

SHYAMA CHARAN DASH AND ORS.

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v.

STATE OF ORISSA AND ANR.

MARCH 11, 2003

[DORAISWAMY RAJU AND D.M. DHARMADHIKARI, JJ.]

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Service Law:

Orissa Industries Service Rules, 1985; Rule 7(1) with amendments: Issuance of notification by State Government merging certain categories of posts as Industries Promotion Officers equivalent to Industrial Supervisors—Deletion by amendment the provision of pay scale rendering officers working in the lower scale of pay to be eligible for promotion—Challenge to—Rejected by the Administrative Tribunal on the ground that the merger order remained unchallenged—Thus, on ground of equity IPOs. have been treated on par with Industrial Supervisors irrespective of having different scale of pay—On appeal, Held: Since State Government issued merger notification and effected amendments in the promotion rules with the object to do substantial justice to all categories of posts equated for the purpose of Rule 7, the Government acted reasonably—Such acts of the Government in pursuance of its policy and in exercise of its statutory power could not be challenged merely on the ground that due to enlargement of chance of promotion of one category of officers, chance of other category officers in the same feeder cadre become diminished.

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State of Orissa, in exercise of its powers under Rule 7(1) of the Orissa Industries Service Rules, issued a notification merging certain categories of posts into viz. the Industries Promotion Officers equivalent to Industrial Supervisors and later by amending Rule 7(1) it deleted the provision of requisite scale of pay of officers in the feeder cadre. Thereby some of the ineligible officers in the feeder cadre became eligible for promotion. The amendments to the rule was challenged by the appellant-Supervisors which was rejected by the Administrative Tribunal. Hence the present appeal.

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It was contended for the appellants that the Government could not equate unequals by making IPOs working in the different grades with different pay scale, on par with Industrial Supervisors working at higher

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A grade with higher pay scale; and that prospects of promotion of Industrial Supervisors would be denied by such acts of the Government and would be violative of Articles 14 and 16 of the Constitution of India.

Dismissing the appeal, the Court

B HELD: 1. The challenge to the order of the Tribunal rejecting the challenge made by the appellants, do not merit acceptance. Thus, no genuine or serious objection could be either reasonably or lawfully taken to the move to enable all the Industries Promotion Officers also becoming eligible for promotion to Class-II posts. So far as Industries Promotion Officers among themselves are concerned, the difference in pay scale among them is due to the differences based on the initial feeder category pay and not due to any intrinsic obligation. As long as the IPOs, as a category, are rendered eligible even from 1986 and that is not challenged, the differences, if any, existing and based on the scales of pay among them, when resolved to be done away with in the undoubted exercise of its power by the State, as a matter of policy, cannot be legitimately challenged by the appellants merely because due to the enlargement of the horizon of consideration resulting therefrom, the chances of consideration for promotion of Industrial Supervisors become diminished. The reasons, which weighed with the State Government in doing so, are found to be genuine, real and substantive and meant to do substantial justice to all categories or grade of posts equated for purposes of Rule 7 of the Rules. The fact that in different proceedings where claim for identical scales of pay came to be contested by the Government or rejected by the Tribunal, is no justification to countenance the claim of the appellants in these proceedings inasmuch as the criteria to be applied in dealing with such claims are totally different or, at any rate, may be one only among several requirements to be satisfied. [903-A; 907-A-E]

Union of India and Ors. v. N.Y. Apte and Ors., [1995] 6 SCC 741] and *Md. Usman and Ors. v. State of Andhra Pradesh and Ors.*, [(1971) 2 SCC 188], relied on.

G *Y.V. Rangiah and Ors. etc. v. J. Sreenivasa Rao and Ors.*, [1983] 3 SCC 284; *R.S. Ajara and Ors. v. State of Gujarat and Ors.*, [1997] 3 SCC 641]; *Chairman, Railway Board and Ors. v. C.R. Rangadhamaiah and Ors.*, [1997] 6 SCC 623; *State of Rajasthan v. R. Dayal and Ors.*, [1997] 10 SCC 419; *S.B. Mathur and Ors. v. Chief Justice of Delhi High Court and Ors.*,

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[1989] Supp. 1 SCC 34 and *State of Maharashtra and Anr. v. Chandrakant Anant Kulkarni and Ors.*, [1981] 4 SCC 130, distinguished. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1787 of 1997.

From the Judgment and Order dated 26.8.1996 of the Orissa B
Administrative Tribunal, Bhubaneshwar in O.A. No. 777 of 1991.

A.T.M. Sampath, Rajiv S. Roy and A.C. Pradhan for P.K. Mullick, for
the Appellants.

