

PETITIONER:
NITYANANDA KAR AND ANR. ETC. ETC.

Vs.

RESPONDENT:
STATE OF ORISSA AND ORS. ETC.

DATE OF JUDGMENT 09/11/1990

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
MISRA, RANGNATH (CJ)
RAMASWAMY, K.

CITATION:
1991 AIR 1134 1990 SCR Supl. (2) 644
1991 SCC Supl. (2) 516 JT 1990 (4) 418
1990 SCALE (2) 976

ACT:
Orissa Administrative Service Class II/Orissa Subordinate Administrative Service Class III--Deputy Collectors and Sub-Deputy Collectors--Integration of--Assignment of year of allotment--Whether valid--Orissa Administrative Service Class II (Appointment of Officers Validation) Act, 1987--Validity of.

HEADNOTE:

On the recommendation of a High Power Committee, the Government of Orissa by its resolution dated 7.2.1972 decided to merge the two cadres of its services known as Orissa Administrative Service Class II and Orissa Subordinate Administrative Service Class III. The officers in the former cadre prior to 7.2.72 were designated as Deputy Collection and those of the latter as Sub-Deputy Collectors. The total integration was to be completed in a phased manner and the two cadres were to be abolished and a single cadre of Orissa Administrative Service with a senior and junior branch was to be constituted. Though initially this integration was contemplated to be completed within a period of 10 years, later on and from 21.12.1973, the two branches were abolished and a new cadre of O.A.S. II was constituted and in terms of the Government order, all members of the then existing O.A.S. II (J.B.) known as Sub-Deputy Collectors were placed in the seniority list below the last person in the then existing O.A.S. II (S.D. known as Deputy Collectors. The inter se seniority of the 'mergerists' and direct recruits who had joined the cadre after passing the competitive examination conducted by the Public Service Commission, was determined keeping in view the concept of 'year of allotment' contemplated under the Orissa Administrative Service Class II (Appointment by Promotion, Transfer and Selection) Regulations, 1959. Some of the mergerists who were initially in the O.A.S. III and came on integration to O.A.S. II challenged the method of fixing the 'year of allotment' before the Orissa High Court in Ananta Kumar Bose v. State of Orissa, AIR 1986 Orissa 151. The challenge therein was confined only to the recruits of the years 1970 and 1971 and was abandoned with regard to the recruits of

the year 1972. The High Court in that case upheld the seniority of the direct recruits of the years 1970 and 1971. Special Leave Petition preferred

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against the decision of the High Court in that case was rejected by this Court. Thereafter the appellants who entered the cadre of O.A.S. II on 21.12.1973 as mergerists filed another writ petition in the High Court challenging the seniority of respondents 4 to 13 contending that even though there was no invitation for filling up any post in the O.A.S. II in the advertisement issued by Public Service Commission, yet respondents 4-13 were given service on different dates in the year 1975 and further those respondents had been assigned '1972' as the 'year of allotment' without authority of law, they having joined service on different dates in 1975. The High Court rejected the petition holding that the case was entirely covered by the Full Bench decision in Ananta Kumar Bose's case referred to above. Hence this appeal before this Court.

The petitioners in the two Writ Petitions (Nos. 1044/87 and 929/87) challenge the vires of the Orissa Administrative Service Class II (Appointment of Officers Validation) Act, 1986 and the petitioners in the third writ petition seek quashing of Resolutions whereby the year of allotment concept was introduced by the Government of Orissa.

It is contended by the petitioners-mergerists that in the absence of clear cut rules relating to the determination of seniority, length of service should be the guiding principle whereas direct recruits contend that the principle of 'year of allotment' has been the traditional and tested modality to regulate and govern seniority inter se between the promotees, and the direct recruits.

Dismissing the appeal and partly allowing the writ petition where challenge to the validity of the Validation Act has been made, this Court,

HELD: The Orissa Legislature's preserving the principle of the year of allotment for the direct recruits of the years 1970 and 1971 and not extending the same to the direct recruits of the year 1972, to say the least is, arbitrary and liable to be struck down under Article 14 of the Constitution, for what is good and valid for 1970 and 1971, direct recruits is equally good and valid for the direct recruits of the year 1972. [654F-G]

Since the two groups of recruits were similarly placed and the situation did not yield to any reasonable classification it was not open to the State Legislature to maintain in artificial classification and provide by the impugned Act unequal treatment to the 1972 recruits. Thus Section 3(2)(a) of the Validation Act, in so far as it permits the deemed

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promotees of the year 1972 to be placed above the direct recruits of the year 1972 in the Gradation List, is violative of Article 14. [655B-C]

Direct Recruit Class H Engineering Officers' Association v. State of Maharashtra and Others, [1990] 2 SCC 715 followed.

Ananta Kumar Bose v. State of Orissa, AIR 1986 Orissa 151 affirmed.

JUDGMENT: