



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.13121 OF 2025

STATE OF ODISHA & ORS.

.....APPELLANTS

VERSUS

SREEPATI RANJAN DASH

.....RESPONDENT

WITH

CIVIL APPEAL NO.13122 OF 2025

STATE OF ODISHA & ORS.

.....APPELLANTS

VERSUS

ADITYA BHANJAN SAHOO

.....RESPONDENT

J U D G M E N T

DIPANKAR DATTA, J.

THE APPEALS

1. These two appeals, by special leave, at the instance of the common appellant — State of Odisha¹ — are directed against the common judgment and order dated 7th November, 2025² passed by a Division Bench of the High Court of Orissa³, dismissing two intra-court appeals⁴ that the State had carried from final orders dated 24th February, 2023 and 28th February, 2023 of a Single Judge allowing the writ petitions⁵

¹ State

² impugned order

³ High Court

⁴ W.A. No.658 of 2023 and W.A. No.744 of 2023

⁵ W.P.(C) No.35645 of 2021 and W.P.(C) No.41042 of 2021

of the two respondents before this Court, viz. Sreepati Ranjan Dash⁶ and Aditya Bhanjan Sahoo⁷, finding no infirmity therein.

FACTUAL MATRIX

2. The basic facts giving rise to the impugned orders, though uncontested, have a history of their own. To the extent germane for disposal of the present appeals, the same are adverted to briefly hereafter.

a. On 17th November 1981, the Commerce & Transport (Transport) Department, Government of Odisha issued an executive instruction (bearing No.17315)⁸ for recruitment to/filling up 4 posts of Assistant Regional Transport Officer for Sambalpur, Koraput, Sundargarh and Mayurbhanj regions. The post, which was a gazetted post, had been created for collection and assessment of Motor Vehicle Tax and Passenger Tax. This instruction was to the Transport Commissioner, Orissa, and declaring him as the authority competent to make appointments on such post. For promotion to the post of Assistant Regional Transport Officer, a Grade I Assistant (Senior Assistant) with 5 years' service as such (Grade I Assistant) was eligible. Promotion was to be based on merit and suitability. Pending finalisation of the recruitment rules, selection was to be made on the basis of the above principles. These instructions held the field with modifications effected on 23rd August, 1991 and 04th

⁶ Dash

⁷ Sahoo

⁸ Executive Instructions

July, 1995.

- b. In the absence of any rule, the posts of Assistant Regional Transport Officer were being filled by selection from different cadres under the administrative control of the Transport Department in terms of the Executive Instructions. On 16th March, 2013, both Dash and Sahoo were appointed as Junior Assistant. Dash and Sahoo joined duty on 18th March, 2013. On 10th June, 2016, both of them were promoted to the post of Senior Assistant, whereupon they joined on 13th June, 2016.
- c. In April, 2017, all border check gates were abolished for free passage of inter-State movement of vehicles on the advice of the Central Government. This required adjustment of the posts of Assistant Regional Transport Officer in the different Regional Transport Offices. On 17th October, 2017, *vide* a Resolution issued by the Commerce & Transport (Transport) Department, Government of Odisha, the officers – Assistant Regional Transport Officer, Additional Regional Transport Officers (General) and Regional Transport Officers (General) – whose services till now had been governed by Executive Instructions were now made a part of the Odisha Transport Service. The Odisha Transport Service cadre now consisted of Assistant Regional Transport Officer, Additional Regional Transport Officer (General) and Regional Transport Officer (General). The post of Assistant Regional Transport Officer was restructured from Group C to Group B w.e.f. 17th October, 2017 and

appointments to this post were now to be made by the Government of Odisha. The pay of this post was upgraded from level 9 of Pay Matrix under Odisha Revised Scale of Pay Rules, 2017 to level 10. Pending finalisation of the cadre rules, recruitment to the post of Assistant Regional Transport Officer was made by way of selection from different posts such as Senior Assistant of Secretariat in the Transport Department, Senior Assistant of the State Transport Authority, Odisha and other non-ministerial posts under the State Transport/Regional Transport officers.

d. On 24th January, 2019, the Government of Orisha, in the General Administration and Public Grievance Department, restructured the Odisha Ministerial Services (Assistant and Section Officers) cadre in the offices of the Heads of Department and the Odisha Heads of Departments Establishment Officers cadre by a resolution, in the manner as follows:

- The Junior Assistant was the base level post.
- The post of Senior Assistant was re-designated as Assistant Section Officer (ASO) with existing level of pay, i.e. Level 09 in Pay Matrix as per Odisha Revised Scale of Pay (ORSP) Rules 2017.
- The posts of Section Officer and Establishment Officer were created.
- The post of Senior Establishment Officer was re-designated as Administrative Officer.

The post of Assistant Section Officer (ASO) was to be filled up by promotion from eligible Junior Assistants and the post of Section Officers would be filled up from eligible Assistant Section Officers. The posts of Junior Assistant, Assistant Section Officer and Section Officer were under the administrative control of the respective Heads of Departments. The posts of Establishment Officer, Administrative Officer and Senior Administrative Officer were to be filled by the Home Department.

- e. Significantly, there is no challenge to this resolution dated 24th January, 2019.
- f. On 16th February, 2019, Dash and Sahoo were redesignated as Assistant Section Officer pursuant to the said resolution and they continued to discharge their duties on regular basis.
- g. On 16th June, 2021, Sahoo submitted a representation to the Government of Odisha for promotion to the post of Assistant Regional Transport Officer under the Executive Instructions. On 24th June, 2021, the Additional Commissioner Transport requested the FA-cum-Additional Secretary to the Government of Odisha, Commerce & Transport (Transport) Department, to convene a Departmental Promotion Committee⁹ to fill up 16 vacant posts of Assistant Regional Transport Officer lying vacant, as Dash and Sahoo as well as one Smt. Ritushree Baral had completed five years of regular service in the post of Senior Assistant Officer and were

⁹ DPC

eligible for promotion as Assistant Regional Transport Officers.

- h. Dash filed a writ petition¹⁰ before the High Court seeking a direction to the authorities to consider his representation. On 13th July, 2021, a Single Judge of the High Court disposed of the writ petition of Dash directing the appellants to consider the representation and pass orders within three months.
- i. On 26th July, 2021, the Government of Odisha rejected the proposal for holding of DPC to fill up the post of Assistant Regional Transport Officer.
- j. On 23rd August, 2021, Sahoo invoked the writ jurisdiction of the High Court seeking quashing of the order dated 26th July, 2021 whereby the proposal for holding DPC was rejected. The High Court disposed of the writ petition on 23rd August, 2021 by setting aside the order dated 26th July, 2021 as it was passed without recording any reason. The matter was remanded to the Government of Odisha for reconsideration to hold DPC to fill up the vacant posts of Assistant Regional Transport Officer and to pass a reasoned order.
- k. On 3rd September, 2021, the Transport Commissioner referred the names of eligible Assistant Section Officers including the names of both Dash and Sahoo for promotion to the post of Assistant Regional Transport Officer with the request to hold a DPC. On 11th October, 2021, the Commerce and Transport (Transport) Department, Government of Odisha rejected the recommendation

¹⁰ W.P.(C) No.19531 of 2021

of the State Transport Authority, Odisha to convene the DPC. It was held *inter alia* that the post of Assistant Regional Transport Officer was a selection and *ex-cadre* post in the past. There was sufficient scope for promotion in the respondents' cadre like Section Officer, Establishment Officer, Administrative Officer and Senior Administrative Officer. The post of Assistant Regional Transport Officer was not in the promotional hierarchy, and the Executive Instructions were not applicable.

- l. On 11th November, 2021, Dash filed another writ petition¹¹ before the High Court challenging the rejection order dated 11th October, 2021.
- m. Similarly, on 10th December, 2021, the Government of Odisha in the Commerce and Transport (Transport) Department, rejected the recommendation of the State Transport Authority, Odisha to convene the DPC.
- n. Sahoo then invoked the writ jurisdiction¹² on 24th December, 2021, challenging the rejection order dated 10th December, 2021.
- o. On 5th January, 2022, the Odisha Transport Service (Method of Recruitment and Conditions of Service) Rules, 2021¹³ came to be framed in exercise of power conferred by the proviso to Article 309 of the Constitution of India¹⁴, in consultation with the Odisha Public

¹¹ W.P.(C) No.35645 of 2021

¹² W.P.(C) No.41042 of 2021

¹³ 2021 Rules

¹⁴ Constitution

Service Commission¹⁵.

- p. On 30th December, 2022, the OPSC issued an advertisement for filling up Group B posts in the Orissa Transport Service Cadre including the post of Assistant Regional Transport Officer.
- q. Close on the heels thereof, on 24th February, 2023, the Single Judge allowed the writ petition of Dash by holding as under:

29. In view of the aforesaid analysis of fact as well as law and upon a conspectus of the materials placed before this Court and upon hearing the learned counsel appearing for the respective parties, this court is of the considered view that the impugned order under Annexure-9 is unsustainable in law and the same is here by quashed. Further, the opposite party No.2 i.e. The Transport Commissioner-cum-Chairman STA, Odisha is directed to immediately convene the DPC and consider the case of the petitioner along with two other persons found eligible by him vide his letter dated 03.09.2021 under Annexure-7 in the light of executive instruction dated 17.11.1981 and take a decision within a period of four weeks from the date of production of the copy of the judgement. It is further directed that in the event, the opposite parties are planning to fill up the vacant post of ARTO in view of the new Rule 2021, which was notified on 03.01.2022, they are free to do so, however, three posts of ARTO as has been recommended under Annexure-7 by the Transport Commissioner shall not be filled up till a final decision is taken by the opposite party No.2 as has been directed hereinabove. In the event, any advertisement Has been published to fill up such posts, suitable modification be made in the said advertisement by way of corrigendum forthwith.

- r. In view of the Single Judge's order dated 24th February, 2023 in W.P.(C) No.35645 of 2021, W.P.(C) No.41042 of 2021 of Sahoo also came to be disposed of on 28th February, 2023 by holding as under:

2. In view of the judgment passed in W.P.(C) No.35645 of 2021 dated 23.02.2023, the present writ petition is disposed of accordingly.

¹⁵ OPSC

- s. The State preferred an appeal¹⁶ on 13th April, 2023 challenging the Single Judge's order. On 7th November, 2023, the Division Bench dismissed the appeal and upheld the Single Judge's order by the impugned judgment.
- t. On 23rd February, 2024, both Dash and Sahoo instituted contempt petitions¹⁷ whereupon the High Court granted time of 4 (four) weeks for securing compliance of its order. Immediately thereafter, on 23rd March, 2024, the State invoked this Court's jurisdiction by presenting the special leave petitions, whereupon notice came to be issued on 22nd April, 2024 by this Court and the impugned orders were stayed. On 2nd August, 2024, this Court in I.A. No.148567 of 2024 directed that any appointment that is made in the interregnum would be subject to the outcome of the special leave petitions.

ARGUMENTS ON BEHALF OF THE APPELLANTS

3. Learned counsel for the State argued as follows:

- a. The High Court erred in directing the Transport Commissioner to convene a DPC for promotion to the post of Assistant Regional Transport Officer, despite the fact that the appointing authority for the said post is the Government of Odisha and the Transport Commissioner has no power or jurisdiction to convene such DPC.
- b. After the restructuring of the post of Assistant Regional Transport

¹⁶ Writ Appeal No.658 of 2023

¹⁷ CONTC No.1111 & 1110 of 2024

Officer vide resolution dated 17th October, 2017, the appointing authority and the power to convene DPC shifted from the Transport Commissioner to the Government of Odisha, rendering reliance on the earlier Executive Instruction dated 17th November, 1981 legally untenable.

- c. Recommendation of the Transport Commissioner could not confer any vested or enforceable right of promotion upon Dash and Sahoo, particularly when the State Government is the competent appointing authority and had passed reasoned orders rejecting their claim.
- d. Upon restructuring of the cadre, Dash and Sahoo ceased to be eligible for promotion to the post of Assistant Regional Transport Officer, as the said post no longer forms part of the promotional hierarchy of the cadre, which instead provides internal promotional avenues.
- e. The directions of the High Court are contrary to the 2021 Rules, under which the post of Assistant Regional Transport Officer is to be filled only through competitive examination, and earlier instructions including the Executive Instructions stand superseded.
- f. The existence of vacancies does not confer a right to promotion, and an employee is entitled only to consideration for promotion in accordance with the rules in force when the competent authority decides to undertake such consideration, which had not occurred prior to the 2021 Rules coming into effect.

- g. The impugned order as well as the orders of the Single Judge are contrary to the judgment of this Court in the case of ***State of H.P. v. Raj Kumar***¹⁸.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

4. Learned counsel appearing for Dash submitted as follows:

- a. The date of consideration and rejection of Dash's claim for promotion was 11th October, 2021.
- b. Respondents were admittedly eligible as per available vacancies and gradation list.
- c. The Executive Instructions were still in force till the 2021 Rules came into force on 5th January, 2022.
- d. Executive instructions have statutory force under Article 162 of the Constitution in the absence of recruitment rules under Article 309 proviso.
- e. Relying on ***Dr. Sharmad vs. State of Kerala***¹⁹, it was contended that Executive Instructions bind the respondents.
- f. Availability of alternate channels of promotion cannot be denied in the absence of Cadre Rules and specific exclusion in cadre restructuring. An eligible officer can opt for promotion to a post when opportunity comes earlier.
- g. Mere change in designation without any change in role or function is of no consequence when considered for promotion.

¹⁸ (2023) 3 SCC 773

¹⁹ 2025 SCC OnLine SC 71

- h. Even after re-designation, Assistant Section Officer remained at Level 09 of the Pay Matrix while Assistant Regional Transport Officer was upgraded to Level 10; as such promotion from Level 09 to Level 10 is a natural progression.
 - i. Decision not to fill up vacancies must be taken for bona fide reasons supported by appropriate reasons (***Shankarshan Dash vs. Union of India & Ors***²⁰).
 - j. **Raj Kumar** (supra) will not apply because the judgment came on 20th March, 2022 and will have prospective effect and neither the judgment nor the recruitment rules were in force when the case of the Dash was considered on 11th October, 2021.
- 5.** Learned counsel appearing for Sahoo adopted the submissions made on behalf of Dash.

ANALYSIS

- 6.** The common grievance of Dash and Sahoo was that despite being eligible for promotion to the post of Assistant Regional Transport Officer, they were not promoted to such post for which they approached the High Court by invoking its writ jurisdiction. This was despite a previous order of the High Court directing consideration of the representation of Sahoo.
- 7.** A Single Judge of the High Court had granted such relief to both, Sahoo and Dash, which was upheld by the Division Bench, directing that the

²⁰ (1991) 3 SCC 47 (para 7)

DPC be convened and their promotion be considered.

8. At the outset, a glaring fallacy discernible from the order impugned before us must be noticed. Despite the learned counsel for the State having cited a recent decision of this Court in **Raj Kumar** (supra) before the High Court, the Division Bench cursorily held that it would not be applicable. The relevant observations of the Division Bench read as under:

14. Taking into consideration the position that the Division Bench does not sit in re-appreciating the Judgment of the learned Single Judge in an intra-Court appeal on finding of fact, unless it is demonstrated by the appellants that the conclusion on set of facts based on material on record arrived at by the learned Single Judge is perverse. Thus, this Court does not feel it expedient to disturb the findings settled by the learned Single Judge. Furthermore, the ratio of Raj Kumar (supra) is not applicable on the factual matrix discussed by the learned Single Judge.

(emphasis ours)

9. Evidently, **Raj Kumar** (supra) was not cited before the Single Judge though the said decision came to be delivered by a bench of 3 judges on 20th May, 2022, thus preceding reservation of judgment by the Single Judge on 10th November, 2022.
10. Be that as it may, when the State in its appeals before the Division Bench, did bring the decision in **Raj Kumar** (supra) to its notice, it came to be summarily rejected as noticed above.
11. This assumes primacy for two reasons: *first*, the Single Judge while arriving at the conclusion that it did, did not refer to any decision of this Court or any court for that matter. Particularly so, when there has been a long line of settled judgments of this Court on the point of law. *Secondly*, when a precedent is cited before the Division Bench, it was

imperative for the Bench to take notice of the fact that the same not having been cited before the Single Judge, it deserved due consideration as to its applicability or the lack of it. Instead, the Division Bench proceeded to dismiss the appeals on the ground that an intra-court appellate bench does not interfere with the order of a Single Judge unless perversity in regard to findings of fact are shown.

