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STATE OF ORISSA AND ORS.

v.

GOPAL CHANDRA RATH AND ORS.

SEPTEMBER 20, 1995

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[S.C. AGARWAL AND G.B. PATNAIK, JJ.]

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Interpretation of Statutes—Validation Act—Powers of legislature to validate an Act retrospectively by removing infirmity indicated in any judgment—They cannot merely set aside, annul or override a judgment of the Court.

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All the respondents were appointed as junior teachers in the Department of Surgery, State of Orissa, in the year 1971, before the Orissa Medical Health Services (Recruitment and Promotion to the Teaching Posts in the Medical Colleges) Rules, 1973, came into force, by process of selection by a Selection Committee and their *inter se* seniority before being finalised under the Rules of 1973, the Orissa Medical Education Service (Recruitment) Rules, 1979 had come into force. Some of the junior teachers challenged the gradation list prepared by the State Government on the ground that the recruitment had not been made by a Selection Committee appointed by the State Government and therefore, the said gradation list was not in accordance with the Recruitment Rules. The Orissa Administrative Tribunal allowed the application on a finding that the Selection Committee which functioned between June 1971 till the promulgation of the Recruitment Rules of 1973 had not been appointed by the State Government and, as such, had no legal authority to make the appointment in question. The gradation list prepared in respect of the junior teachers appointed between 1960 till 1973 had been quashed. The Special Leave Petition filed against the order of the Tribunal was dismissed. However, the legislature enacted the Orissa Medical Education Service (Validation of Gradation List of Junior Teachers) Act, 1988 validating the gradation list prepared in respect of the junior teachers appointed in pursuance of the recommendation of the Selection Committee from time to time during the period 1.12.1960 and 22.9.1973 notwithstanding any judgment, decree or order of any Court or Tribunal, by substituting the definition of 'Selection Committee' in the Recruitment Rule of 1979 retrospectively, to mean the Selection Committee which was in existence

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from time to time during the period 1.12.1960 to 22.9.1973. Respondent A
No.1 filed an application in the year 1985 claiming seniority over respon-
dent Nos. 2 to 15. The Tribunal allowed it and declared respondent No.1
to be senior to respondent Nos. 2 to 15 in the rank of junior teachers with
consequential benefit. Hence this appeal.

The appellants contended that the Tribunal committed gross error in B
holding that the seniority was to be determined with reference to their date
of appointment as Assistant Surgeons. The respondent alleged that valida-
tion Act being an Act to override the judgment of this Court, it was invalid;
that the Selection Committee not having been constituted by the State
Government and that the post of junior teachers and Assistant Surgeons C
being inter changeable at the relevant point of time, the seniority, *inter se*
had to be determined on the basis of their seniority in the rank of Assistant
Surgeons and accordingly there was no infirmity with the conclusion of the
Tribunal.

The questions raised for consideration were (i) whether in view of D
the validation Act of 1988 *inter se* seniority of junior teachers was to be
determined in accordance with clause (ii) of sub-rule (2) of Rule 8 of
Recruitment Rules 1979 or with clause (iii) of the sub Rule and (ii) whether
there had been any lacuna in the Validation Act?

Allowing the appeal, this Court E

HELD : 1.1. The legislatures have the powers to validate an Act by
removing the infirmity indicated in any judgment and that too also
retrospectively but they cannot merely set aside, annul or override a
judgment of the Court. The judgment of the Court was merely to the effect F
that the Selection Committee not having been appointed by the State
Government as required under the Rules, the process of Selection got
vitiating. The Orissa Medical Education Services (Validation of Gradation
List of Junior Teachers) Act, 1988 had removed the lacuna by changing
the definition of the Selection Committee and consequently validating the
appointments made by such Committee during the period in question. G
There is no infirmity with the Validation Act. [824-B-C]

1.2. All the respondents were appointed as junior teachers sub-
sequent to June 1971 and before the Orissa Medical Health Services
(Recruitment and Promotion to the Teaching Posts in the Medical Col- H

A leges) Rules 1973, came into force, by process of selection by a Selection Committee and their *inter se* seniority before being finalised under the Recruitment Rules of 1973, the Orissa Medical Education Service (Recruitment) Rules, 1979 had come into force, the same had to be determined in accordance with the 1979 Rules. Under clause (iii) of sub Rule (2) of Rule 8 only *inter se* seniority of those junior teachers who had been appointed without consultation with the Commission or without being selected by the Selection Committee had to be determined. All the respondents having been appointed by a Selection Committee which Committee was valid in the eye of law by virtue of the Validation Act, Clause (iii) will have no application. The *inter se* seniority of all the respondents which had been determined in accordance with clause (i) of Sub Rule (2) of Rule 8 must be maintained. [824-E-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1306 of 1995.

