

ORISSA SMALL INDUSTRIES CORPN. LTD. AND ANR. A

v.

NARASINGHA CHARAN MOHANTY AND ORS.

DECEMBER 9, 1998

[SUJATA V. MANOHAR AND G.B. PATTANAIK, JJ.] B

*Service Law—Promotion—Right to be considered for promotion—Under relevant Rule, merit and suitability being criteria for promotion to the post of Manager—Departmental Promotion Committee considered the case of respondent along with others for promotion but did not find him suitable—Respondent approaching the High Court which directed the employer to reconsider the case of the respondent—Held, not justified—Orissa Small Industries Corporation Employees Service Rules, 1979—Rule 24—Constitution of India, 1950 Article 226—Interference in service matters—Promotion.* C D

**Respondent had been appointed as Assistant Manager in the appellant company and later on his services stood terminated. The said order of termination was challenged by the respondent before the High Court, which set aside the order of termination and directed reinstatement of the respondent in service with all consequential relief. The respondent was reinstated and granted all financial benefits as well as service benefits by way of retrospective promotion to the post of Joint Manager. But when the question of promotion to the post of Manager arose, the Departmental Promotion Committee considered the case of the respondent along with others but did not find him suitable and promoted two of his juniors to the post of Manager. The respondent thereafter, approached the High Court, which directed the appellant to reconsider the question of promotion to the post of Manager. Hence this appeal.** E F

**It was contended by the appellant that the criteria for promotion to the post of Manager being merit and suitability as per Rule 24 of the Employees Service Rules, 1979 and the respondent having been considered and not being found suitable for promotion, there has been no infringement of his constitutional rights of being considered.** G

**Allowing the appeal, this Court**

**HELD : Promotion to the post of Manager is governed by Rule 24 of** H

A the Orissa Small Industries Corporation Employees Service Rules, 1979. Under the said rule the Selection Committee is required to recommend the suitable employee for promotion whom they consider fit. Suitability and merit being the criteria for promotion and the respondent having been considered but being found unsuitable for promotion, the constitutional rights of being considered cannot be said to have been infringed. If the Departmental Promotion Committee has taken into consideration the fact that the respondent has not in fact served as Joint Manager though he has been given notional promotion to the said post and, therefore, has not gained the necessary experience, it cannot be said that the ground is an extraneous ground for adjudging the suitability of the person for being promoted to the post of Manager. That apart, the Court is not entitled to assess the respective merit of the candidates for adjudging their suitability for being promoted and the only right the employee has, is a right of consideration. The said right of consideration not having been infringed in the present case, the High Court was not justified in issuing the impugned direction for reconsideration of his case. [461-G-H; 462-A-B]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6972 of 1994.

E From the Judgment and Order dated 6.1.94 of the Orissa High Court in O.J.C. No 8342 of 1992.

V.C. Mahajan (J. Buthar) for P.N. Gupta for the Appellants.

Raj Kumar Mehta for the Respondents.

F The Judgment of the Court was delivered by

G PATTANAİK, J. The judgment and order dated 6.1.94 of the Orissa High Court passed in Original Jurisdiction Case No. 8342 of 1992 is being challenged in this appeal *inter alia* on the ground that the respondent having been considered for promotion to the post of Manager but not promoted as he was not found suitable and the criteria for promotion being merit and suitability, the High Court committed error in directing the appellant to reconsider the question of promotion to the post of Manager. It is not necessary to elaborate the facts. Suffice it to say that the respondent had been appointed as Assistant Manager in the Orissa Small Industries Corporation Ltd. on 23rd of May, 1981. His services stood terminated by order dated 7.11.83. The said order of termination was challenged by the respondent by filing a writ petition in the

Orissa High Court which was registered as Original Jurisdiction Case No. 2386 A of 1983. By judgment dated 17th of April, 1987, the High Court set aside the order of termination and directed reinstatement of the respondent in service and granted all consequent financial benefits which he would have been entitled to had his service not been terminated. The respondent, thereafter was reinstated in service and was granted all financial benefits as well as B service benefits by way of retrospective promotion to the post of Joint Manager with effect from 7.1.87. But when the question of promotion to the post of Manager crept up in the year 1991, the Departmental Promotion Committee considered the case of the respondent along with others but did not find him suitable and promoted two of his juniors to the post of Manager. C The respondent, therefore, approached the High Court by filing a writ petition which was allowed with the direction as already stated.

Mr. V.C. Mahajan, the learned Senior Counsel, appearing for the appellants, contends that the criteria for promotion to the post of General Manager being merit and suitability as per Rule 24 of the Employees Service Rules, 1979 and the respondent having been considered but not being found D suitable for promotion, there has been no infringement of his constitutional rights of being considered. In that view of the matter, the High Court was in error in directing reconsideration of the case of promotion by the impugned judgment Mr. R.K. Mehta, the learned counsel, appearing for the respondent, on the other hand contended that the Departmental Promotion Committee no E doubt considered the case of the respondent for being promoted to the post of Manager but such consideration was not a consideration in accordance with law inasmuch as even though he was promoted to the post of Joint Manager w.e.f. 1987 in view of earlier judgment of the High Court but Committee was of the view that he did not have sufficient experience in the post of Joint F Manager so as to be promoted to the post of Manager. According to the learned counsel, once respondent was promoted to the post of Joint Manager w.e.f.1987, he must be deemed to have gained the experience of that post even if he has not actually served as Joint Manager w.e.f. 1987. We are unable to accept this submission of the learned counsel for the respondent.

Promotion to the post of Manager is governed by Rule 24 of the G Employees Service Rules, 1979 Under the said rule the Selection Committee is required to recommend the suitable employee for promotion whom they consider fit. Suitability and merit being the criteria for promotion and H respondent having been considered but being found unsuitable for promotion, the constitutional rights of being considered cannot be said to have been

- A** infringed. If the Departmental Promotion Committee has taken into consideration the fact that the respondent has not in fact served as Joint Manager though he has been given notional promotion to the said post and, therefore, has not gained the necessary experience, it cannot be said that the ground is an extraneous ground for adjudging the suitability of the person for being promoted to the post of Manager. That apart, the Court is not entitled to
- B** assess the respective merit of the candidates for adjudging their suitability for being promoted and the only right the employee has, is a right of consideration. The said right of consideration not having been infringed in the present case, the High Court was not justified in issuing the impugned direction for reconsideration of his case. We, accordingly set aside the
- C** impugned judgment of the High Court and hold that the writ petition filed by the respondent stands dismissed. This appeal is allowed, but in the circumstances there will be no order as to costs.

R.K.S.

Appeal allowed.