12. We are mindful of the limited scope of interference in intra-court appeal jurisdiction of a high court. The Division Bench, *albeit* correctly discussed the limited scope of intra-court appeals by relying on the decisions in ***Union of Inda v. Arulmozhi Iniarasu***²¹, ***N. Ramachandra Reddy v. State of Telangana***²², ***Management of Narendra & Company v. Workmen of Narendra & Company***²³, it requires no reiteration that the ratio laid down in a precedent must hold good in the set of facts before the court. However, how or why the facts of **Raj Kumar** (supra) were different from the facts at hand and the law laid down therein had no applicability, was a question left lingering in the air.

13. Having held thus, we now proceed to see whether **Raj Kumar** (supra) has any application in the present facts. The proposition of law laid down in **Raj Kumar** (supra) and the decisive stroke given therein being necessary for the adjudication of the present matter, are reproduced hereunder:

²¹ (2011) 7 SCC 397

²² (2019) 11 SCR 792

²³ (2016) 3 SCC 340

82. A review of the fifteen cases that have distinguished *Rangaiah* [Y.V. *Rangaiah* v. J. Sreenivasa Rao, (1983) 3 SCC 284 : 1983 SCC (L&S) 382] would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in *Rangaiah*. The findings in these judgments, that have a direct bearing on the proposition formulated by *Rangaiah* are as under:

82.1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, *Rangaiah* case must be understood in the context of the rules involved therein. [*Deepak Agarwal v. State of U.P.*, (2011) 6 SCC 725, para 26; *Union of India v. Krishna Kumar*, (2019) 4 SCC 319, para 10].

82.2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existing rules, which implies the "rule in force" as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates. [*Deepak Agarwal v. State of U.P.*, *Union of India v. Krishna Kumar*].

82.3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government. [*K. Ramulu v. S. Suryaprakash Rao*, (1997) 3 SCC 59, paras 12 & 13; *Shyama Charan Dash v. State of Orissa*, (2003) 4 SCC 218, para 9; *State of Punjab v. Arun Kumar Aggarwal*, (2007) 10 SCC 402, para 38; *Deepak Agarwal v. State of U.P.*, (2011) 6 SCC 725, para 28]. There is no obligation for the Government to make appointments as per the old Rules in the event of restructuring of the cadre is intended for efficient working of the unit. [*G. Venkateshwara Rao v. Union of India*, (1999) 8 SCC 455, para 4]. The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14. [*Rajasthan Public Service Commission v. Chanan Ram*, (1998) 4 SCC 202, para 15; *K. Ramulu v. S. Suryaprakash Rao*, (1997) 3 SCC 59, para 15].

82.4. The principle in *Rangaiah* need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately. [*Delhi Judicial Services Assn. v. Delhi High Court*, (2001) 5 SCC 145, para 5].

82.5. When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases [*Deepak Agarwal v. State of U.P.*, (2011) 6 SCC 725, para 25].

83. The above-referred observations made in the fifteen decisions that have distinguished *Rangaiah* case demonstrate that the wide principle enunciated therein is substantially watered-down. Almost all the decisions that distinguished *Rangaiah* hold that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of law that existed on the date

when they arose. This only implies that decision in *Rangaiah* is confined to the facts of that case.

84. The decision in *Deepak Agarwal v. State of U.P.* is a complete departure from the principle in *Rangaiah* inasmuch as the Court has held that a candidate has a right to be considered in the light of the *existing rule*. That is the *rule in force* on the date the consideration takes place. This enunciation is followed in many subsequent decisions including that of *Union of India v. Krishna Kumar* [*Union of India v. Krishna Kumar*, (2019) 4 SCC 319]. In fact, in *Krishna Kumar* Court held that there is only a “right to be considered for promotion *in accordance with rules which prevail on the date on which consideration for promotion takes place*”.

