

STATE OF ORISSA AND ORS. A
v.
SUDHIR KUMAR BISWAL AND ORS.

AUGUST 16, 1994

[KULDIP SINGH AND B.L. HANSARIA, JJ.] B

Service law :

Orissa District Revenue Service (Method of Recruitment and conditions of Service) Rules 1983—Rule 5(1)—Relaxation of maximum age—Power of Government to specify certain categories—Whether unguided—Held: No—Section 6(1)—Restricting recruitment to candidates of the particular district—Whether violative Art. 16(2) of the Constitution. C

Constitution of India—Art. 16(2)—Recruitment to District Service restricted to candidate of that district—Held violative of Art. 16(2)—However requirement of residence without a State not prohibited by art. 16(2). D

Certain portions of Rules 5(1) and 6(1) of the Orissa District Revenue Service (Method of Recruitment and Conditions of Service) Rules, 1983 were challenged before the Orissa Administrative Tribunal. Hence these appeals by the State. E

Disposing of the appeals, this Court

HELD : 1. Rule 5(1) of the Orissa District Revenue Service (Method of Recruitment and Conditions of Service) Rules, 1983 speaks of eligibility conditions, one of which is that the candidate must be below 28 years. Relaxation is provided in clause (b), in respect of SC/ST candidates and candidates with experience in settlement consolidation and to such extent in case of such other categories as Government may, by general or special order, specify from time to time. The Tribunal observed that this clause conferred unbridled power. This Court is of the view that the challenged portion of the provision contained some guidelines. The first is that the categories in relation to which the power can be invoked has to be analogous the two categories specifically mentioned in the rule. This appears to be the clear intention, as in the first part the proviso mention has been made to some categories, and so, "other categories" have to be a kin to them, like H

A other Backward Classes. This apart, as the power has been conferred on the Government and can be exercised only by issuing general or special order, a presumption of invoking the power in appropriate cases only is permissible to be drawn. Further, the extent to which maximum age limit may be relaxed cannot also to unlimited, as in the a candidates belonging to Scheduled Castes and Scheduled Tribes, as well as for other categories of candidates mentioned in the first part of the proviso, the limit is of five years. Thus the relaxation in case of other categories cannot also exceed five years and so it is difficult to agree with the Tribunal in the view it has taken about the power in question being unguided. [667-C-H, 668-A-B]

C 2. The offending portion of Rule 6(1) are the words "from the candidates of the district". The words "ordinarily" as used and placed in the sub-rule, refers to the periodicity which is said to be annual. It has no connection with the place of residence of the candidates. As to this part of the sub-rule, it has been pointed out by the Tribunal that he same is in conflict with Article 16(2) of the Constitution, which has laid down that no citizen shall be discriminated against, *inter alia* on the ground of "place of birth, residence or any of them." The aforesaid part of the sub-rule is thus clearly violative of the aforesaid prohibition and has, therefore rightly been held to the *ultravires*. [668-E-F]

E 3.1. The view taken by the Tribunal qua the proviso to rule 5(1) is reversed and its view as regard the challenged part of rule 6(1) is affirmed. [668-H-G]

F 3.2. As the selection had, however, been made on the basis of the applications which has been invited from the candidates of concerned district alone, the selection made pursuant to such an invitation cannot be sustained. The selection of the respondents in C.A. No. 2419/1993 cannot, therefore, be upheld. The appellants are directed to issue fresh advertisement by inviting applications for the posts in question from the candidates of all the districts of the State, as the requirement of residence within a State is not prohibited by Article 16(2). Appointments shall be made thereafter in accordance with the provisions contained in the Rules and other statutory provisions holding the field. [668-H, 669-A-B]

Pradeep Jain v. Union of India, AIR (1984) SC 1420 relied on.

H CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2478-79 of 1993.

From Judgment and Order dated 23.1.92 of the Orissa Administrative Tribunal in T.A. No. 432/87 (OJC. No. 907/84 and T.A. No. 433/87 (OJC. No. 908/84).