D From the Judgment and Order dated 4.5.92 of the Orissa Administrative Tribunal, Bhubaneswar in T.A. No. 451 of 1987 (OJC. No. 1767/85).

E Jayanta Das, P.N. Misra, A.C. Pradhan and A.K. Panda (NP) for the Appellants.

S.S. Jawali and Ms. Kirti Mishra for the Respondent.

Bharat Sangal, Sanjiv Das and N.P. Middha for the Intervenor.

F The Judgment of the Court was delivered by

G **PATNAIK, J.** This appeal by the State of Orissa is directed against the judgment of the Orissa Administrative Tribunal, Bhubaneswar in T.A. No. 451/87. By the impugned judgment the Tribunal having altered the seniority of the junior teachers in the Department of Surgery, the same is being assailed *inter alia* on the ground that the Rule 8(2)(iii) cannot have any application for determining the *inter se* seniority between these junior teachers who were appointed in the year 1971 by a Selection Committee.

H The brief facts, necessary for examining the point in issue, may be stated thus; The post of junior teacher is a teaching post attached to the Medical Colleges of the State, whereas, Assistant Surgeons are posts

attached to different Government hospitals in the State. Between the period 1960 till June 1971 the doctors who were appointed as Assistant Surgeons through a process of selection by the Orissa Public Service Commission were also being posted as a junior teacher in any of the Medical Colleges. In June 1971, however, the State Government decided to fill up the post of junior teacher in the Medical Colleges from amongst the Assistant Surgeons by process of selection to be selected by the Selection Committee. In the year 1973, a set of rules for recruitment and promotion to the various teaching posts in the Medical Colleges were framed under the Proviso to Article 309 of the Constitution, called the Orissa Medical Health Services (Recruitment and Promotion to the Teaching Posts in the Medical Colleges) Rules, 1973 (hereinafter referred to as "The Recruitment Rules of 1973"). Under the said Rules appointment to the post of junior teachers could be made through a Selection Board by recruitment from amongst the Assistant Surgeons with atleast one year experience in consultation with Public Service Commission. The *inter se* seniority of such junior teachers who were appointed on or after 1st December 1960 till the commencement of the Recruitment Rules of 1973 was to be determined in accordance with Sub-Rule (2) of Rule 8. In the aforesaid Recruitment Rules of 1973 the expression "Selection Committee" was defined in Rule 3(g) to mean the "Selection Committee appointed by the State Government prior to the commencement of the Rules to select persons for appointment to the junior teaching post." Be it be stated that even prior to the Recruitment Rules of 1973, a set of rules were in vogue being framed in exercise of powers under the Proviso to Article 309 of the Constitution called the Orissa Medical Health Service (Promotion to Senior Teaching Posts in the Medical Colleges) Rules, 1970, to be referred to as "The Recruitment Rules of 1970". Though the aforesaid Rules of 1970 contained the method of promotion to the post of senior teaching post in the Medical Colleges, namely, the Assistant Professor, Associate Professor and Professor but it recognised the junior teachers as a cadre and provided for the criteria for determination of *inter se* seniority in the rank of junior teachers, same being that it shall be reckoned with respect to the date of appointment to the junior teaching post in the speciality and in super speciality. While the Gradation List of the junior teachers prepared in accordance with the Recruitment Rules of 1973, was provisional and the same had not been finalised, the Recruitment Rules of 1973 was repealed and another set of Recruitment Rules were framed called the Orissa

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- A Medical Education Service (Recruitment) Rules, 1979, (hereinafter referred to as "The 1979 Recruitment Rules"). The definition of Selection Committee in Rule 3(g) of the 1979 Recruitment Rule was to the effect that Selection Committee appointed by the State Government from time to time in between the period from 1.12.1960 to 22.9.1973 to select persons for appointment to the junior teaching posts. Rule 8 of the 1979 Recruitment Rules provided for determination of *inter se* seniority of junior teachers. Sub-Rule (2) of Rule 8 is the provision for determination of *inter se* seniority of junior teachers appointed on or after 1st December, 1960, till the date of commencement of the said Recruitment Rule. Clause (i) of the aforesaid Sub Rule is to the effect that the seniority of junior teachers shall be reckoned from the date of their appointment to the junior teaching post. Under the Explanation the date of appointment must be deemed to be the date on which the notification relating to the appointment is issued by the Government in consultation with the Commission. Clause (ii) of the said Sub-Rule is to the effect that persons appointed on the same day as junior teachers in pursuance of the recommendations of the Selection Committee shall be given *inter se* seniority in accordance with the placement given by the Selection Committee. Clause (iii) of the said Sub-Rule provides the mode of determining *inter se* seniority of junior teachers other than those appointed in consultation with the Commission or the Selection Committee on the basis of their seniority in the rank of Assistant Surgeons in the State Medical and Health Services. Clause (iv) of the said Sub Rule provides that those junior teachers who were appointed on or after 1st December 1960 in pursuance of the recommendation of the Commission, to be considered senior to those appointed in the same year without consulting the Commission, irrespective of the date of appointments.