85. The consistent findings in these fifteen decisions that *Rangaiah* case must be seen in the context of its own facts, coupled with the declarations therein that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of rules which existed on the date on which they arose, *compels us to conclude that the decision in Rangaiah is impliedly overruled*. However, as there is no declaration of law to this effect, it continues to be cited as a precedent and this Court has been distinguishing it on some ground or the other, as we have indicated hereinabove. For clarity and certainty, it is, therefore, necessary for us to hold:

85.1. The statement in *Y.V. Rangaiah* that, “the vacancies which occurred prior to the amended Rules would be governed by the old Rules and not by the amended Rules”, *does not reflect the correct proposition of law governing services under the Union and the States under Part XIV of the Constitution. It is hereby overruled.*

85.2. The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services.
(italics in original)

(underlining for emphasis ours)

- 14.** We are pained to observe that a bare perusal of the law laid down in **Raj Kumar** (supra) would have set the entire controversy at rest, particularly when the portion extracted above was set out in the arguments on behalf of the State. Reliance placed by learned counsel for the State on a precedent, having a bearing on the issue, ought to receive due judicial consideration. Mere reference of the precedent in the passing without engaging with it in the analysis is not sufficient compliance with the duty to assign reasons.

- 15.** This Court has observed that an employee does not have a vested right to be promoted nor does he possess a legitimate expectation to be promoted (See: **Haryana SEB v. Gulshan Lal** ²⁴). The limited right that an employee can legitimately claim is for consideration of his candidature. However, should the government, being the appointing authority choose, in its wisdom, to not fill up vacancies by promotion, especially when there is a change in cadre and restructuring of posts, it cannot be compelled to carry out the appointments.
- 16.** In **Raj Kumar** (supra) this Court, speaking through P.S. Narasimha, J., overruled the law laid down in **Y.V. Rangaiah** (supra) which had held the field for nearly four decades though it was consistently doubted in prior precedents.
- 17.** If one were to analyse the law laid down in paragraph 82 of **Raj Kumar** (supra) in the present set of facts, all the requirements set out therein are squarely covered. The Government, in the present case, chose not to fill the posts of Assistant Regional Transport Officer. This was in view of restructuring of the cadre and to enforce the 2021 Rules, which is in conformity with the law. The proposition that vacancies must be filled up by promotion in accordance with the rules which existed on the date such vacancies arose has also been negated. Thus, the decision of the Government to fill up these vacancies in accordance with the 2021 Rules cannot be faulted. The order impugned, though without reference to, proceeded on the law laid down in **Y.V.**

²⁴ (2009) 12 SCC 231

Rangaiah (supra), which expressly stood overruled by **Raj Kumar** (supra).

- 18.** Having observed thus, the 2021 Rules also must be adverted to, particularly in consonance with the Executive Instructions. The Executive Instructions, under which the respondents claimed appointment, were valid and operative till the enactment of the 2021 Rules. The Executive Instructions provided the Transport Commissioner as the authority competent to make appointments to the post of Assistant Regional Transport Officer. Paragraph 4 of these instructions assume significance and is extracted hereunder:

4. Pending finalization of the cadre rules for recruitment to the posts of Asst. Regional Transport Officer, selections may be made according to the above principles through the Departmental Promotion Committee whose composition will be as follows:

Transport Commissioner	...Chairman
Deputy Transport Commissioner	...Member
Deputy Secretary, Transport	...Member
Secretary, State Transport Authority	...Member-Secretary

(emphasis ours)

- 19.** Thus, paragraph 4 makes it clear as crystal that the instructions were put in force as a *pro-tem* arrangement till the finalization of the cadre rules, which were brought in force by way of the 2021 Rules. Intent of paragraph 4 of the Executive Instructions stood fulfilled by framing of the 2021 Rules, in exercise of the power conferred by the proviso to Article 309 of the Constitution.
- 20.** Notably, the 2021 Rules did not specifically repeal the Executive Instructions; however, the preamble did recite supersession of all previous rules, *instructions* and orders. On this basis, the Division

Bench of the High Court, proceeded to interpret the preamble to the 2021 Rules. For convenience, the preamble is reproduced as under:

No. 45-TRN-FE-MISC-0044-2017/T.— In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and in supersession of all rules framed, instructions or orders issued in this respect except as respect things done or omitted to be done before such supersession, the Governor of Odisha hereby makes the following rules to regulate the method of recruitment and conditions of service of persons appointed to the Odisha Transport Services, namely:—

