(1968) 08 OHC CK 0005

In the Orissa High Court

Case No : O.J.C. No. 448 of 1967

Sribatsa Misra APPELLANT

Vs

State of Orissa and Another RESPONDENT

Date of Decision : 20-08-1968

Acts Referred:
Constitution of India, 1950 — Article 309

Citation : AIR 1969 Ori 13 : (1968) 34 CLT 1099 : (1970) 1 LLJ 333

Hon'ble Judges : S. Barman, C.J;S. Acharya, J

Bench : Division Bench

Advocate : B.M. Patnaik and G.B. Patnaik, for the Appellant; Adv.-General, for the Respondent

Final Decision : Allowed

Judgement

Barman, C.J.—The petitioner challenges an order of the Additional District Magistrate, Sundargarh, dated March 18, 1967 by which the petitioner was reverted from the rank of senior Upper Division Clerk td the rank of Junior Upper Division Clerk on the ground that he had not passed the Final Accounts Examination as required by Rule 9 of the Orissa Ministerial Services (Method of Recruitment and Conditions of Service of Clerks and Assistants in the District Offices and Offices of Heads of Departments) Rules 1963 (hereinafter referred to as the Orissa Ministerial Service Rules).

2. The petitioner''s main points are that the Orissa Ministerial Service Rules, 1963, as prospective do not apply to his case; that he was exempted from undergoing a course of training in Accounts as required prior to the Rules of 1963; that in any event he actually passed the Accounts Examination and should be deemed to have satisfied the appropriate rule or order -- even if applicable to the petitioner -- requiring the passing of such examination, all as discussed hereunder.

3. Rule 9 of the Orissa Ministerial Service Rules, 1963 which requires the passing

of departmental examination as a condition precedent for promotion to the higher posts in the cadre of ministerial service of the district offices, so far as material, is this:

"9. Promotion to the higher posts in the cadre of ministerial service of district offices shall be subject to passing of departmental examinations and such other tests, if any, as may be ordered by the head of the district office in that behalf and shall be based on merit and suitability in all respects, with due regard to seniority, and will be made in the following manner, namely

xx xx xx"

For commencement of the Rules, it is provided in Sub-rule (2) of Rule 1, which is this:

"1(2) They shall come into force on such date as the State Government may, by order, direct."

The State Government by order directed the Rules to commence from April, 15, 1963.

4. In the counter-affidavit filed on behalf of the opposite parties (State of Orissa and the Additional District Magistrate, Sundergarh) in support of the order of reversion it is said that according to Rule 9, the passing of the Final Accounts Examination is a condition precedent for promotion to the rank of senior Upper Division Clerk which is equivalent to the post of a Head-clerk previously held by the petitioner; that the petitioner was not eligible to hold the post of Head clerk as he had not till December, 1966 passed the Final Accounts Examination as required by the Orissa Ministerial Service Rules, 1963 and the Accounts Examination Rules prior thereto. It was also stated that the petitioner was not exempted from passing the said examination and that he had been taken as Head Clerk under the orders of the Collector only as a provisional measure. The records, however, do not show what has been stated in the counter-affidavit in support of the order of reversion. The correct position appears to be as hereinafter stated.

5. On April, 1, 1948 the petitioner was appointed Lower Division Clerk in which post he was confirmed on April 1, 1950. On July 18, 1955 he was promoted as Junior Upper Division Clerk. Two years thereafter on June 1, 1957 the petitioner, then upper division clerk cum Store Keeper of Rajgangpur N.E.S. Block, was promoted to the post of Accountant of that office but he was to draw his salary on his then existing pay scale, until he passed the Accounts Examination in the Accounts Training School, Bhubaneswar. Thereafter, by an order dated August 19, 1958 the Government of Orissa were pleased to exempt him, among, others, from undergoing the course of training in Accounts in the Accounts Training School at Bhubaneswar as prescribed in Political & Services Department letter No. 4485 (68) CDF dated December 20, 1956. Thereafter in March. 1960 he was promoted on a temporary basis as Progress Assistant which post, the petitioner

states in his petition, he joined on August 1, 1960 and continued therein till August 31, 1964. In the meantime, the Orissa Ministerial Service Rules, 1963 came into force with effect from April, 1963 as aforesaid.

6. The circumstances in which after the Government exempted the petitioner from appearing in the Accounts Examination, the question of the petitioner having been required to pass the examination again arose, are stated hereunder.

7. On April 22, 1965 Government Order No. 5275 (13) CD dated October 19, 1963 requiring the passing of the examination was for the first time communicated to the petitioner under memo No 2553 (1) Estt. dated April 22, 1965. The said Government order of October 19, 1963 purports to be a decision of the Government that the unpassed candidates holding the posts of Upper Division Clerks and Head Clerks in the blocks will be allowed two years time from the date of issue of the said order to pass the Preliminary and Final Accounts Examination prescribed by the Board of Revenue for the purpose; in case anyone fails to pass the tests within the period specified above, he will have to quit or be downgraded; no exemption will however be allowed from passing the Accounts tests,

8. The petitioner submits that he was not aware of the said order of Government dated October 19, 1963 prior to the receipt of the memo dated April 22, 1965. Alternatively he submits that assuming that he is bound by the said order of Government dated October 19, 1963, even so he actually passed the Examination; and should be deemed to have passed the Examination within the period as required by the said order.

