**(1981) 03 PAT CK 0011**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 432 of 1978 (R)

Manendra Prasad APPELLANT

Vs

Ranchi Regional Development Authority and Another RESPONDENT

**Date of Decision :** 31-03-1981

**Acts Referred:**

Bihar and Orissa General Clauses Act, 1917 — Section 4(30)
Constitution of India, 1950 — Article 16

**Citation :** AIR 1981 Patna 208

**Hon'ble Judges :** Umesh Chandra Sharma, J;Satyeswar Roy, J

**Bench :** Division Bench

**Advocate :** J.P. Srivastava, A.B. Kumar and B.P. Verma, for the Appellant; N.K. Prasad, Bhagwat Prasad and B.S. Lal, for the Respondent

**Final Decision :** Allowed

## Judgement

Satyeshwar Roy, J.—By this application under Articles 226 and 227 of the Constitution the petitioner has prayed for quashing Annexure-''7'' order dated 13-7-1978 passed by Ranchi Regional Development Authority, respondent No. 1, by which the petitioner was reverted from the post of Accountant to that of Upper Division Clerk with effect from 12-6-1978.

2. Applications were invited by respondent No. 1 for the post of Senior Accounts Clerk in the Upper Division Scale. The required qualifications for the candidates were that they should be at least intermediate in Commerce, Science or Arts with Mathematics and possess at least 5 years'' experience in the Accounts work in a local body or Public Works Department (the P. W. D.). The petitioner in pursuance of that advertisement applied for the post and by Annexure-''l'' dated 10-6-1970 he was appointed temporarily to the post of Senior Accounts Clerk. By office order dated 19-5-1976, Annexure-''3'' the petitioner was confirmed. By office order dated 7-4-1976, Annexure-''2'' respondent No. 3, who was senior most Upper Division Assistant in the office of respondent No. 1 was appointed as Accountant in the office of respondent No. 1 in anticipation of the concurrence of

the Bihar Public Service Commission (the B. P. S. C.). By order dated 17-8-1976, Annexure-''4'' respondent No. 1 promoted the petitioner on purely temporary basis for one year to the post of Accountant. It was provided that if the petitioner would not pass the Local Bodies Accounts Examination then he would be reverted to the post of Upper Division Clerk. The petitioner was posted to work as Accountant in the office of the Executive Engineer of respondent No. 1. As the petitioner did not pass the Local Bodies Accounts Examination, he was reverted to the post of the Upper Division Clerk. The grievance of the petitioner is that although applications were invited for the post of Senior Accounts Clerk and the petitioner was appointed as such in pursuance of that advertisement by Annexure-''1'' and was subsequently confirmed as Senior Accounts Clerk but he was not reverted to his substantive post i.e., Senior Accounts Clerk. His further grievance is that although respondent No. 3 did not pass the Local Bodies Accounts Examination before his promotion as an Accountant as no condition was imposed in his case that he would be reverted to his substantive post if he would not pass the Local Bodies Accounts Examination, no condition could have been imposed by respondent No. 1 making it compulsory for the petitioner to pass the Local Bodies Accounts Examination as that amounted to change of the conditions of the service which was without jurisdiction and also imposition of such condition in case of the petitioner amounted to discrimination inasmuch as no such condition was imposed in the case of respondent No. 3.

3. In the counter-affidavit filed on behalf of respondents Nos. 1 and 2 it has been admitted that the petitioner was appointed as Senior Accounts Clerk and that he was confirmed in that post. It has been stated that a person can be substantively appointed as accountant only after he passes Local Bodies Accounts Examination and as the petitioner could not pass it he was reverted from the post of accountant. Their further case is that respondent No. 3 is the senior most clerk in office of the Authority and who is also a member of the Scheduled Tribe was promoted as Accountant. He was exempted from passing the accounts examination in terms of Government letter dated 1-6-1978, Annexure-''B'' to the counter affidavit. It was asserted that the reversion of the petitioner was legal and valid.

4. According to the supplementary affidavit filed on behalf of the petitioner there are two cadres of clerks in the office of respondent No. 1, one is general cadre and the other is accounts cadre. It was stated that he could not have been reverted to the general cadre when his appointment was in the accounts cadre. No counter affidavit had been filed to the supplementary affidavit filed on behalf of the petitioner.

5. It may be stated that Ranchi Improvement Trust was created under Bihar Town Planning and Improvement Trust Act 1951 (hereinafter referred to be as the Trust Act). The petitioner and respondent No. 3 were in the service of the Trust. Rules under the Trust Act known as the Bihar Improvement Trust Officers and Servants (Appointment, Classification, Conduct, Control and Punishment)

 

Rules, 1956 (the Rules) were framed regarding the service conditions and other matters of the officers and servants of the Trust. The Governor of Bihar promulgated Bihar Regional Development Authority Ordinance 1974 (hereinafter referred to as the Ordinance) which was extended from time to time. By Section 93 (1) (a) of the Ordinance it was provided that the Trust Act shall cease to have effect within area notified under Sub-section (1) of Section 3. By notification u/s 3 (1) of the Ordinance published in the official gazette Ranchi Regional Development Authority (the Authority) was created and in terms of Section 93 (2) of the Ordinance all officers and employees of the Trust shall be deemed to have been transferred to and become officers and employees of the Authority on the same terms and conditions of service as held under the Trust and shall continue to do so until and unless such terms and conditions of the service were duly altered by the Authority. It is admitted position that no rules have been framed by the Authority, The employees of the Authority, therefore, shall be governed by the Rules noticed above.

6. The respondents Nos. 1 and 2 have relied on Rule 6, which is as follows:--

"Classification of staff......(i) The officer and Secretary of the Trust shall be classified into two groups, namely:--

(a) "officers" which will include the Secretary the Chief Engineer, other Engineers, not below the rank of Assistant Trust Engineer and other employees who may be classified by the Trust as such; and

(b) "other servants" of the Trust which will include all employees who are not officers.

(ii) The clerical posts under the Trust shall be classified into three groups namely:--

(a) "Selection posts" which will include the Accountant the Head Clerk and any other clerical posts that may be classified by the Trust as such-

(b) "Upper Division posts"; and

(c) "Lower Division posts." In Rule 6 (i) second line, the word "Secretary" is perhaps a misprint for "Servant". According to Mr. N. K. Prasad, learned counsel appearing on be- half of the respondents, the rule quoted above speaks only of one cadre which is known as clerical post. According to Mr. Srivastava, learned counsel appearing on behalf of the petitioner that rule speaks about classification and grouping and not about cadre. Cadre has been defined in Rule 12 of the Bihar Service Code which means the strength of the service or a part of service sanctioned as a separate unit. Rule 6 speaks about classification of staff of the Authority. The staff of the Authority has been classified as "officers" and "other servants" other servants have been classified into three groups. Employees of the Authority who are not officers have all been classified as clerks. This rule does not speak about cadre. In absence of a counter affidavit to the supplementary affidavit filed on behalf of the petitioner wherein it has been submitted that there are two cadres in clerical staff and in absence of any rule contrary to what has been asserted by the petitioner, it must be held that the petitioner was in accounts cadre before he was promoted as accountant. He, therefore, could not have been reverted by Annexure-"7" to the post of Upper Division Clerk. The order of the Authority, as contained in Annexure-"7" reverting the petitioner to the post of Upper Division Clerk must be held to be bad.

7. There is no provision in the Rules that a person cannot be substantively appointed unless he passes the Local Bodies Accounts Examination. Mr. Prasad, submitted that the Authority is a local authority and, therefore, the rules framed under the Bihar and Orissa Local Self Government Act, 1885 (the L. S. G. Act) shall apply, which provides according to Mr. Prasad that a candidate for employment as an accountant in the office of the Authority must hold a certificate that he has passed the examination prescribed in the Public Works Department Code. In support of his contention that the Authority is a local authority, Mr. Prasad relied on Section 2 (m). Section 63 (2) and Section 44 (3) of the Ordinance. Section 2 (m) provides that local authority means any Municipal Corporation, a local body constituted under Bihar and Orissa Municipal Act, 1922 or Panchayat established under Bihar Panchayat Raj Act or any such local body constituted in any Region to which this Ordinance applies. Section 63 (2) states that the Authority shall be deemed to be a local authority within the meaning of the Bihar and Orissa General Clauses Act for the purpose of Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, Bihar Money Lenders Act, 1938, Bihar and Orissa Local Body Audit Act, 1925 and the Local Authorities Loans Act, 1914. Heading of Section 44 of the Ordinance is Fund of the Authority and Section 44 (3) provides that contributions shall be made from Municipal Funds to the Authority. A local authority has been defined in Section 4 (30) of the Bihar and Orissa General Clauses Act, 1917 (General Clauses Act) to mean a Municipal Committee, a District Board or any other authority entrusted by any government with or legally entitled to control or management of municipal or local fund. The Authority is legally entitled to management of municipal funds which it gets by way of contribution. Reading the, definition of the local authority in the General Clauses Act and the different provisions of the Ordinance noticed above the Authority must be held to be a local authority.