F In the case, in hand, we are really concerned with Clauses (ii) and (iii) of Sub-Rule (2) of Rule 8. For better appreciation of the point in issue Sub-Rule (2) of Rule 8 of the 1979 Recruitment Rules is extracted herein below in extenso :-

- G 8. (2) *Inter-se* seniority of Junior Teachers appointed on or after the 1st December 1960 till the date of commencement of these Rules shall be determined in consultation with the Commission according to the following principles :-

- H (i) Seniority of such Junior Teachers of Speciality or Higher

Speciality shall be reckoned from the dates of their appointment to the Junior Teaching Posts. A

Explanation - The date of appointment shall be deemed to be the date on which the notification relating to the appointment is issued by Government in consultation with the Commission. B

(ii) Persons appointed on the same day as Junior Teachers in pursuance of the recommendations of the Selection Committee shall be given *inter se seniority in accordance with the placements given by the Selection Committee.* C

(iii) Notwithstanding anything contained in clause (i) of this Sub-Rule, *inter se seniority of Junior Teachers other than those appointed in consultation with the Commission or the Selection Committee shall be determined on the basis of their respective seniority in the rank of Assistant Surgeons in the State Medical and Health Services.* D

(iv) Notwithstanding anything contained in clause (i) of this sub-rule, Junior Teachers appointed on or after the 1st December 1960 in pursuance of the recommendations of the Commission, which were valid at the time of such appointment, shall be considered senior to those appointed as such in the same year without consulting the Commission, irrespective of the date of appointments." E

Some of the junior teachers had challenged the gradation list prepared by the State Government on the ground that the recruitment had not been made by a Selection Committee appointed by the State Government and, therefore, the said gradation list is not in accordance with the Recruitment Rules. Originally such Petition had been filed in the High Court and stood transferred to the Orissa Administrative Tribunal and the Tribunal allowed that application on a finding that the Selection Committee which functioned between June 1971 till the promulgation of the Recruitment Rules of 1973 had not been appointed by the State Government and, as such, had no legal authority to make the appointment in question. The aforesaid judgment of the Tribunal was assailed in this Court in a Special Leave Petition which was dismissed by an order dated 17.1.91, but it was observed that the interpretation given by the State Administrative Tribunal may not H

A be taken as final and as and when a fresh dispute is raised the matter shall be taken for consideration. Since the gradation list prepared under the Recruitment Rule in respect of the junior teachers appointed between 1.12.1960 till 1973 had been quashed on the ground of infirmity in the Constitution of the Selection Committee, the Legislature came forward with the Validation Act called the Orissa Medical Education Services (Validation of Gradation List of Junior Teachers) Act, 1988, (hereinafter referred to as "The Validation Act". The definition of the Selection Committee in the Recruitment Rule of 1979 was substituted retrospectively with effect from 13th August, 1979, to mean that the Selection Committee which is in existence from time to time during the period 1.12.1960 to 22.9.1973 to select persons for appointment to the junior teaching post. The aforesaid Validation Act also validated the gradation list prepared in respect of the junior teachers appointed in pursuance of the recommendation of the Selection Committee from time to time during the period 1.12.1960 and 22.9.1973 notwithstanding any judgment, decree or order of any Court or Tribunal. It would be appropriate at this stage to extract Rules 3(g) and 4 of the Validation Act :-

3. In rule 3 of the Recruitment Rules, for clause (g), the following clause shall be substituted, namely :-

E (g) "Selection Committee" means the Selection Committee in existence from time to time during the period between 1.12.1960 and 22.9.1973 to select persons for appointment to the Junior Teaching Posts."

F 4. Notwithstanding any judgment, decree or order of any court or tribunal or other authority, the gradation lists prepared in pursuance of clause (ii) of sub-rule (2) of rule 8 of the Recruitment Rules in respect of the Junior Teachers appointed in pursuance of the recommendations of the Selection Committee in existence from time to time during the period between 1.12.1960 and 22.9.1973 shall, for all intents and purposes, be deemed to have been validly and effectively prepared as if clause (g) of rule 3 of the Recruitment Rules as amended by section 3 were in force at all material times when such gradation lists were prepared, and accordingly, no suit or other legal proceeding shall be instituted, maintained or continued in any court or tribunal or before other

authority merely on the ground that those lists were prepared on the basis of the placement given by the Selection Committee not constituted by Government in accordance with the provisions contained in the Recruitment Rules as stood prior to the amendment made under Section 3;

Provided that nothing contained in this section shall affect the jurisdiction of the Orissa Public Service Commission under sub-rule (2) of rule 8 of the Recruitment Rules in determining the *inter-se* seniority."

