

(2017) 01 OHC CK 0038

In the Orissa High Court

Case No : 1186 of 2014

State of Odisha

APPELLANT

Vs

Manmohan Rath and others

RESPONDENT

Date of Decision : 09-01-2017

Acts Referred:

Constitution of India, Article 227, Article 323A, Article 323 - Power of superintendence over all courts by the High Court - Administrative tribunals - Reports of Public

Citation : (2017) 01 OHC CK 0038

Hon'ble Judges : Sanju Panda, Sujit Narayan Prasad

Bench : DIVISION BENCH

Advocate : Rajjeet Roy, R.K.Sahoo, S.K.Singh, S.Saurav

Final Decision : Dismissed

Judgement

1. This writ petition has been filed by the State Government making the following prayers: (i) To quash the order dated 10.5.2011 passed by the Odisha Administrative Tribunal, Bhubaneswar in O.A.No.1456 of 2008;

(ii) to quash C.P.No.9 of 2013 in which the Tribunal is proceeding against the State Government and its functionaries in the contempt proceeding for non-compliance of the order passed in O.A.No.1456 of 2008.

2. Brief facts of the case is that the applicant before the Tribunal, opposite party no.1 herein, filed an application before the Tribunal being O.A.No.1456 of 2008 for grant of retrospective promotion to the rank of Orissa Administrative Service-I, Senior Branch. His grievance before the Tribunal was that he joined as Orissa Administrative Service-II in 1974 batch but his name was not recommended for promotion under Orissa Administrative Service-I, Senior Branch cadre on account of the pendency of the departmental proceeding and for adverse remarks for 98 days for the year 1992-93 while his juniors were promoted to the rank of Orissa Administrative Service-I, Senior Branch on 26.10.1994. Subsequently, adverse

remarks was expunged on 31.10.1994 and also departmental proceeding was dropped on 23.8.1995 hence his case was considered by the selection board on 6.10.1995, was promoted to the Orissa Administrative Service-I, Senior Branch on 23.9.1995 in which he was regularized vide order dated 29.9.1998 being concurrence given by the Orissa Public Service Commission. The opposite party no.1 made a representation for retrospective promotion to the rank of Orissa Administrative Service-I, Senior Branch with effect from the date from which his juniors had been promoted but the same was rejected by the government which compelled him to move the Tribunal by filing two original applications being O.A.No.82 of 2001 and O.A.No.91 of 2001. The competent authority has constituted a review departmental promotion committee, meeting of which was held on 24.9.1995 recommending his case for promotion with retrospective effect from 26.10.1994 to the rank of Orissa Administrative Service-I, Senior Branch subject to concurrence of the Orissa Public Service Commission and as such the original applications filed by the opposite party no.1 had been withdrawn being not pressed. Opposite party no.1 had not been granted retrospective promotion to the rank of Orissa Administrative Service-I, Senior Branch due to non-concurrence of the Orissa Public Service Commission, as a result of which he again moved the Tribunal by filing another original application being O.A.No.1445 of 2006 and the Tribunal has disposed of the original application vide order dated 16.11.2006 with a direction to the competent authority to treat the original application as the representation of the applicant and to dispose of the same by a speaking order within four weeks from the date of communication of the same. Accordingly representation of the opposite party no.1 was rejected on 30.12.2006 by the order of the Special Secretary, General Administrative Departmental on the ground that the Orissa Public Service Commission did not concur the promotion with retrospective effect, being aggrieved with the rejection order dated 30.12.2006 the opposite party no.1 had filed another original application being O.A.No.68 of 2007 and while disposing of the original application vide order dated 20.9.2007 quashed the order of rejection dated 30.12.2006, remanded the matter before the competent authority to take into consideration the entire material along with recommendation of the review departmental promotion committee and pass necessary order. The competent authority has again passed an order dated 25.1.2008 rejected the claim of the opposite party no.1 on the same ground on which order dated 30.12.2006 was passed, opposite party no.1 again approached the Tribunal by filing original application being O.A.No.1456 of 2008, Tribunal has disposed of the original application vide order dated 10.5.2012 directing the respondent no.1, therein, to consider grant of retrospective promotion to the rank of Orissa Administrative Service, Class-I, Senior Branch from the date as recommended by the departmental promotion committee with all service benefits.

3. Opposite party no.1 has subsequently filed one contempt petition before the tribunal being C.P.No.9 of 2013 alleging non-compliance of the order of the Tribunal passed in O.A.No.1456 of 2008 dated 10.5.2012. The competent

authority of the state Government has subsequently passed reasoned order on 27.12.2013 rejected the claim of the opposite party no.1, however the same was having been passed by the Joint Secretary, the same has subsequently been modified on 19.6.2013 by inserting the words "by orders of the Governor" with the stipulation that all other conditions are unaltered. The Tribunal, while entertaining contempt petition no.9 of 2013, has passed order on 2.8.2013 directing the state authority to file proper compliance report rejecting the show cause reply filed by the authority on 27.6.2013 failing which the alleged contemnor must appear in person to receive charge of contempt and face the trial. The State of Odisha being aggrieved with the orders passed in O.A.No.1456 of 2008 and C.P.No.9 of 2013 is before this Court assailed the same on the ground that the Orissa Public Service Commission being the competent authority to recommend the case of promotion to the rank of Class-II officer under such cadre since has not given concurrence with respect to the recommendation of the review departmental, promotion committee, as such his retrospective promotion has been rejected. This aspect of the matter was brought into the notice of the Tribunal in the contempt petition with a prayer to drop the contempt since the order has been complied with.

4. We have heard Mr. Sahoo, learned Additional Government Advocate representing the State of Odisha and perused the documents available on record.

5. Before appreciating the argument advanced on behalf of the petitioner it is relevant to state here that the State Administrative Tribunal has come into being by virtue of an amendment incorporated in the Constitution in the Article 323 by inserting 323A of the Constitution of India by virtue of the 42nd Amendment Act, 1976 for the purpose of adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union of any State or any local or other authority within the territory of India or under the control of the Government of India or any corporation owned or controlled by the Government. Under the amendment, section 15 contains a provision for constitution of the Central Administrative Tribunal to exercise its power regarding the recruitment and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian. While section 14 stipulates a provision for constitution of State Administrative Tribunal to be constituted for a State to exercise all the jurisdiction, powers and authority exercisable immediately before that day of courts in relation to the recruitment, matters concerning recruitment, to any civil service of the State or to any civil post under the State. Administrative Tribunal Act, 1985 also stipulates provision under section 17 to inflict punishment having the same jurisdiction, the powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971.

The vires of the Article 323 has been challenged and the matter ultimately fell for consideration before the Constitution Bench in the case of L.Chandra Kumar -vs- Union of India and others reported in (1997) 3 SCC 261, whereby and where under the Tribunal has been conferred with the power to be a court of first instance and High Court has been delegated with the power of superintendence under Article 227 of the Constitution of India but all the powers of enforcement of the fundamental rights has been conferred with the Tribunal whether the Central Administrative Tribunal or the State Administrative Tribunal.

It is not in dispute that Contempt of Courts Act,1971 confers power upon the Court to punish the contemnor in case of willful and deliberate disobedience of orders passed by it, in view of the provision of section 17, Tribunal has also been conferred with the power to exercise the power of contempt as per the Contempt of Courts Act,1971, meaning thereby the Tribunal has got jurisdiction to punish the erring person/officers who are willfully and deliberately non-complying the judicial order passed by it.

6. So far as the fact of the case in hand is concerned, opposite party no.1 is contesting for consideration of his case for promotion to the rank of Orissa Administrative Service-I, Senior Branch, for granting retrospective promotion, that is from the date from which his juniors have been promoted since his promotion has not been considered along with them due to adverse entry in the C.C.R. for 98 days and pendency of departmental proceeding but subsequently adverse entry has been expunged as well as the departmental proceeding also dropped. His case was considered and has been granted promotion w.e.f. 23.9.1995 but being not satisfied with his promotion w.e.f. 23.9.1995, since he was to be promoted from 26.10.1994, the date from which his juniors have been promoted, he contested the case by way of series of litigations before the Tribunal on the pretext that when the review departmental promotion committee has considered him for promotion, then he ought to have been granted promotion w.e.f. 26.10.1994, the date from which his juniors had been promoted but in spite of the recommendation of the review departmental promotion committee, the Odisha Public Service Commission since has not given concurrence, his claim has been rejected leading the opposite party no.1 to file original application challenging the rejection and preferred original applications before the Tribunal being O.A.Nos. 82 of 2001 and 91 of 2001. In pursuance to the direction passed by the Tribunal, the review departmental promotion committee has recommended his case for retrospective promotion w.e.f. 26.10.1994 subject to concurrence of the Odisha Public Service Commission but the Odisha Public Service Commission has not concurred with the recommendation of the review departmental promotion committee, hence he has again approached to the Tribunal in O.A.No.1445 of 2006 which was disposed of by directing the competent authority to take decision treating the original application as representation, the representation was rejected on 30.12.2006, same was challenged again in O.A.No.68 of 2007, Tribunal had quashed the order dated 30.12.2006 vide its order dated 26.7.2007 and referred the matter

before the authority to take into consideration the material along with recommendation of the review departmental promotion committee and pass necessary order but again claim of the opposite party no.1 was rejected vide order dated 25.1.2008 which was challenged again before the Tribunal in O.A.No.1456 of 2008 and the Tribunal taking note of the facts and circumstances has made specific observation regarding non-concurrence of the Odisha Public Service Commission by stating at para-13, which is being referred herein below:

" The Government can well disagree with the opinion or recommendation of the PSC. In the instant case we find that the decision of PSC not to concur the recommendation of the review DPC is not sustainable. The applicant has since retired from government service. We therefore direct respondent no.1 to consider for grant of retrospective promotion to the applicant to the rank of OAS Class-I(SB) from the date as recommended by the DPC with all service benefits."

