

2022 SCeJ 1122

Supreme Court of India

*Before: Justice Indira Banerjee, Justice C.T. Ravikumar.***ARJUN MURMU v. THE STATE OF ODISHA**

Civil Appeal No. 6913 of 2022

23.09.2022

Constitution of India, 1950, Art. 136 - Vacancies in promotional post - Challenge to seniority list - Vacancies in the promotional post are still lying vacant - Certainly, non-filling of vacancies in the promotional post would be prejudicial to the interests of the administration of any service - Normally, when the seniority list is in challenge and a number of vacancies are available in the promotional post, promotions would be permitted to be effected subject to the result of the Writ Petition carrying challenge against the seniority list. [Para 14, 15]

Petitioner Counsel: Vaibhav Manu Srivastava, Respondent Counsel: Sibho Sankar Mishra

JUDGEMENT

C.T. Ravikumar, J.

1. Leave granted.

2. These Appeals are filed against the final judgment and order dated 14.07.2021, passed by the High Court of Orissa at Cuttack in I.A. No.1000 of 2021 in Writ Appeal (W.A.) No.612 of 2020. The Appeal arising from SLP(C) No.14996 of 2021 is filed by the Appellant in W.A. No.612 of 2020 and he is Respondent No.7 in the Appeal arising from SLP(C) No.17933 of 2021 filed by third parties to the stated interlocutory application and also the stated Writ Appeal. As a matter of fact, the Appellants in the Appeal arising from SLP(C) No. 17933 of 2021 are not parties even to Writ Petition No.24191 of 2020 and the interim order passed in I.A.

No.10848 of 2020 thereon dated 24.09.2020 led to the filing of W.A. No.612 of 2020. The party Respondents in W.P.(C) No.24191 of 2020 are Respondent Nos. 5 and 6 in both the Appeals. For the sake of convenience, the parties are referred to hereinafter in this judgment in accordance with their rank and status in the latter Appeal arising from SLP(C) No.17933 of 2021 as all the parties in the former Appeals are arrayed as Respondents therein, unless otherwise specifically mentioned. All the private parties viz., the petitioners and the party Respondents belong either to the batch of directly recruited Assistant Section Officers (for short, 'ASOs') under the special recruitment drive for the backlog vacancies for Scheduled Tribes or batch of directly recruited ASOs under the General Quota, in Governor's Secretariat / State Secretariat in the State of Odisha. The subject matter of the W.P.(C) No.24191 of 2020 is regarding the fixation of inter se seniority between the said batches of ASOs, (evidently recruited and appointed in the same recruitment years) in the final gradation list of ASOs published vide Notification dated 11.06.2020.

3. In view of the manner in which we intend to dispose of the Appeals it is unnecessary to delve into the facts. Notification for the special recruitment drive was first in point of time and naturally on culmination of the selection process candidates from the rank concerned were appointed earlier in point of time. It is the case that direct recruitment notification for direct recruitment under the General Recruitment Drive and the appointments of candidates from the consequently drawn list were effected subsequently. Pursuant to their appointment, the first Respondent, State of Orissa published a tentative gradation list of seniority in the post of ASOs in the State of Orissa on 12.04.2018. In the said gradation list, the appointees from the General quota were assigned seniority over the special recruits. Aggrieved by the assignment of seniority in the aforesaid manner in the gradation list dated 12.04.2018 Respondent

a
b
c
e
f
g
h
i
j
k
l
m

No.7 filed representation raising objection. According to her, similarly situated persons have also filed such representations. Disregarding their contentions and objections the final seniority list in the said grade of ASOs was drawn and published and this led to the filing of the afore-stated Writ Petition.

4. When the Writ Petition came up for admission, a learned Single Judge of the High Court passed an order on 24.09.2020 in I.A. No.10848 of 2020 on the following lines: -

“As an interim measure it is directed that, any promotion pursuant to the Gradation List vide Annexure – 13 shall be subject to the result of the writ petition.”

5. It is assailing the said interlocutory order dated 24.09.2020 that Writ Appeal No.612 of 2020 was filed. The Division Bench passed an interim order in I.A. No.1694 of 2020 on 25.01.2021 on the following lines: -

“Heard learned counsel for the parties. As an interim measure, this Court directs that there shall be no promotion shall be given to anybody without the leave of this Court. The I.A. is accordingly disposed of.”

6. Later, the said Writ Appeal itself was disposed of on 24.02.2021. Taking note of the pendency of the Writ Petition, the Division Bench ordered that it would be open to the parties to argue the Writ Petition on merits and requested the learned Single Judge to dispose of W.P. (C) No.24191 of 2020 within a period of one month as a number of promotional posts were lying vacant due to the pendency of the said Writ Petition. It was further ordered therein thus: - “Since we request the learned Single Judge to dispose of the Writ Petition within a period of one month, the interim order dated 24.09.2020 passed in I.A. No.10848 of 2020 shall continue till disposal of the W.P. (C) No.24191 of 2020 by the learned Single Judge. The Writ Appeal is disposed

of. In view of disposal of the Writ Appeal, all the pending I.A.s are accordingly disposed of.”

7. Subsequent to the disposal of the Writ Petition, I.A. No.606 of 2021 was moved by the 7th Respondent viz., the Appellant in the former Civil Appeal, essentially, contending that taking advantage of an inadvertent mistake in the order dated 24.09.2020, the opposite parties are initiating steps to effect promotions from the final gradation list of ASOs dated 12.06.2020 which is under challenge in the Writ Petition. Consequently, they sought for modification of the order dated 24.02.2021 with direction to continue with the interim order dated 25.01.2021 passed in I.A. No.1694 of 2020 till disposal of W.P.(C) No.24191 of 2020. On 18.03.2021, the Division Bench disposed of the said interlocutory application by modifying the order dated 24.02.2021 to the extent that interim order dated 25.01.2021 passed in I.A. No.1694 of 2020 shall continue till disposal of the Writ Petition by the learned Single Judge. It was made clear that the rest of the order dated 24.02.2021 would remain unaltered.

8. The first Respondent – State of Odisha filed interlocutory application viz., I.A. No.1000 of 2020 which led to the passing of the impugned order in the Appeals arising from the above special leave petitions. As per the impugned order dated 14.07.2021 in I.A. No.1000 of 2021, the Division Bench recalled the order dated 18.03.2021 and restored the order dated 24.02.2021 as the final order of disposal of Writ Appeal No.612 of 2020. It is in the aforesaid circumstances, the Appellant in the said Writ Appeal who is also the petitioner in W.P.(C) No.24191 of 2020 filed the captioned Appeals.

9. Heard, learned counsel for the parties.

10. From the aforesaid narration, it is clear that the Writ Petition challenging the fixation of seniority under the final seniority list of ASOs dated 12.06.2013, of the above

a
b
c
e
f
g
h
i
j
k
l

m

mentioned two batches is still pending before the learned Single Bench of the High Court. The impugned order of the Division Bench modifying the interim order passed by the learned Single Judge in W.P.(C) No.24191 of 2020 as also modifying its own interim order passed in the W.A. No.612 of 2020 was passed while disposing of the Appeal with liberty to the writ petitioner to apply for an early disposal of the pending Writ Petition. It is also evident that originally, the Appeal was disposed of as per order dated 24.02.2021 requesting the learned Single Judge to dispose of the Writ Petition within one month. Obviously, the Writ Petition was not disposed of within the stipulated time limit and it is still pending. It is the availability of a large number of vacancies in the promotional post and the non-availability of incumbents to man the posts and the consequential exigency in administration that made the first Respondent to file I.A. No.1000 of 2021.

11. We are of the considered view that the rival contentions advanced before us have to be appreciated in the light of the aforesaid undisputed position that the Writ Petition is still pending before the learned Single Judge of the High Court. When the Special Leave Petitions came up before this Court on 08.10.2021, this Court passed the following order: -

“Issue notice.

In the meanwhile, there will be ad interim stay of operation of the impugned order dated 14.07.2021 in IA No.1000 of 2021 in Writ Appeal No.612/2020 passed by the High Court.”

12. The scope of exercise of corrective jurisdiction under Article 136 of the Constitution of India has to be looked into in the light of the aforesaid undisputable position that the Writ Petition itself is pending before the learned Single Judge of the High Court. It is a fact that no issue was finally decided by the High Court, warranting exercise of corrective jurisdiction of this Court under Article 136 of the Constitution. It is

also a fact that this Court has not passed any order transferring the pending Writ Petition into the file of this Court either suo motu or on application. In such circumstances, the short question is what should be the nature of the interim order, in view of the conflicting orders referred to hereinbefore, to be maintained, pending consideration of W.P. (C) No.24191 of 2020. We have taken note of the order passed by the learned Single Judge as also the conflicting orders passed by the Division Bench in Writ Appeal No.612 of 2020 and lastly, the impugned order passed in I.A. No.1000 of 2021 in the said Writ Appeal.

13. The interim order passed by the Division Bench of the High Court dated 24.02.2021 itself would reveal the availability of a number of vacancies in the promotional post of ASOs/Section Officer and that they are not being filled up solely due to the pendency of W.P. (C) No.24191 of 2020.

14. The fact is that those vacancies in the promotional post are still lying vacant. Certainly, non-filling of vacancies in the promotional post would be prejudicial to the interests of the administration of any service.

15. The Writ Petition is pending before the learned Single Judge and on its disposal, the party or parties aggrieved would be having a remedy to file intra Court appeal. Taking note of all the aforesaid aspects, we think it wholly appropriate to desist from making any observation touching the merits of the rival contentions and at the same time to emphasize on the expediency of an early disposal of the Writ Petition, which would be in the interest of all concerned. Normally, when the seniority list is in challenge and a number of vacancies are available in the promotional post, promotions would be permitted to be effected subject to the result of the Writ Petition carrying challenge against the seniority list. The learned Single Judge of the High Court had actually passed such an order taking note of the balance of convenience. In other words, as an interim measure it was ordered by

a
b
c
e
f
g
h
i
j
k
l
m

the learned Single Judge that promotion pursuant to the final gradation list would be subject to the result of the Writ Petition. In froth, as per the original order dated 24.02.2021, Writ Appeal No.612 of 2020 itself was disposed of maintaining the interim order passed by the learned Single Judge dated 24.09.2020 in I.A. No.10848 of 2020. That order was admittedly varied by the Division Bench time and again, as explained earlier. As per order dated 08.10.2021, this Court stayed the operation of the order dated 14.07.2021 in I.A.No.1000 of 2021 in Writ Appeal No.612 of 2020 passed by the High Court.

a

b

c

e

16. Taking note of the totality of the circumstances and also the balance of convenience, we dispose of these Civil Appeals with request to the High Court of Orissa to dispose of the Writ Petition No.24191 of 2020 as expeditiously as possible, preferably, within a period of two months from the date of receipt of a copy of this judgment. All the parties to the Writ Petition shall cooperate for the early disposal of the Writ Petition, within the stipulated time. If for any reason, the disposal of the Writ Petition is not possible within the stipulated period of time, it would be open for the Respondent authorities to fill up vacancies in the promotional post of ASOs from the final gradation list of ASOs, referred to as Annexure 13 in the interim order dated 24.09.2020 in I.A. No.10848 of 2020 in Writ Petition (C) No.24191 of 2020, provisionally and subject to the result of the Writ Petition.

f

g

h

i

j

17. These Appeals stand disposed of as above. All pending applications/interlocutory applications are also disposed of.

k

l

m