

(1995) 11 SC CK 0155
Supreme Court of India
Case No: Civil Appeal No. 2091 of 1990

Sisir Kumar Mohanty

APPELLANT

Vs

State of Orissa and
Another
Bhikari
Charan Parida and
Others Vs State of
Orissa and Another

RESPONDENT

Date of Decision: Nov. 28, 1995

Acts Referred:

- Constitution of India, 1950 - Article 309, 311

Citation: (1996) 1 AD 82 : (1995) 9 JT 121 : (1995) 6 SCALE 771 : (1996) 7 SCC 120 : (1995) 5 SCR 756 Supp

Hon'ble Judges: S. B. Majmudar, J; K. Ramaswamy, J

Bench: Division Bench

Advocate: J.R. Das, for the Appellant; V.A. Mohta and P.N. Misra, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

C.A. No. 2091/90

1. This appeal by special leave arises from the order dated July 11, 1988 made by the Orissa Administrative Tribunal, Bhubaneshwar in T.A. No. 819 of 1987 (OJC 1215/84). The appellants are members of ministerial staff in the Police Department of Orissa working as Lower Division Clerks in the Offices of the Superintendent of Police and other district offices. They claimed parity of pay-scales and other benefits with the ministerial staff working in the offices of DIG, IG or DGP at the headquarters. The relief was denied by the Tribunal on the ground that they constitute separate cadre and, therefore, the ministerial staff working in the district headquarters could not be considered to be on par with the staff working in the offices of DIG, IG or DGP, as

the case may be. When the matter came up for consideration before this Court, after hearing the counsel at length, by order dated September 7, 1994 this Court directed as under:

Shri Sanlosh Hegde, learned senior counsel for the appellant, relying upon the resolution of the Govt. of Orissa, dated September 7, 1974, in particular paras 2 and 4 thereof, contended that all the police ministerial officers were treated as a whole unit, though they had earlier formed part of separate cadres and were given the benefits of special pay, rent free accommodation, house rent allowance although as a common cadre, incidentally all the benefits of the common cadre also stood extended. In support thereof, he sought to place reliance on the orders of transfer and postings effected in the office order No. 617-Administration, dated May 4, 1981 in which certain staff were inter-transferred from DPO Office to DIG SR etc.

It is contended for the State that though the said method was adopted only for the purpose of disciplinary control, for the purpose of recruitment, appointment and control the police ministerial staff are controlled by Section 7 of the Police Act, 1862 and the Orissa Ministerial Service (Method of Recruitment and Conditions of Service of Clerks and Assistants in the District Offices and Offices of the Heads of Departments) Rules, 1963 would continue to operate. In consequence, the ministerial staff appointed in the district offices are different from the ministerial staff working in the heads of the department and that, therefore, the same benefits or the scale of pay etc. were not extended to the staff working in the "district offices. Section 7 of the Act speaks of the appointment etc. Are (sic) subject to Article 311 of the Constitution and the Rules made under the Act or any other rules made in that behalf from time to time. When we asked the counsel for the State to point out to us whether any separate rules u/s 7 were made or any resolution in exercise of the powers u/s 7 was passed by the State adopting 1963 Rules as a part, for the purpose of appointment and administrative control of the ministerial staff working in the district offices as well as in the offices of the heads of the departments in the police department, it was said that since this question was not canvassed nor argued in the Tribunal, they did not have an occasion to look into the matter and place the necessary material before this Court. Since this is the crucial question that arises for decision in this case, the material is necessary. Counsels weeks for and is granted four weeks" time to place the necessary material on record.

2. Thereafter, the Government has placed before us the statutory rules issued under proviso to Article 309 of the Constitution, viz., the Orissa District Police Ministerial Officers (Method of Recruitment and Conditions of Service) Rules, 1995 (for short "the Rules") which came into force w.e.f. February 24, 1995. These Rules made a demarcation between the ministerial staff working in the district offices and those working in the offices of DIG, IG and DGP. The method of recruitment and the nature of the conditions of service have been enumerated thereunder.

3. From these circumstances, it is contended for the appellant by Shri Das, learned Counsel that preceding February 24, 1995 there were no statutory rules or administrative instructions regulating the recruitment, transfer and posting of the ministerial staff separately in the district offices and the offices of DIG, IG and DGP respectively. On the other hand, the evidence placed on record would clearly indicate that the recruitment, posting etc. are inter-changeable from the district offices to the State level offices referred to earlier. Therefore, they are entitled to the parity of benefits of pay-scales and other emoluments. We find force in the contention.

4. Shri Mohta, learned senior counsel for the respondents contended that the resolution of September 7, 1974 and further proceedings of 1984 clearly indicate that they made a distinction between the ministerial staff working in the district headquarters and the ministerial staff working in the head offices, viz., DIG, IG and DGP offices, and that, therefore, the appellant cannot claim parity. We find no force in the contention. A reading of the resolution dated September 7, 1984 would clearly show and also indicates the intention that the ministerial staff is different from the executive staff of the Police Department. There is not further sub-division amongst the ministerial staff working in the district head-quarters and those working in the head offices, viz., DIG, IG and DGP offices. Under these circumstances, the appellants are entitled to the parity of the treatment with the ministerial staff working in the office of DIG, IG and DGP. Since the Rules have come into force prospectively, viz., from February 24, 1995, whatever conditions prevailing preceding that date would continue to operate and be applicable to them and the conditions in respect of anyone recruited, under the Rules will be governed by the Rules separately.

5. Thus considered, we hold that the appellants are entitled to the benefits of the resolution dated September 7, 1974. The appeal is accordingly allowed to the above extent. No costs.

W.P. (C) No. 692/93

6. The writ petition is dismissed as infructuous.