

(1990) 12 OHC CK 0019

In the Orissa High Court

Case No : Civil Revision No. 465 of 1985

Sri Jagar Singh

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 17-12-1990

Acts Referred:

Administrative Service (Pay) Rules, 1954 — Rule 9(4), 9(6)

Citation : (1991) 71 CLT 434 : (1991) 1 OLR 335

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

Bench : Single Bench

Advocate : S.D. Das, K.N. Singh, A.S. Nandy and B. Panda, for the Appellant;
K.C. Mohanty, A.S.C., for the Respondent

Final Decision : Allowed

Judgement

A.K. Padhi, J.—Plaintiff is the petitioner Challenging the judgment and decree dated 7-2-195 and 15-2-1985 respectively in Money appeal No. 3 of 1982 reversing the judgment and decree dated 16-11-1982 and 23-10-1982 respectively passed in Money Suit No. 13 of 1981, this Civil Revision has been filed.

2. In the plaint, it has been averred that the plaintiff "was appointed to the Indian Administrative Service in the year 1976 and was allotted to the Orissa Cadre. After completion of probation" period he was posted as SDO, Bhanjnagar on 22-2-1978 and thereafter posted as Charge Officer of Sambalpur Major Settlement in which post he continued till 25-7-1980. these two posts, according to him carries a basic pay of Rs. 800/-. The plaintiff-petitioner's pay is to be fixed under the provisions of "the Indian Administrative Service (Pay)" Rules, 1954 (hereinafter referred to as the "Rules"). According to the petitioner, since his appointment was in accordance- with Rule 9(4) of the Rules, provisions of Rule 9 (6) of the Rules is due to him and therefore he is entitled to "minimum basic scale of Rs. 850/- as per the schedule appended to the plaint for the period he served as SDO and Charge Officer.

It is submitted that the scale of pay prescribed for the above two posts as Rs. 850 - 80-1150-EB-60-14450/-. According to the plaintiff petitioner, he was entitled to at least the minimum salary of "Rs. 850/- which is prescribed for the post of SDO/Charge Officer. In spite of plaintiff's repeated demands to give his pay at the rate of Rs. 850/--, he was only "paid at the rate of Rs. 780/- with special pay attached to the post besides DA and ADA Averring such facts, plaintiff claims the differential pay which is prescribed for the post of SDO/Charge Officer which was being paid by the defendant-State Government to the plaintiff. The total money which is claimed under plaint "is . Rs. 2,053-10 as per the rate of calculation given in the schedule annexed to the plaint._

3. Defendant-State filed written statement. According to the averments, in the written statement, the plaintiff is not entitled to claim the pay prescribed by the State Government for the post of SDO and Charge Officer because those are the pay scale only admissible to the members of the OAS Class-I (Junior Branch) held by promotion by Officers of State Administrative Service. According to the defendant, the plaintiff is only entitled to draw pay in the scale of Junior scales prescribed for Officers of Indian Administrative Service for the period he .was working as SDO (General) and Charge Officer.

4. Plaintiff examined himself as PW 1. No witness was examined on the side of the defendant. Reliance was placed by both sides on AN India Administrative Service (Pay)-Rules, 1954.

5. Learned trial Court relying on Rule-9 (4) and Rule 9(6) of the Rules decreed the suit on the finding that the prescribed pay of SDO and Charge Officer is Rs. 850/- and under. Rule 9, (6) of the -Rules, plaintiff was entitled to draw the minimum basic pay prescribed for the post he was holding.

6. Defendant filed appeal which was numbered as Money Appeal No. 3 of 1982,, The appellate Court reversed the decree of the trial Court and held :

"...The posts of SDO, and Charge Officer have been prescribed with the particular scales of pay as - is evident" from the plaint and the written statement of the parties (.though no! such notification have been proved from .either sides). What the respondent wants, his case should lit in to the scale of pay already prescribed by the Government for the posts of SDO" and Charge Officer. , It is on the .basis of this, he claims the difference. But the entire matter is within the; competency of the State Government or the Central,. Government, as the case may be, and this is clear from the language of Sub-rule (6), which runs as follows:

In paragraph 9 while concluding the judgment, the appellate-Court held that the decision on the question of pay scale "whether" the plaintiff is entitled to draw the salary under any particular scale of pay is not to be agitated in the Civil Court and with the above .findings allowed the appeal and dismissed the suit.