With

C.A. No. 3929 of 1993.

A.K. Panda for the Appellants.

Manoj Swarup for the Respondent in C.A. No. 3929/93.

The Judgment of the Court was delivered by

HANSARIA, J. A challenge was made before the Orissa Administrative Tribunal to some portion of the proviso to rule 5(1) of Orissa District Revenue Service (Method of Recruitment and Conditions of Service Rules) 1983 hereinafter the Rules; so also to certain part of rule 6(1) of the Rules. The Tribunal has accepted the challenge. Hence these appeals.

2. Rule 5(1) deals with the eligibility conditions of direct recruitment and has, *inter alia*, provided that the candidate must be below 28 years. This find place in clause (b) which has the following proviso :

"Provided that the maximum age-limit may be relaxed by five years in case of candidates belonging to the Scheduled Castes and Scheduled Tribes and up to five year in case of candidates having actual work experience in Settlement/Consolidation, *and to such extent in case of candidates of such other categories as Government may, by general or special order, specify from time to time*". (underlining by us).

3. The challenge was to the under lined portion of the proviso. As to this, the Tribunal has stated that the same has conferred unbridled power; there being not guidelines for invoking this power. We are, however, of the view that the challenged portion of the proviso does contain some guidelines. The first is that the categories in relation to which the power can be invoked has to be analogous to the two categories specifically mentioned in the rule. To us this appears to be the clear intention, as in the first part of the proviso mentioned has been made to some categories, and so, "other categories" have to be akin to them, like other Backward Classes. This apart, as the power has been conferred on the Government and can be exercised only by issuing general or special order, a presumption of invoking the power in appropriate cases only is permissible to be

A drawn. Further, the extent to which maximum age limit may be relaxed cannot also be unlimited, as in the case of candidates belonging to Scheduled Castes and Scheduled Tribes, as well as for other categories of candidates mentioned in the first part of the proviso, the limit is of five years. We are of the view that the relaxation in case of other categories cannot also exceed five years.

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4. We, therefore, do not agree with the Tribunal in the view it had taken about the power in question being unguided.

5. The next rule to be challenged is a part of rule 6(1) which reads as below :

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"Direct recruitment to the cadres of Revenue Inspectors, Amins and Collection Moharirs for the district shall ordinarily be made annually by the Collector, who shall invite applications from the candidates of the district through advertisement in the newspapers of the State".

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6. The offending portion of this rule are the words "from the candidates of the district". Shri Panda appearing of the appellants has submitted in this connection that this is ordinary requirement because of the word "ordinarily" appearing in the sub-rule. We are, however, of the view that the word "ordinarily" as used and placed in the sub-rule, refers to the periodicity which is said to be annual. It has no connection with the place of residence of the candidates.

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7. As to this part of the sub-rule, it has been pointed out by the Tribunal that the same is in conflict with Article 16(2) of the Constitution, which has laid down that no citizen shall be discriminated against, *inter alia*, on the ground of "place of birth, residence or any them". The aforesaid part of the sub-rule is thus clearly violative of the aforesaid prohibition and has, therefore, rightly been held to be *ultravires*.

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8. We, therefore, reverse the view taken by the Tribunal qua the proviso to rule 5(1), subject to the observations made by us relating to its real purport and reach, but affirm its view as regards the challenged part (6). As the selection had, however, been made on the basis of the applications which had been invited from the candidates of the concerned district alone, the selection made pursuant to such an invitation cannot be sustained. The selection of the respondents in C.A. No. 2419/1993 cannot,

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therefore, be upheld. The appellants are directed to issue fresh advertisement by inviting applications for the posts in question from the candidates of all the districts of the State. (May it be Stated that the requirement of residence within a State is not prohibited by Article 16(2) as was held in *Pradeep Jain v. Union of India*, AIR (1984) SC 1420. Appointments shall be made thereafter in accordance with the provisions contained in the Rules and other statutory provisions holding the field. A B

9. The appeals are disposed of accordingly.

G.N.

Appeals disposed of.