9. The reasoning on which the petitioner claims that he should be deemed to have passed the examination is, in substance, this. The two years time mentioned in the said order of October 10, 1963 requiring him to pass the Examination should be counted from April 22, 1965 that is, the date on which the order was actually communicated to and received by him; in other words, according to the petitioner he was given time to pass the examination till April 22, 1967; in fact he appeared in the Final Accounts Examination in December, 1966 -- the last date of which was December 12, 1966. Although the result of the Examination was published on October 4, 1967 the petitioner claims to have passed the same with effect from December 12, 1966 which was the last date of the examination; this claim is based on Government order dated June 28, 1956 quoted in paragraph 10 of the writ petition to the effect that

"Clerk who passes the examination or test shall be deemed to have passed the same on the last date on which the examination or test was held."

The petitioner having thus passed the examination the last date of which was December 12, 1966 must be deemed to have passed it on that date which was well within the period of two years which was not due to expire until April, 22, 1967 in the case of the petitioner. But according to the opposite parties, the period of two years must be counted from the date of issue of the aforesaid

Government order dated October 19, 1963 so that, according to them, two years expired on October 19, 1965; and because the petitioner did not pass the examination within this period, the opposite parties could revert him.

10. But the crux of the point for decision is; Can it be said in the circumstances of the case that the petitioner was bound to pass the departmental examination? In our opinion, having regard to the terms of the order of his promotion dated June 1, 1957, such promotion was not made subject to any condition that he should pass any departmental examination. The order of promotion dated June, 1, 1957, was in these terms:

"Sri Sribatsa Misra U. D. Clerk cum Storekeeper of Rajgangpur N. E. S. Block is promoted to the post of Accountant of that Block Office in the scale of 90-5-120 P. M. with effect from 1st June. 1957. He will, however, draw his salary in the existing pay scale of Rs. 70-2/1-90-E. B 4-100 until he passes the Accounts training class at Bhubaneswar.

S. A. L. Nair District Magistrate, Sundergarh"

It is clear from the aforesaid order that his promotion was not subject to any condition. The only condition was in respect of the salary he would draw on promotion, and all that was ordered was that until he passed the examination, he would continue to draw pay in his then existing scale. But there was no ambiguity about the position that he was promoted as Accountant of the Rajgangpur Block Office. The order as worded cannot support the contention that his promotion was made subject to his passing the Accounts Training Class examination at Bhubaneswar. This our view is supported by the decision of the Supreme Court in Chief Secretary to the Government of Mysore v. S. C. Chandraiah 1967 SLR 155 158 (Paragraph 7). There, in an almost similar case, their Lordships laid down as follows:

"When the order of promotion is clear, unambiguous and self-contained, we can not legitimately imply any conditions which are not incorporated therein. The promotees can only be governed by that order and other statutory rules regulating the conditions of service, if any, that were ''obtaining at that time''. We there fore hold that the order promoting the respondents as Assistants was not subject to the condition that they should pass any departmental test." (the underlining (here in '' '') is ours).

11. In the present case, at the point of time -- June 1, 1957 -- when the petitioner was promoted by a self-contained order in such clear and unambiguous terms as quoted above, the Orissa Ministerial Service Rules, 1963 requiring the assistants to pass departmental examination, as a condition precedent to promotion, were not there in existence; in fact, as already pointed out the said Rules did not come into force until April 15, 1963, that is to say, until about six years after the petitioner had been promoted to the post of Accountant although only his drawal of pay in the higher scale of Accountant was made subject to his passing the Examination.

12. As regards the passing of the Examination in the Accounts Training School. Bhubaneswar, as a condition precedent to the drawal of a higher pay as Accountant than what he was drawing as U. D Clerk cum Store-keeper, the Government by their order dated August 19. 1958 exempted him from undergoing such training in the Accounts Training Class at Bhubaneswar. In fact, the District Magistrate, Sundergarh, also permitted the petitioner to draw pay in the higher scale with effect from August 1, 1957. After having thus exempted him from training in Accounts in the Accounts Training School in 1958 and permitted him to draw pay in the higher scale with effect from August 1957, it was not open to Government to again require the petitioner to pass the Preliminary and Final Examination as they purported to do by their subsequent order dated October 1963, nor was it open to Government to take the view that the petitioner had not qualified himself to continue in the post of Accountant to which he had been promoted.

13. This by itself is sufficient ground for quashing the order of reversion. It is unnecessary for us to go into the questions as to whether the petitioner must be deemed to have passed the Examination in compliance with the requirements of the Orissa Ministerial Service Rules, which he claims to have done in December 1966 within the prescribed period; whether the order of Government dated October 19, 1963, was not actually communicated and received by him until April 22, 1965; and whether the period of two years prescribed in that order should run from the date of that order, namely October 19, 1963 or from April 22, 1965, the date of receipt of the said order by the petitioner, all which matters being purely questions of fact, we are not to deal with in this writ petition.

14. In the result, therefore, the writ petition is allowed and the order of reversion of the petitioner dated March 18, 1967 is quashed. The petitioner is entitled to all salaries and emoluments due to him, on promotion, as permissible under the rules and according to law. The petitioner will also be entitled to costs. Hearing fee Rs. 100 (Rupees one hundred only).

Acharya, J.

15. I agree.