Radha Shyam Jena for Respondent No. 1. C

Raj Kumar Mehta, Ms. M. Sarada and Ms. Suman Kukrety for
Respondent No. 2

The Judgment of the Court was delivered by

D. RAJU, J. The above appeal has been filed against the Order dated D
26.8.1996 of the Orissa Administrative Tribunal, Bhubaneswar, in O.A.
No.777/91, whereunder the claim of the appellants before this Court and
some others seeking to quash the amendments introduced in 1991, notified
on 24.5.1991, which had the consequence of bringing all the Industries
Promotion Officers (IPOs) within the zone of consideration for promotion to E
Class-II service and their further claim to declare that only Rs.500-930 grade
employees alone are eligible for promotion to Class-II post and that those in
Rs.400-750 grade are ineligible to such Class-II promotions, came to be
rejected.

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Prior to coming into force of the Orissa Industries Service Rules, 1985
on 12.9.1985, officers of different categories in the Industries Department
under the Directorate of Industries were performing duties and functions of
the same nature at different levels in varied fields, appointed to posts with the
different nomenclature carrying different scales of pay. Not only there seem
to have been periodical revision of scales of pay but changes in their
promotional prospects, and their status and position in the hierarchical set up
also appears to have been made from time depending upon the exigencies of
the situation and necessities of smooth administration on the basis of
recommendations of the Pay Commissions or Committees specially constituted
for the purpose.

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The Tribunal below rejected the challenge holding that the impugned

A notification was not vitiated on account of any *malafide* exercise of power and that despite the fact the posts of Sub-Assistant Registrar was a promotional post for Block Level Extension Officers, having regard to the similarity in the nature of their functions, the cadre of IPOs came to be formed by merging and redesignating them both SAR, Industries and BLEO, Industries as Industries Promotion Officers. Reliance was placed in this regard on the decision of the Government made on 27.5.1980 - a conscious decision to merge them into one as IPOs though with a classification among them as Seniors and Juniors depending upon differences in the scales of their pay which was necessitated for the reason that the merged posts were carrying different scales of pay, initially. Reference also seems to have been made to the subsequent decision on 17.2.1982 to do away with the said difference and the abolition of the selection grade in respect of all cadres of posts in the State, resulting in denial of the only avenue of promotion to IPOs in the grade of Rs.400-750. Support was drawn by the Tribunal for its conclusions also from the fact that the Government Orders dated 11.6.1986 declaring 17 posts equivalent to that of Industrial Supervisors remained unchallenged and that really the equities stood adjusted in providing promotional opportunities to the cadre of IPOs, irrespective of the scales of pay, on par with Industrial Supervisors.

Shri A.T.M. Sampath, learned counsel appearing for the appellants, sought to assail the decision of the Tribunal mainly on the ground that the Government could not have attempted to equate unequals by making eligible all grades of IPOs *de hors* the intrinsic differences in their scales of pay and placing them on par with Industrial Supervisors, who were of higher grade with higher scales of pay. It was also contended that by throwing open the avenues of promotion to Class-II posts to IPOs, who are in large numbers treating them on par with Industrial Supervisors with comparatively small numerical strength, the prospects of promotion of the Industrial Supervisors have been completely denied with slender or even no chances during their tenure of office. In order to highlight the grievance of the appellants, the learned counsel vehemently contended that the experience gained by IPOs in the lower grade of posts cannot be treated on par with those service of Industrial Supervisors in higher grades for purposes of further promotion to Class-II posts and this anomaly brought about by the amendment with effect from 24.5.1991 works great hardship and constitutes gross violation of Articles 14 and 16 of the Constitution of India. Shri R.K. Mehta, appearing for the non-official respondent and Shri R.S. Jena for the State, adopted the reasons assigned by the Tribunal in their support and contended that they are quite

in accordance with law and do not call for any interference. We have carefully considered the submissions of the learned counsel appearing on either side and, in our view, the challenge to the order of the Tribunal rejecting the challenge made by the appellants, do not merit our acceptance. A

