

PETITIONER:
KISHORE CHANDRA PANIGRAHI

Vs.

RESPONDENT:
STATE OF ORISSA AND ORS.

DATE OF JUDGMENT: 29/10/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

PATTANAIK.J.
Leave granted.

This Appeal by Special Leave is directed against the order of the Orissa Administrative Tribunal dated 19th April, 1990, passes in D.A. No.134 of 1986 as well as the order of the said Tribunal dated 3.9.1990 passed by the said Tribunal on an application for review.

The appellant had been appointed to the post of a peon in Class IV in the year 1976 in the Office of the Special Treasury, Berhampur. He was promoted to the post of Junior Clerk in the year 1982 which is a post in class III. By order dated 18.10.1986 he was reverted to his substantive post of peon in class IV. He therefore, challenged the order of reversion before the Orissa Administrative Tribunal. The Tribunal came to hold that the promotion of their appellant to the post of junior clerk was temporarily made without prejudice to the claim of seniority of others and the said promotion being contrary to the statutory rules and not having conferred any right on the appellant the order of reversion cannot be challenged and a such cannot be interfered with by the Tribunal. The appellant, therefore, has approached this Court in this appeal.

Mr. Mishra, learned counsel for the appellant did not challenge the finding of the Tribunal that the promotion of the appellant to the post of Junior Clerk was in contravention of the provisions of the Statutory Recruitment Rules called Orissa Ministerial Services (Method of Recruitment and conditions of service of clerks, assistants in the District Office and Office of the Heads of Department Rules)1963, (hereinafter referred to as 'the Recruitment Rules'). He however contended that the State Government having come forward with a set of Rules called Orissa Ministerial Services (Regularisation of Recruitment and conditions of Service of Irregular Recruits in the District Offices and Offices Subordinate thereto) Rules, 1986 (hereinafter referred to as "The Regularisation Rules) and thereunder having regularised all the recruitments made to the post of clerks prior to 8th October, 1982 and the appellant having been promoted to the post of Junior Clerk

in Class III on 8th September, 1982, his services must be held to be regularised under the Regularisation Rules and therefore, the order of the Tribunal is erroneous. The learned counsel appearing for the respondents on the other hand contended, that the Regularisation Rules regularises only those direct recruitments made contrary to the Statutory Rules and does not govern the case of promotion like that of appellant. According to him though under the Administrative instructions an employee from Class IV can be promoted only to some special post in Class IV like that of diarist and despatcher and could not have been promotion direct to the post of junior clerk, and therefore, his case is not covered by the aforesaid Regularisation Rules. In view of the rival submissions two questions really arise for consideration:-

1. Whether the promotion of the appellant to the post of Junior Clerk can be held to be valid promotion conferring any right on the appellant, and therefore, whether the order of reversion to the substantive post of peon in Class IV can be held to be penal.

2. Whether the Regularisation Rules cover the case of appellant.

So far as the first question is concerned it is well settled law that temporary promotion of an employee to a higher post contrary to the Provisions of the Recruitment Rules does not counter any right on the employee against the said promoted post and, therefore, reversion to the substantive rank cannot be held to be penal in nature. It is an admitted fact that the posts of junior clerks in the District Offices are filled up by a set of rules framed by the governor in exercise of power under Article 309 of the Constitution which is the Recruitment Rules. The said rules do not contemplate any promotion from Class IV to Class III excepting to a category of post like District, Despatcher. In other words under the Recruitment Rules it is not permissible for a peon in Class IV to be promoted to the post of a Junior Clerk in Class III. Consequently the promotion of the appellant to the post of Junior Clerk in Class III was per se illegal being contrary to the statutory Recruitment Rules and did not confer any right on the appellant who holds the said post. Therefore, the order of reversion passed by the employer reverting the appellant to the substantive post must be held to be legal and does not suffer from any illegality.

So far as second question is concerned, the Rules no doubt purpose to regularise irregular recruits to the post of junior clerks and assistants in Class III but the history of the aforesaid Regularisation Rules indicates that where in several departments direct recruitments were made by the Departmental Authorities without filling up the post in accordance with the Statutory Recruitment Rules and such employees contended to occupy the post for a considerable length of time and were to face termination. The appointment being contrary to the Statutory Rules, the Governor in exercise of power under Article 309 of the Constitution came forward with the Regularisation Rules. Such Regularisation Rules does not bring within his sweep the case of promotion of an employee in Class IV to that of a Clerk in Class III. We are unable to agree with the submission of Mr. Mishra, the learned counsel that the appellant's case is covered by the Regularisation Rules.

In the premises, as aforesaid, we do not find any infirmity with the decision of the Tribunal warranting interference by this Court under Article 136 of the Constitution. The appeal is accordingly dismissed. But in

the circumstances, there will be no order as to costs.

JUDIS