Respondent no. 1 had filed a Writ application in the year 1985 claiming the seniority over respondent nos. 2 to 15 and the said Writ application stood transferred to the Orissa Administrative Tribunal under Section 29 of the Administrative Tribunal Act and was numbered as Tribunal Appeal No. 451/87. The Tribunal by the impugned judgment dated 4.5.92 having allowed the same and having declared respondent no. 1 to be senior to respondent nos. 2 to 15 in the rank of junior teachers with consequential benefit the State has come up to this Court in appeal.

The learned counsel Mr. Das, appearing for the State of Orissa, contended that the Tribunal committed gross error in holding that the Validation Act has no application and it further committed error in holding that the seniority is to be determined with reference to their date of appointment as Assistant Surgeons. Mr. Javali, learned senior counsel appearing for respondent no. 1, on the other hand, contended that Validation Act is nothing but an Act to override the judgment of this Court and, therefore, on the face of it is invalid. He further contended that the Selection Committee not having been constituted by the State Government and on the admitted position that the post of junior teachers and Assistant Surgeons were inter-changeable at the relevant point of time, the seniority, *inter se* has to be determined on the basis of their seniority in the rank of Assistant Surgeons and accordingly there is no infirmity with the conclusion of the Tribunal.

It is an undisputed fact that respondent nos. 1 to 15 were appointed as junior teachers on different dates subsequent to June 1971 and their selection had been made by a Selection Committee not appointed by the State Government but by the Director of Health Service. The question that arises for consideration is whether in view of the Validation Act of 1988

- A *inter se* seniority of such junior teachers is to be determined in accordance with clause (ii) of Sub Rule (2) of Rule 8 of Recruitment Rules 1979 or it is to be determined in accordance with clause (iii) of the said Sub Rule. Further question that arises for consideration is that whether there has been any lacuna in the Validation Act? But so far as the second question is concerned, it is too well settled that the legislature have the powers to validate an Act by removing the infirmity indicated in any judgment and that too also retrospectively but they cannot merely set aside, annul or override a judgment of the Court. The judgment of the Court was merely to the effect that the Selection Committee not having been appointed by the State Government as required under the Rules, the process of Selection got vitiated. The Validation Act has removed the lacuna by changing the definition of the Selection Committee and consequently validating the appointments made by such Committee during the period in question. We see no infirmity with the aforesaid Validation Act. The contention of Mr. Javali, learned senior counsel, therefore, cannot be accepted.

- D Coming back to the first question, the admitted position being that all the respondents were appointed as junior teachers subsequent to June 1971 and before the Recruitment Rules of 1973 came into force, by process of Selection by a Selection Committee and their *inter se* seniority before being finalised under the Recruitment Rules of 1973, 1979 Recruitment Rules have come into force, the same has to be determined in accordance with 1979 Recruitment Rules. A plain reading of the aforesaid Recruitment Rules would indicate that the *inter se* seniority of such junior teachers like respondent nos. 1 to 15 has to be determined in accordance with clause (i) of Sub Rule (2) of Rule 8. The Tribunal committed gross error by holding that the *inter se* seniority is to be determined under Clause (iii) of Sub Rule (2) of Rule 8 in as much as under the said Sub Rule only *inter se* seniority of those junior teachers who had been appointed without consultation with the Commission or without being selected by the Selection Committee has to be determined. All the respondents having been appointed by a Selection Committee which Selection Committee is valid Selection Committee in the eye of law by virtue of the Validation Act, Clause (iii) of Sub Rule (2) will have no application and accordingly the question of determining their seniority on the basis of their respective seniority in the rank of Assistant Surgeons in the Medical Health Services does not arise. The Tribunal, in our opinion, has misdirected itself by referring to Clause (iii) of Sub Rule (2) of Rule 8 for determining the *inter se* seniority among the

respondents. The said conclusion of the Tribunal is wholly unsustainable in law and we accordingly quash the same and direct that the *inter se* seniority of all the respondents which has been determined in accordance with Clause (i) of Sub Rule (2) of Rule 8 must be maintained. In view of our quashing of the order of the Tribunal declaring the respondent no. 1 as senior to respondent nos. 12 to 15 in the rank of Junior Teacher, subsequent direction for re-consideration of the case of respondent no. 1 to the promotion on the post of Assistant Professor as well as other post of higher rank does not arise and the same direction accordingly is quashed, Civil Appeal is thus allowed. The impugned judgment of the Tribunal is set aside. But, in the circumstances, there will be no order as to costs.

R.A.

Appeal allowed.