It is appropriate at this stage to make reference to some of the decisions relied upon by the learned counsel on either side. *Y.V. Rangaiah and Ors., etc. v. J. Sreenivasa Rao and Ors.*, [1983] 3 SCC 284 being a case where not only there was omission to prepare the promotion panel in time as per rules then in force but the amended rules dispensed with the original provision for considering LDCs along with UDCs for promotion, adversely affecting their promotional prospects, has no application to the case on hand. The decision in *R.S. Ajara and Ors. v. State of Gujarat and Ors.*, [1997] 3 SCC 641 lays down that the benefit that has accrued or crystallized under the existing rules cannot be taken away by an amendment with retrospective effect. In *Chairman, Railway Board and Ors. v. C.R. Rangadhamaiah and Ors.*, [1997] 6 SCC 623, a Constitution Bench of this Court held that a rule which operates *in futuro* so as to govern future rights of those already in service cannot be assailed on the ground of retrospectivity as being violative of Articles 14 and 16 of the Constitution of India, but a rule which seeks to reverse from an anterior date, a benefit which has been granted or availed, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 to the extent it operates retrospectively. This observation came to be made in the context of a challenge to the notification, which, by the language employed therein, applied to the detriment of the pensionary rights of those who had already retired and no longer in service and deprived the retired persons of their entitlement to be reckoned as on the date of retirement, when they acquired a right to a particular pension, as per rules in force on the date of their retirement. *State of Rajasthan v. R. Dayal and Ors.*, [1997] 10 SCC 419 is a case wherein this Court held that the mere fact that a person was empanelled for promotion, does not entitle him for valid appointment if by the time the vacancies for his appointment actually arose, the eligibility criteria was altered by the amendment to the rules, emphasizing the position that the preparation of the panel alone does not freeze the criteria to be satisfied in respect of the subsequent vacancies arising thereafter, so as to dispense with the need to satisfy the requirements of rules, which came into force thereafter by way of amendment. Those observations cannot be drawn out of their context to be extended to the case on hand which should be guided by the fact that the amendments in this case never had any effect of rendering ineligible an already eligible person. A mere enlargement of the area or zone of consideration B
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- A by enabling some more category of posts also to be considered for promotion, if at all could be claimed to have merely affected chances of promotion only and not either right to be considered for promotion or deprive any vested or accrued rights, in law. In *S.B. Mathur and Ors. v. Chief Justice of Delhi High Court and Ors.*, [1989] Supp. 1 SCC 34, this Court held that an eligibility criterion is distinct from the zone of consideration. In *State of Maharashtra and Anr. v. Chandrakant Anant Kulkarni and Ors.*, [1981] 4 SCC 130, this Court observed that mere chances of promotion are not conditions of service, and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service while reiterating the settled principle that a right to be considered for promotion is a term of
- C service, but mere reduction in chances of promotion are not.

- The grievance sought to be made as to the equation of posts for purposes of further avenues of promotion or the right and powers of the State to do so also, does not merit our acceptance, in the peculiar facts and circumstances of the case as well, besides the relevant principles of law governing the same. This Court in *S.B. Mathur's* case (supra) observed as follows:-
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- E “11. The first submission of Mr. Thakur, learned counsel for the petitioners is that there is a violation of Article 14 of the Constitution in treating the posts of Superintendents, Court Masters or Readers and Private Secretaries to the Judges as equal status posts. It was urged by him that the sources of recruitment to these posts were not identical and so also the qualification required for appointments to these posts. He also pointed out that the duties of the incumbents of these posts were different. It was submitted by him that in treating
- F these posts as equal status posts unequals were treated equally and hence the rule of equality was violated. In appreciating this submission, it must be borne in mind that it is an accepted principle that where there is an employer who has a large number of employees in his service performing diverse duties, he must enjoy a certain measure of discretion in treating different categories of his employees as holding
- G equal status posts or equated posts, as questions of promotion or transfer of employees *inter se* will necessarily arise for the purpose of maintaining the efficiency of the organization. There is, therefore, nothing inherently wrong in an employer treating certain posts as equated posts or equal status posts provided that, in doing so, he
- H exercises his discretion reasonably and does not violate the principles

of equality enshrined in Articles 14 and 16 of the Constitution. It is also clear that for treating certain posts as equated posts or equal status posts, it is not necessary that the holders of these posts must perform completely the same functions or that the sources of recruitment to the posts must be the same nor is it essential that qualifications for appointments to the posts must be identical. All that is reasonably required is that there must not be such difference in the pay scales or qualifications of the incumbents of the posts concerned or in their duties or responsibilities or regarding any other relevant factor that it would be unjust to treat the posts alike or, in other words, that posts having substantially higher pay scales or status in service or carrying substantially heavier responsibilities and duties or otherwise distinctly superior are not equated with posts carrying much lower pay scales or substantially lower responsibilities and duties or enjoying much lower status in service.”