8. According to Mr. Prasad, the Rules framed under the L. S. G. Act with regard to the qualification of a candidate for the purpose of appointment as accountant shall apply. He could not point out any provision in the Ordinance in support of this contention. He however contended that even if the rules framed under L. S. G. Act do not apply, the Authority is competent to prescribe qualification for appointment of a candidate to a selection post which included the post of accountant. Mr. Srivastava did not challenge this contention of Mr. Prasad. But he submitted that no resolution of the Authority has been shown by which it laid down any such qualification for the purpose of appointment to the post of accountant. He contended that even if the Authority prescribes qualification for an accountant, it must be applicable to all candidates, prmotees or direct

 

recruits. It is true that no resolution of the Authority has been brought on record by which it prescribed that a candidate for the purpose of substantive appointment to the post of accountant must pass Local Bodies Accounts Examination. Mr. Prasad contended that the Authority prescribed that qualification for all candidates. According to him in the case of the petitioner that was incorporated in Annexure-- ''4'' and in the case of respondent No. 3 he was exempted from passing that examination in terms of Annexure -- ''B''. Annexure-- ''B'' is a letter dated 21-6-1978 issued by the State Government to all Heads of Departments, Departmental Secretaries and others. From Annexure---''B'' it appears that the State Government decided that officers who have crossed the age of 50 years may be exempted on compasionate grounds and on special situation from passing departmental examination. Annexure-- ''B''. therefore, refers to officers only and neither the petitioner nor respondent No. 3 is an officer. Annexure-- ''B'', therefore, has no application to this case. Moreover, if passing of Local Bodies Accounts Examination is a must for an accountant nothing appears from Annexure-- ''2'' why exemption has been made in case of respondent No. 3 when he was appointed as an accountant.

9. This brings us to the contention of Mr. Srivastava that the Authority has discriminated between two equals, the petitioner and respondent No. 3 there is no dispute about the legal position that the authority cannot discriminate between two equals for the purpose of appointment to the post of accountant. In the case of petitioner an additional qualification for his substantive appointment as an accountant has been prescribed, whereas in the case of respondent No. 3 no such qualification has been laid down. It must, therefore, be held that the authority has discriminated between the petitioner and respondent No. 5 for the purpose of appointment to the post of accountant.

10. Mr. Prasad contended that reversion of the petitioner cannot be challenged inasmuch as the petitioner accepted his promotion on a particular condition and once he has accepted his promotion he is bound to accept the condition also. According to Mr. Prasad the petitioner cannot be allowed to approbate and reprobate. A reference was made by him of a particular observation of the Supreme Court made in paragraph 45 in the case of Pannalal Binjraj Vs. Union of india (UOI), . There is no such observation of the Supreme Court in that case which supports the contention of Mr. Prasad. To my mind in a situation with which we are faced in this case the petitioner cannot be said to acquiesce his right to challenge the jurisdiction of the Authority to impose particular condition in his case for appointment as an accountant. The observation of the Supreme Court, therefore, has no application to this case. Rather from the facts of this case it appears that the petitioner agreed to pass the Local Bodies Accounts Examination in ignorance of the fact that there was no resolution as was adopted by the Authority laying down that qualification for a person for appointment as an accountant. According to Annexure--''2'' the ground for appointment of respondent No. 3 as an accountant is that although respondent No. 3 is a senior most Upper Division Assistant in the office at the time of promotion to the post of

 

Head Assistant his rightful claim was ignored. A gross injustice was done to him by ignorance. On this ground and also on the ground that respondent No. 3 is a member of Scheduled Tribe and has brilliant record of service he was appointed as an accountant. The Authority has no jurisdiction to lay down different criteria to be applied with regard to the candidates for filling up a particular post. Nothing has been shown that a post of accountant in the Authority is reserved for the members of the Scheduled Tribe. Nothing has been shown that the Authority have decided that a member of the Scheduled Tribe for the purpose of appointment as an accountant is not required to pass the Local Bodies Accounts Examination, if that is permissible in law. It must, therefore, be held that the Authority denied the petitioner equality of opportunity for appointment to the post of accountant.

11. A grievance was also made on behalf of the petitioner that respondent No. 3 who was in the general cadre by his appointment as accountant has been transferred to the accounts cadre. According to the petitioner importing persons from one cadre to another to fill up promotional avenue is bad in law, and therefore, the appointment of respondent No. 3 must be set aside. We are not inclined to apply our mind to this submission as no prayer has been made in the application for quashing Annexure-- ''2''.

12. In the result, this application is allowed and Annexure-- ''7'' order dated 13-7-1978 is quashed. There will be no order as to costs.

Umesh Chandra Sharma, J.

13. I agree.

 