

STATE OF ORISSA

v.

SANGRAM DAS

JANUARY 2, 1995

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Service Law : Orissa Reservation of Vacancies in the Post of Service (for S.C. & S.T.) Act, 1975—Section-7 —Recruitment in excess of 50% of Reservation for S.C. & S.T. treating the vacancies vacant for S.C. to be excess of 50% under the provisions, where there was no recruitment for several years—Held : illegal.

Respondent and another were competing candidates for the post of Assistant Law Officer in the State of Orissa. The post was filled up by a candidate selected on merit. When another post became vacant respondent approached Administrative Tribunal, seeking a direction to appoint him in that post. The Tribunal allowed the petition by its order dated 27.4.1992, directing the Appellant to appoint the Respondent in a regular vacancy. The appellant carried the matter on appeal to this court and this court dismissed the appeal.

Thereafter respondent filed a Contempt Petition for implementation of the order of Tribunal and the Tribunal by its order dt. 13.5.94 directed the State to appoint the respondent in the resultant vacancy. Hence this appeal by State.

Allowing the appeal, this Court

HELD : 1. As per the provisions of Orissa Reservation of Vacancies in the Post of Service (for S.C. & S.T.) Act, 1975 when a general recruitment is sought to be made, the rule of reservation shall be applied for and notification be issued calling the candidates from reserved quota to apply for recruitment. If no candidates is recruited or found eligible in terms of the provisions of the Act, the reserved vacancy should be carried forward for three recruitment years. In the recruitment year in question if the reserved vacancies exceed 50% then the resultant excess vacancies would be de-reserved throwing open to the general candidates and the excess vacancies should be forwarded for future recruitment. In other words, at

A each recruitment year, attempt shall be made to notify the reserved vacancies for recruitment. In case the candidates are not available nor are found suitable, then the question of carrying forward would arise. [3-F-H]

B 2. In the instant case it could be seen that there was no recruitment till 1990; therefore the question of carry forward of the reserved vacancies for SC & ST did not arise. [4-B]

C 3. It is seen that a general candidate was temporarily appointed otherwise than according to rules. Therefore the Government have to consider the case of the respondent in that temporary vacancy. Under the circumstances, the appellant is directed to consider the case of the respondent for appointment in the temporary vacancy till the regular vacancy of a general candidate arises and then to consider his case. He cannot at present be treated to be a regular candidate and seek for consequential benefits. [4-C]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 103 of 1995.

From the Judgment and Order dated 13.5.94 of the Orissa Administrative Tribunal in O.A. No. 80 of 1991.

E N.S. Hegde and Raj Kr. Mehta for the Appellant.

Janaranjan Das for the Respondent.

The following Order of the Court was delivered :

F Leave granted.

Heard counsel for the parties.

G For recruitment made to a post of Assistant Law Officer in the State of Orissa, the respondent and another were competing candidates. The post was filled up by a candidate selected on merit. When another post became vacant, the respondent filed C.A. No. 80/91 in the Administrative Tribunal, Orissa seeking issuance of a direction to appoint him in that post. The Tribunal by its order dated April 27, 1992 allowed the petition and directed the appellant to appoint the respondent in a regular vacancy. The H appellant carried the matter in appeal in C.A. No. 8626/92 and this Court

dismissed the appeal. Thereafter, the respondent filed a contempt petition for direction to implement the order passed by this Court. The Tribunal in the impugned order dated 13.5.94 directed to appoint the respondent in the resultant vacancy. Thus this appeal. A

It is not in dispute that the State of Orissa made the Orissa Reservation of Vacancies in the post or Service (for SC & ST) Act, 1975. Section 7 of the Act provides that if in any recruitment year, the number of candidates either from Scheduled Castes or Scheduled Tribes is less than the number of vacancies reserved for them, even after exchange of reservation between the Scheduled Castes and Scheduled Tribes, the remaining vacancies may be filled up by general candidates after de-reserving the vacancies in the prescribed manner, but the vacancies so de-reserved may be carried forward to subsequent three years of recruitment provided that in the years following the recruitment year the normal reserved vacancies together with the vacancies carried forward shall not exceed fifty per cent of the total number of vacancies of the year in which recruitment is made and the excess over fifty per cent of the reserved vacancies shall be carried forward to subsequent years of recruitment. It is contended that there are three vacancies reserved for ST and SC and as such there cannot be recruitment in excess of 50% reservation. In that resultant vacancy the respondent should be appointed in a substantive capacity, we find no force in the contention. One Mr. D. Mullick, ST was appointed on 5.7.1978. Thereafter, in the vacancy reserved for SC one G.L. Chakraborty, general candidate was appointed on January 27, 1986. Another vacancy for ST has arisen in 1986, one Mr. B.N. Mohanty, general candidate was appointed on September 24, 1986. Recruitment was made for general candidates in March, 1990 and one Mr. P.K. Nanda was appointed as a general candidate. As per the provisions of the Act, when the general recruitment is sought to be made, the rule of reservation shall be applied for and the notification be issued calling the candidates from reserved quota to apply for recruitment. If no candidate is recruited or found eligible in terms of the provisions of the Act, the reserved vacancy should be carried forward for three recruitment years. In the recruitment year in question if the reserved vacancies exceed 50% then the resultant excess vacancies would be de-reserved throwing open to the general candidates and the excess vacancies should be carried forward for future recruitment. In other words, at each recruitment year, attempt shall be made to notify the reserved vacancies for recruitment. In case the candidates are not available nor are B
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A found suitable, then the question of carrying forward would arise.

Thus it could be seen that there was no recruitment till 1990. The question of carry forward of the reserved vacancies for SC and ST did not arise. The Tribunal has committed an illegality in treating the vacancy meant for SC to be excess of 50% under the provision. But one fact that remains on record is that one Mr. L.B. Misra, a general candidate was temporarily appointed otherwise than according to rules. Therefore, the Government have to consider the case of the respondent in that temporary vacancy. Under these circumstances, the appellant is directed to consider the case of the respondent for appointment in the temporary vacancy till the regular vacancy of a general candidate arises and then to consider his case. He cannot at present be treated to be a regular candidate and seek for consequential benefits. The appeal is accordingly allowed. No costs.

C

K.S.D.

Appeal allowed.