In *Union of India and Ors. v. N.Y. Apte and Ors.*, [1998] 6 SCC 741, this court observed that the matter of equation of posts is entirely within the domain of the rule-making authority and unless the rule is shown to be wholly unreasonable and irrational, the Court will not interfere with the same. In *Md. Usman and Ors. v. State of Andhra Pradesh and Ors.*, [1971] 2 SCC 188, this Court, while repelling a challenge based on equality clause, observed as hereunder:-

“5. On the other hand it was argued on behalf of the contesting respondents that before considering the vires of Rule 5, we must first ascertain the reason behind the rule to find out whether in fact there is discrimination. The contesting respondents do not deny that the position of an U.D.C. is superior to that of a L.D.C. But according to them it became necessary for the State to pool together U.D.Cs. as well as the L.D.Cs. for the purpose of recruitment in question for the following reasons.

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7. On the facts before us we are unable to agree that for the purpose of recruitment with which we are concerned herein the State should have classified the U.D.Cs. and L..D.Cs. separately. If the State had treated the U.D.Cs. as being superior to the L.D.Cs. for the purpose of that recruitment it would have resulted in a great deal of injustice

A to a large section of the clerks. The fortuitous circumstance of an officer in a particular district becoming an U.D.C. would have given him an undue advantage over his seniors who might have been as efficient or even more efficient than himself, merely because they chanced to serve in some other district. For the reasons mentioned above, we do not think that in the present case the State can be said to have treated unequals as equals. The rule of equality is intended to advance justice by avoiding discrimination. In our opinion the High Court by overlooking the reason behind Rule 5 came to the erroneous conclusion that the said rule violated Article 14 of the Constitution.”

C So far as the case on hand is concerned, Rule 7 of the Orissa Industries Services Rule 1985, which came into force with effect from 12.9.1985 deals with promotion to Class-II posts enumerated in Schedule B thereto, and relevant for the purpose, reads as follows:-

“7. Promotion to Class-II.

D (1) Not more than 25% of total vacancies in Class-II of the service in any year may be filled up by promotion from amongst non-gazetted non-Ministerial Class-III field executive staff, namely :-

E Industries Promotion Officers, Industrial Supervisors in grade pay of Rs.500-930 or as revised from time to time and such other posts as may be created in the equivalent grade or declared equivalent in status by Government from time to time having completed seven years of service in the post or posts. The promotion quota of Industries Promotion Officers, Industrial Supervisors shall be in a ratio according to the strength of qualified officers in each group as may be decided by Government.....”

H It is stated by all the learned counsel on either side that the percentage of 25% mentioned in Sub-rule (1) stood altered subsequently as 50% from August, 1995. By a Notification dated 11.6.1986, the State Government, in exercise of its powers under Rule 7(1) of the Rules, declared about 17 categories of posts to be equivalent in status with that of the Industries Promotion Officers/Industrial Supervisors for the purpose of Sub-rule (1) of Rule 7. This Notification has not been challenged at any point of time and even in the course of present proceedings. By the impugned amendment which came into force from 24.5.1991, the words, abbreviation and figures, “in grade pay of Rs. 500-930 or as revised from time to time” were ordered to be deleted. Even *de*

hors the reasoning of the Tribunal that those words from the inception qualified only the class of Industrial Supervisors, we are of the view that no genuine or serious objection could be either reasonably or lawfully taken to the move to enable all the Industries Promotion Officers also becoming or rendered eligible for promotion to Class-II posts. So far as Industries Promotion Officers among themselves are concerned, the difference in pay scale among them is due to the differences based on the initial feeder category pay and not due to any intrinsic or basic differences of essential qualifications or the nature of duties and obligations. As long as the IPOs, as a class or category, are rendered eligible even from 1986 and that is not challenged, the differences, if any, existing and based on the scales of pay among them, when resolved to be done away with in the undoubted exercise of its power by the State, as a matter of policy, cannot be legitimately challenged by the appellants merely because due to the enlargement of the horizon of consideration resulting therefrom, the chances of consideration for promotion of Industrial Supervisors become diminished. The reasons, which weighed with the State Government in doing so, are found to be genuine, real and substantive and meant to do substantial justice to all categories or grade of posts equated for purposes of Rule 7 of the Rules. The fact that in different proceedings where claim for identical scales of pay came to be contested by the Government or rejected by the Tribunal, is no justification to countenance the claim of the appellants in these proceedings inasmuch as the criteria to be applied in dealing with such claims are totally different or, at any rate, may be one only among several requirements to be satisfied. Consequently, the challenge on behalf of the appellants has no merit whatsoever and shall stand rejected.

For all the reasons stated above, the appeal fails and shall stand dismissed. No costs.

S.K.S.

Appeal dismissed.