7. Learned advocate for the petitioner submits that the relevant rule applicable to the plaintiff is Rule 9(4) read with Rule 9 (6) of the Rules. Since the authority

have prescribed pay scale for the post of SDO/Charge Officer, the plaintiff is entitled to the minimum basic-pay under- the provisions of Rule 9 (6) of the Rules, The- learned, advocate for the opp. party on the other hand submits that the findings of the learned appellate Court are correct and are not assailable.

8. From the rival contention of both the sides, the moot point arises for consideration is as to when plaintiff has been appointed to a post which does not come under Schedule III of the Rules, he being direct recruit whether he is entitled to the basic pay prescribed for the post of SDO-cum-Charge Officer when he is posted to hold such posts. Rule 9 of the Rules which is relevant for the purpose reads as follows :

"9. Pay of members of the Service appointed to posts not included in Schedule III.

(1) No member of the Service shall be appointed to a post other than a post specified in Schedule III, unless the State Government concerned in respect of posts under its control, or the Central Govt. in respect of posts under its control, as the case may be, make a declaration that the said post is equivalent in status and responsibility to a post specified in the said Schedule.

(2) The pay of a member of the Service on appointment to a post other than a post specified in Schedule III shall be the same as he would have been entitled to, had he been appointed in the post to which the said post is declared equivalent.

(3) For the purposes of this rule "post other than a post specified in Schedule III includes a post under a body (incorporated or not which is wholly or substantially owned or controlled "by the Government.)"

(4) Notwithstanding anything contained in this" rule the State Government concerned in respect of any posts under its control, or the Central" Government "in respect" of any posts under its control, may, for sufficient "reasons to be" recorded in writing,, where question is not possible, appoint any member" of the Service to" any such post. without making a declaration that the said post is equivalent in status and responsibility to a post specified, in Schedule III.

(5) A member of the Service on appointment" to a post referred to in Sub-rule"(4), in respect of which no pay. or scale has been"" prescribed,, shall draw such rate of pay as the State Government, in consultation with the Central Government in the case of a : post under the control of the State Government or as the Central Government in the case of a post under the control of the Central Government may, after taking into account the nature of duties and responsibilities involved in the post, determine.

(6) A member of the Service on appointment to a post referred to in Sub-rule (4), in respect of which any pay or scale of pay has been prescribed, shall draw where the pay has been prescribed the prescribed pay and where scale of pay has" been prescribed, such rate of pay not exceeding the maximum of the scale

as may be fixed in this behalf by the State* Government or, as the case may be, by the Central Government:

Provided that the pay allowed to an officer under this Sub- rule (5) shall not at any time be less than what he would have drawn had he not been appointed --to a post referred to in Sub-rule(4).:

9. Admittedly, the State Government had appointed plaintiff- petitioner as S.D.O./ Charge Officer which post is not included in Schedule III. Therefore his appointment directly comes within the purview of Rule 9 (4) of the Rules. It is also admitted at the .Bar that-the State Government "has not made any declaration that the said post is equivalent in status and responsibility to any post specified in Schedule III." therefore the" Officer who is appointed by the State Government without a declaration is "required under Sub-rule (4) to be equivalent to that of any post; in Schedule III shall "be entitled to the pay which ...has been prescribed for the post he was holding under provisions of Rule 9(6) of the Rules. As, it is seen from the plaint and written statement that Rs. 850/- was the basic pay at the relevant time which .was prescribed for the post of S.D.O.-cum-Charge Officer, the plaintiff was "entitled "to draw the basic pay for the post to which he was appointed by the State Government. Since the pay to which he was entitled as per the Rules was denied to him by the State Government, he had the cause of action to bring the suit and therefore the suit is maintainable.

10. In the result, the Civil Revision is allowed, judgment and decree passed by the" appellate Court is not sustainable under law and therefore is set aside and the judgment and decree passed by the trial Court is restored. The suit is "decreed and the plaintiff Is entitled to get Rs. 2, 053. 10, from the defendant. The "defendant is "directed to pay the decretal dues within three months from today failing which the plaintiff is entitled to levy execution. In the circumstances of the case, there shall be no order as to costs.