21. The Division Bench proceeded to interpret application of the term '*supersession*' and the expression '*except as respect things done or omitted to be done before such supersession*'. It referred to the 5th edition of Black's Law Dictionary as well as ***Union of India v. Glaxo India Ltd.***²⁵ to hold it akin to repealing and replacing the Executive Instructions.
22. To that extent, there is no quarrel. The 2021 Rules superseded the Executive Instructions.
23. However, what is *saved*, or in this case *exempted*, is an act done or omitted to be done before such supersession. The Division Bench proceeded, in our view erroneously, to hold that the action for convening the DPC would be saved by the 2021 Rules.
24. It would be plausible to accept such a reasoning if the appointment to the post of Assistant Regional Transport Officer had already been made. Such appointment would not be displaced in view of the 2021 Rules and would stand saved. On the contrary, in the present facts,

²⁵ (2011) 4 SCR 50

not only were the appointments *not* made, even the DPC was not constituted. In such a case, there is no act for the 2021 Rules to save it from 'supersession'. An act which was permissible and, in fact, done in pursuance of the Executive Instructions and found inconsistent with the 2021 Rules could certainly be saved, if so warranted. However, the Transport Commissioner's letter, requesting that the DPC be convened cannot, by any stretch of imagination, be construed as an act done under the Executive Instructions. The preliminary consideration ought to have been whether or not the request for the DPC to be convened was an act completed under the Executive Instructions. Had it done so, the question of interpreting the term 'supersession' would not arise at all. The High Court, in a classic instance, appears to have missed the woods for the trees.

- 25.** That apart, rules framed under Article 309 would, even otherwise, supersede any instructions, circular, memorandum issued by a department, as held by this Court in ***Union of India v. Somasundaram Viswanath***²⁶. We consider it apt to reproduce the following passage:

6. It is well-settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by the appropriate legislature or by rules made under the proviso to Article 309 of the Constitution of India or by means of executive instructions issued under Article 73 of the Constitution of India in the case of Civil Services under the Union of India and under Article 162 of the Constitution of India in the case of Civil Services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under proviso to Article 309 of the Constitution of India

²⁶ (1989) 1 SCC 175

prevail, and if there is a conflict between the rules made under the proviso to Article 309 of the Constitution of India and the law made by the appropriate legislature the law made by the appropriate legislature prevails. ...

(emphasis ours)

26. Furthermore, the post of Assistant Regional Transport Officer was not a promotional post but a selection post. The difference, though seemingly narrow, is significant. In case of promotion, if the service rules in force confer an automatic right upon the individual to be promoted, in such case one may have a right to be promoted. In the absence thereof, an employee, at best, has a right to be considered for promotion, strictly in accordance with service rules [see: **H.P. SEB v. K.R. Gulati**²⁷].

27. The Government as the employer, in its wisdom, chose to select and appoint Assistant Regional Transport Officers by way of direct recruitment through combined competitive recruitment examination conducted by the OPSC. In such case, Dash and Sahoo would have no right to be appointed or promoted to such post other than in a manner consistent with the 2021 Rules. A profitable reference may be drawn to a decision of this Court in **Sant Ram Sharma v. State of Rajasthan**²⁸ where it was held thus:

6. ... If these three posts are selection posts it is manifest that the State of Rajasthan is not bound to promote the petitioner merely because he stood first in the Gradation List. The circumstance that these posts are classed as 'Selection Grade Posts' itself suggests that promotion to these posts is not automatic being made only on the basis of ranking in the Gradation List but the question of merit enters in promotion to selection posts. In our opinion, the respondents are right in their contention that the ranking or

²⁷ (1998) 2 SCC 624

²⁸ AIR 1967 SC 1910

position in the Gradation List does not confer any right on the petitioner to be promoted to selection posts and that it is a well-established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is therefore available. ...

(emphasis ours)

- 28.** The post being a selection post and not one of promotion, the manner of selection is a matter of policy which completely vests with the Government. If the Government deemed it fit to change the method of selection, it was within its power, authority and competence and unless the changed policy is proved to be arbitrary, Dash and Sahoo cannot have a claim to the post.
- 29.** In view of the aforesaid, the view taken by the Division Bench of the High Court is erroneous and it acted illegally in the exercise of its jurisdiction in dismissing the intra-court appeals of the State.
- 30.** The appeals, thus, deserve to be and are, accordingly, allowed. The impugned orders are set aside. Interim orders, if any, stand vacated.
- 31.** Parties shall bear their own costs.

.....J.
(DIPANKAR DATTA)

.....J.
(AUGUSTINE GEORGE MASIH)

**NEW DELHI;
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