

CASE NO.:
Appeal (civil) 2822 of 1999

PETITIONER:
SIMANCHAL PANDA

Vs.

RESPONDENT:
STATE OF ORISSA & ORS.

DATE OF JUDGMENT: 25/01/2002

BENCH:
S. Rajendra Babu & Doraiswamy Raju.

JUDGMENT:

RAJU, J.

The appellant herein, who lost before the High Court fighting his cause as fourth-respondent in a Writ Petition filed in the High Court by the fourth-respondent in this appeal, has challenged the judgment of the Division Bench of the Orissa High Court dated 4.9.98 in OJC No.3652 of 1996 wherein the Order dated 23.3.96 passed by the Second Respondent herein according approval insofar as it related to the appellant in the category of non-teaching staff as Junior Clerk-cum-Typist in Anchalika Mahavidyalaya Jagannath Prasad, Distt. Ganjam, came to be set aside.

The relevant and necessary facts for appreciating the respective claims of the parties before us are that the appellant herein was appointed as Upper Division Clerk in the college with effect from 8.9.90 and joined service on 8.9.90. Since the college, as part of its own staff pattern, had a junior clerk (the fourth-respondent herein and the writ petitioner in the High Court) and another person as Lower Division Clerk-cum-Typist for purposes of effectively manning and smooth running of the office, the appellant was stated to have been designated as Upper Division Clerk being senior among the others though it is said, for all purposes he was taken to be the Lower Division Clerk-cum-Typist discharging duties as such from the beginning. Before joining when the appellant pointed out about this designation as Upper Division Clerk, the college seems to have instructed the appellant to accept appointment giving at the same time an undertaking that he had no objection if the approval of the competent authorities for purposes of Grant-Aid was obtained as Lower Division Clerk or Lower Division Clerk-cum-Typist depending upon the sanction based on the staff pattern permissible and that may be accorded by the authorities for purposes of assessment of aid to the college. It is seen from the combined statement submitted by the college authorities to the Education Department, that the case of the appellant was submitted for approval as Junior Clerk-cum-Typist since that is the category of post to which the sanction could be accorded for the college as per the eligibility criteria laid down for the purpose. When the Second Respondent passed the Order dated 23.3.96 according approval, as noticed above, the fourth-respondent herein filed the Writ Petition challenging the same by contending that the present appellant in this Court was only appointed as Upper Division Clerk or Head Clerk and it was the writ petitioner in the High Court, the present fourth-respondent, who was appointed as Junior Clerk-cum-Typist and, therefore, the approval ought to have been of the appointment of the writ petitioner and not of the appellant. This stand of the fourth-respondent herein had the acceptance of the Division Bench of the High Court for the reason that if depending upon the students strength, the approval can only be of one

Junior Clerk-cum-Typist, the writ petitioner who was appointed as such alone could have been approved and approval by the authorities of the present appellant is unwarranted and impermissible in law. While quashing the appointment of the present appellant, directions have been issued to the competent authorities to approve the appointment of fourth-respondent herein within the stipulated time. Aggrieved, as noticed earlier, the present appeal has been filed.

Heard Shri P.N. Misra, Senior Advocate, for the appellant and Shri Ashok Panda, Senior Advocate, for the fourth-respondent and Mrs. Kirti Misra, Advocate, for the State and its Authorities.

We have been taken through the relevant papers to substantiate the respective stand of the opposing parties. On a careful consideration of the same we are of the view that the High Court committed a serious error in interfering with the order of approval accorded to the appointment of the appellant as Junior Clerk-cum-Typist for purposes of assessing the quantum of aid. There can be no serious dispute or controversy that the appellant herein was senior to the fourth-respondent, he having been working in the college since 8.9.90 as Junior Clerk-cum-Typist though internally for administrative purposes of the college he was designated as Head Clerk-cum-Upper Division Clerk to enable the smooth running of the office administration, in the light of the two other clerks employed in the services of the college immediately though subsequently after the appointment of the appellant. It is seen from the qualifications possessed by the respective candidates also that the appellant is fully and better qualified for the post and he has been used as such Junior Clerk-cum-Typist in the college. When, irrespective of the nomenclature given internally to the post held by the three persons in the services of the college, in terms of the guidelines laid down for purposes of assessment of aid-grant from the Government only one post of Junior Clerk-cum-Typist is permissible and the college authorities taking into account not only the seniority of the appellant but also the fact that the appellant alone has been discharging duties for all effective purposes as Junior Clerk-cum-Typist have chosen to recommend for approval and assessment of grant in order to satisfy the norms pertaining to the grant and the entitlement of the college and the competent authorities in the Education Department has also chosen to accept and accord approval therefor, the High Court ought not to have interfered with the sanction accorded by the second respondent under the impugned order. The reason assigned by the High Court to justify interference appears not only to be superficial but also not in conformity with any settled or accepted principle of law or on facts. It perpetuates on the other hand an anomalous position of justifying approval to the appointment of a junior to the detriment of a senior resulting in grave and substantial injustice. Consequently, we are unable to persuade ourselves agree with the reason of the High Court.

The appeal is hereby allowed, the order of the High Court is set aside and consequently the writ petition filed in the High Court by the fourth-respondent shall stand dismissed. No costs.

J.
(S. Rajendra Babu)

J.
(Doraiswamy Raju)

January 25, 2002.