The State has not challenged the specific finding given by the Tribunal at para-13 as quoted herein above and again rejected the claim of the opposite party no.1 vide order dated 27.2.2013 on the plea that the Odisha Public Service Commission has not concurred for retrospective promotion, very surprisingly the said order was passed by the Joint Secretary to Government and after lapse of about four months the same has been rectified to be issued by the order of the Governor of the State.

7. Opposite party no.1 has filed a contempt petition before the Tribunal being C.P.No.9 of 201 of 2013 alleging therein that the order passed by the Tribunal in O.A.No.1456 of 2008 dated 10.5.2012 has not been complied with in its letter and spirit. The Tribunal, while entertaining the contempt petition, has found that specific finding at para-13 of the order to the extent of non-concurrence by the Odisha Public Service Commission has been held to be not sustainable and issued show cause upon the State functionaries to show cause as to why they be punished for non-compliance of its order by which claim of retrospective promotion, to be given to the opposite party no.1, has been rejected on the ground of non-concurrence by the Odisha Public Service Commission while this reasoning has been held to be not sustainable and also the same has not been challenged by the State or the opposite parties before the higher forum.

Functionaries of the State had appeared before the Tribunal and filed their show cause stating therein that the order passed in O.A.No.1456 of 2008 has been complied with., case of the opposite party no.1 had been considered for retrospective promotion but his claim has been rejected and as such no contempt is made out but the Tribunal has rejected the reply of the show cause, directed the functionaries of the State either to comply with the order or to appear in person for framing of charge and face trial.

8. As we have already discussed above taking into consideration the statutory provision, particularly the provision of Section 17 of the State Administrative Tribunals Act,1985 by which power of contempt has been conferred upon the

State Administrative Tribunals empowering it to exercise the said jurisdiction, powers and authority in respect of the contempt of itself as High Court has and may exercise, and for this purpose, the provision of the Contempt of Courts Act, 1971 shall have effect but after pronouncement by the Apex Court in the Constitution Bench in the case of L.Chandra Kumar, the Tribunal has been delegated with the power to deal with the contempt cases in pursuance to the provision of Contempt of Courts Act, 1971 and its procedure and rules.

9. There is no dispute about the fact that power of contempt has been vested by virtue of Legislation upon the court by enactment under the Contempt of Courts Act, 1971 empowering the court to see as to whether the order passed by it has been complied with and if not whether there is willful and deliberate disobedience? If the appropriate court come to conclusion that the order passed by the court has not been complied with willfully and deliberately then the concerned court will proceed under the Contempt of Courts Act, 1971 for inflicting punishment. We, after going through the factual aspect of the instant case, have found that the Tribunal while seeing legality and propriety of the rejection order of the claim of the opposite party no.1 for retrospective promotion passed order passed by the Tribunal in OA No.1456 of 2008 and come to finding that the rejection order is not in consonance with the order passed in the said original application since the opposite party no.1 has again rejected the claim on the ground of non-concurrence of the Odisha Public Commission which has been held to be not sustainable by the Tribunal.

The Tribunal has taken note of the fact that the specific finding given in this regard in the order passed in O.A.No.1456 of 2008 has not been assailed by the functionaries of the State Government and in course of validity of the said order, claim has been rejected and as such the Tribunal has found that the authorities have willfully and deliberately not complied with the order and as such proceeded with the contempt by not accepting show cause reply filed by the functionaries of the State.

10. We want to make it clear that if any order is being passed by any court of law, parties are at liberty to assail the same before higher forum and if the parties have not chosen to assail the order, the course available with the parties are to comply with the order in its letter and spirit. We have found, in the instant case, that the functionaries of the State has sat over the order passed by the Tribunal by making ground of rejection of retrospective promotion of opposite party no.1 which is held to be not sustainable by the tribunal. Further more, it is not proper for this Court to look into the legality and propriety of the order passed in O.A.No.1456 of 2008 for the following reasons:-

(i) The authorities have acted in terms of the order passed in O.A.No.1456 of 2008 since they have passed order afresh on 27.12.2013 and it is settled that once order passed by a Court of Law is acted upon, the parties will be precluded from assailing it.

(ii) The writ application has been filed assailing the order when the tribunal has proceeded with the contempt, the parties (alleged contemnors) have appeared and filed their reply to show cause.

11. In view of the facts of the case as has been discussed by us above, interference of this Court with the impugned orders will be unwarranted, hence we are not inclined to interfere with the orders. In the result, the writ petition fails and is dismissed.