

PETITIONER:
ORISSA JUDICIAL SERVICES ASSOCIATION, CUTTACK

Vs.

RESPONDENT:
STATE OF ORISSA AND ANR.

DATE OF JUDGMENT 26/11/1990

BENCH:
SINGH, K.N. (J)
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SINGH, K.N. (J)
RAMASWAMY, K.

CITATION:
1991 AIR 386 1990 SCR Supl. (3) 348
1992 SCC Supl. (1) 187 JT 1990 (4) 726
1990 SCALE (2) 1220

ACT:
Orissa Superior Judicial Service Rules, 1963--Rule 7-
Constitutional validity of--Government to fix the quota for
promotees and direct recruits.

HEADNOTE:

Petitioners, the Association of the inservice employees of the Orissa Superior Judicial Service, in their petition under Article 32 challenged the constitutional validity of Rule 7 of the Orissa Superior Judicial Service Rules, 1963 and prayed for quashing the Notification dated 24.2.1987 inviting applications from members of the Bar for direct recruitment to the Orissa Judicial Service. It was contended that most of the Judicial officers have been stagnating for many years on account of lack of promotional avenues, and that direct recruitment of the members of the Bar was not permissible under the law, and that the State Government and the High Court were acting contrary to law in making the direct recruitment. A-73

Dismissing the writ petition, this Court,

HELD: 1. Article 233(1) and (2) contemplates recruitment to the post of District Judge in the Superior Judicial Service of the State by promotion from the Subordinate Judicial Service as well as by direct recruitment from the members of the Bar. The recruitments are made by the Governor of the State in consultation and on recommendation of the High Court. [350G-H]

2. The Constitution as well as the statutory rules framed under Article 309 provide for recruitment to the Senior Branch of Service by direct recruitment from the members of the Bar. The Constitutional mandate can not be challenged merely because it might adversely effect the chances of promotion of the Junior Branch of Judicial Service. [351C-D]

3. The plea of frustration and stagnation raised on behalf of the petitioners was wrong and incorrect and their grievance against the direct recruitment was unjustified. The members of the Judicial Service

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should not indulge in this kind of frivolous litigation as it does not bring credit to the Judicial Administration.

[351E-G; 352A]

4. Though Rule 7 does not prescribe quota for the two sources of recruitment, but the State Government and the High Court of Orissa have fixed the quota of 25% for direct recruitment and 75% for promotion by administrative orders. On the material placed before the court it is clear that recruitment by promotion to the service has been made in excess of 75 per cent quota. Therefore, the petitioner's grievance relating to discrimination against the members of the Junior Branch of Judicial Service is without any substance. [352D-F]

5. Statutory rules can be supplemented by administrative instructions. In the absence of Statutory provision, the State Government in consultation with the High Court is competent to prescribe quota for the two sources of recruitment to the service by administrative orders. It would, however, be desirable and proper to prescribe quota for recruitment to the service in the Rules. Absence of statutory provision in the Rules fixing the quota for the two sources of recruitment, results into a state of uncertainty leading to suspicion and litigation. The State Government should therefore take immediate steps in consultation with the High Court for amending the Rules by prescribing quota to remove the uncertainty.

JUDGMENT: