
(2015) 11 OHC CK 0026
In the Orissa High Court
Case No : W.P.(C) No. 6467 of 2012

State of Odisha and Others	Vs	APPELLANT
Ashok Kumar Sethi and Others		RESPONDENT

Date of Decision : 13-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 — Section 6, 7

Citation : (2015) 2 ILR (Ori) 1073

Hon'ble Judges : D.H. Waghela, C.J. and B.P. Ray, J.

Bench : Division Bench

Advocate : B. Mohanty, J.B. Swain, K. Pradhan, J.R. Rath and B. Barik, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Ray, J.—This writ petition under Articles 226 & 227 of the Constitution of India has been filed by the State of Odisha and its functionary challenging the judgment dated 29.4.2011 passed by the learned Orissa Administrative Tribunal, Bhubaneswar in O.A. No. 752/2009 quashing the order dated 23.7.2009 passed by the Additional Secretary to Government in Agriculture Department reverting opposite party No. 1, Sri Ashok Kumar Sethi from the post of Special Officer, Office of the Director of Horticulture to the rank of Group-B (Class-II) Horticulture Service and directing to reinstate Sri Sethi in the promotional rank/post forthwith along with other ancillary directions, vide Annexure-1.

2. The case of the petitioner is that the present opposite party No. 1, Sri Ashok Kumar Sethi approached the learned Tribunal by filing O.A. No. 752/2009 challenging the order of his reversion. According to Sri Sethi, he belongs to Scheduled Caste community and while working as Assistant Horticulture Officer, Group-B (Class-II), his name was recommended by the D.P.C. for promotion to the rank of Junior Class-I. It appears, on the basis of the said recommendation of

the D.P.C., opposite party No. 1 was promoted to the rank of Junior Class-I of Horticulture Service, vide order dated 30.5.2008. After about one year, opposite party No. 1 was reverted to his former post by order dated 23.7.2009. Challenging the order of reversion, he filed Original Application No. 752/2009 before the Tribunal.

3. The State of Odisha filed its counter affidavit in the Original Application stating therein that the D.P.C. in its meeting held on 11.3.2008 decided that the present opposite party No. 1 would be considered for promotion against the vacancy meant for Scheduled Tribe Category as no Scheduled Tribe candidates were available for the zone of consideration. It was further stated that in pursuance of such recommendation of the D.P.C., opposite party No. 1 was promoted to the rank of Junior Class-I and the recommendation was sent to the Orissa Public Service Commission for its concurrence. Since the Orissa Public Service Commission refused to accept the recommendation of the D.P.C. on the reasoning that the principle of exchange of vacancy between the Scheduled Castes and Scheduled Tribes category was not applicable to the instant promotion, the impugned order directing the reversion of opposite party No. 1 was passed.

It was further stated that in view of the 2nd proviso to Section 7 of the Orissa Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 (in short, "the Act") read with Sub-Rule (3) of Rule-5 of the Rules framed under the Act, the D.P.C. could not have recommended the case of opposite party No. 1 for promotion. In other words, it was stated that the post having been earmarked for Scheduled Tribe candidates and in case of non-availability of such category of candidates, the candidates belonging to Scheduled Caste community could not be filled up against such promotional post.

However, on the basis of these averments of the State of Odisha, the Orissa Public Service Commission, which had submitted its advice in the aforesaid manner, had chosen not to file any counter affidavit before the Tribunal.

4. Learned Tribunal after hearing learned counsel for the parties by judgment dated 29.4.2011 under Annexure-3 has quashed the order of reversion and also granted the necessary consequential relief to opposite party No. 1.

5. We have perused the records and also the order impugned in this writ petition, wherefrom we find that the learned Tribunal relying upon the provision of Section 6 of the Act has passed the said judgment.

We ourselves have also perused the provision to Section 6 of the Act, which authorizes the competent authority to resort to the modality of the exchange in the matter of reservation between Scheduled Castes and Scheduled Tribes in the event of nonavailability of candidates from the respective communities.

Admittedly, opposite party No. 1 belongs to a Scheduled Caste community and

the post, to which he was promoted, was reserved for the candidate belonging to Scheduled Tribe community. The records reveal that no Scheduled Tribe candidate was available for the zone of consideration. In such circumstances, by application of the provision of Section 6 of the Act, opposite party No. 1 was promoted to the rank of Junior Class-I inasmuch as Section 6 of the Act empowers the authority for exchange of post between Scheduled Castes and Scheduled Tribes. We find, such modality has been adhered to while according promotion to opposite party No. 1 to the rank of Junior Class-1. Therefore, the promotion of opposite party No. 1 from the rank of Junior Class-II to Junior Class-I cannot be faulted with.

6. However, opposite party No. 1 was reverted by applying the 2nd provision to Section 7 of the Act. Learned Tribunal has held that the promotion in question would be governed by the provision of Section 6 of the Act and not Section 7 of the Act. Therefore, we are in complete agreement with the finding and conclusion reached by the learned Tribunal in the impugned judgment under Annexure-3.

7. In that view of the matter, we do not find any infirmity or illegality in the impugned judgment dated 29.4.2011 passed by the learned Orissa Administrative Tribunal, Bhubaneswar in O.A. No. 752/2009 to be interfered with in the present writ petition.

8. The writ petition is accordingly dismissed being devoid of merit.

D.H. Waghela, C.J.

I agree.