post of Inspector of Income Tax, Group-B had been challenged by opposite party No. 4 and three Ors. and the Tribunal while dismissing the Original Application held that the Petitioner is senior to opposite party No. 4. Therefore, the order in Annexure-3 dated 28.1.1983 holding that

promotion of the Petitioner was wrong due to incorrect determination of seniority in the grade of I.TO. held on 6.1.1981, is also wrong. The question is whether the Petitioner should have approached the Tribunal immediately after the order was passed on 28.1.1983 or not. When the said order was passed, the writ application filed by opposite party No. 4 and three Ors. was sub-judice before this Court and was subsequently transferred to the Central Administrative Tribunal, Cuttack Bench, Cuttack in the year 1986. The question of inter-se seniority between the Petitioner and opposite party No. 4 was to be adjudicated in the said Transfer Application and, therefore, pending disposal of the said Transfer Application even if the Petitioner had approached the Tribunal in 1986, the Tribunal could not have decided the issue. The question of inter-se seniority was finally decided in the order delivered by the Tribunal on 27.6.1991 in T.A. No. 214 of 1986. In the aforesaid Transfer Application, a review was filed. The said review was dismissed on 3.11.1992 whereafter the Petitioner made a representation for implementation of the judgment delivered in the Transfer Applications and no action having been taken, he approached the Tribunal. The Tribunal while dismissing the Original Application though held that the import of the judgment in the Transfer Application No. 215 of 1986 is that the Petitioner would become senior to those who joined as Inspectors of Income Tax later than him but were confirmed earlier, the Applicant did not approach the Tribunal within the period of limitation for re-fixation of his seniority. This observation appears to be incorrect considering the fact that determination of inter-se seniority was the subject matter of dispute in the Transfer Application and that was adjudicated by the Tribunal in the year 1991 and the review filed by opposite party No. 4 and three Ors. against the judgment of the Tribunal in the Transfer Application was dismissed in the year 1992. We are, therefore of the view that so far as second prayer of the Petitioner is concerned, it was within the period of limitation and the Tribunal should have allowed the prayer. Once the second prayer of the Petitioner is allowed, the first prayer will automatically stand allowed because of the finding in the Transfer Applications with regard to inter-se seniority and such finding taken away the effect of order dated 28.1.1983.

5. For the reasons stated above, we allow the writ application, set aside the impugned judgment and direct that the seniority of the Petitioner vis-a-vis opposite party No. 4 having been determined in the aforesaid Transfer Applications, the department may grant consequential benefit to the Petitioner by giving him promotion to different higher posts from the date his immediate juniors had been given promotion and such promotion shall only be given effect to for the purpose of retrial benefits and the Petitioner cannot claim the differential arrear salary that may be due to him for such promotion.

The writ application is accordingly disposed of.

B.N. Mahapatra, J.

6. I agree.

