

CASE NO.:
Appeal (civil) 2091 of 1990

PETITIONER:
SISIR KUMAR MOHANTY AND ORS.

RESPONDENT:
STATE OF ORISSA AND ORS.

DATE OF JUDGMENT: 09/05/2002

BENCH:
G.B. PATTANAIK & UMESH C. BANERJEE

JUDGMENT:
JUDGMENT

2002 (3) SCR 976

The Judgment of the Court was delivered by

BANERJEE, J. Parity of benefits of pay scales and other emoluments between the members of the ministerial staff in the Police Department of Orissa working as Lower Division Clerks in the office of the Superintendent of Police and other District Offices with that of the ministerial staff working in the offices of DIG, IG or DGP at the headquarters, has been the core issue for which litigation persists for more than three decades. The matter in issue had a chequered career and has had to travel more than once before this Court, but the finality is yet to be reached and parties are yet to get justice in accordance with law in our justice delivery system. Judicial process is slow and delay in disposal of matters in this sub-continent is not unknown but that, however, does not warrant protracted litigation to be continued more than three decades-unfortunately, the facts presently under consideration depict such a protraction and the delayed process of our justice delivery system. Before we proceed further, we are emboldened to put on record our displeasure as to the method and manner in which this particular litigation proceeded even before this Court. Blames we do not want to attribute but the fact remains judicial process has seen probably-its saddest and poorest exposure in this matter as regards the time period. Faith, belief and confidence of the people cannot but be termed to be the hallmark of our justice delivery system and if matters like this proceed, there would neither be faith or belief nor confidence in the judiciary-a state of affairs which cannot but imply a total failure and breakdown of the entire constitutional system of the country since judiciary, the third pillar of the Constitution, stands out to be the guardian-angel of the society. It is not that this Court has not been able to deal with the matters like the present one but it so happened that the judicial process has taken its own time and thus the toll. In a progressive society judiciary must be active and should be able to dispense with the justice delivery system in quickest possible period of time - this is not the requirement presently, but has been the well-recognised principle since the advent of judicial process in the society. On this score, in fine we wish to mention that both the Bench and the Bar alike owe a duty to the people of the country to make available the justice delivery system with utmost promptitude and our conjoint efforts only would be able to bring forth a change.

Adverting to the matter under consideration be it noticed that as against the order dated July 11, 1988 passed by the Orissa Administrative Tribunal, Bhubaneswar in T.A. No. 819 of 1987(OJC 121/84) this Court upon a detailed hearing disposed of the appeal being Civil Appeal No. 2091 of 190 in the manner following:

"A reading of the resolution dated September 7, 1984 would clearly show

and also indicate the intention that the ministerial staff is different from the executive staff of the Police Department. There is no further sub-division amongst the ministerial staff working in the district headquarters 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.

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."

The resolution dated 7th September, 1974 spoken of in the order pertained to formation of all police ministerial officers in the State into one separate cadre and directed the recruitment to be under Section 7 of the Police Act of 1861 and all police ministerial officers in the State were to be designated as Police officers (Ministerial). Be it further noted that pursuant to the said resolution, the ministerial officers whether posted in the IG or DIG's office or in the District officers' office exercised their option to be recruited under the Police Act, 1861, whereupon they were issued necessary certificates under Section 8 of the Police Act.

It is significant to note that above noted Civil Appeal No. 2091 of 1990 came up for consideration before this court once before on September 7, 1994, wherein this court directed as under:

"Shri Santosh 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 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 Art. 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 thus whether any separate rules under section 7 were made or any resolution in exercise of the powers under Section 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. Counsel seeks for and is granted four weeks' time to place the necessary material on record."

It is in the context as above that this Court finally in its order dated November 28, 1995 recorded the following :

"Thereafter, the Government has placed before us the statutory rules issued under proviso to Article 309 of 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.

From these circumstance, 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 interchangeable 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."

Incidentally, by reason of the order as aforesaid, a Writ Petition filed by one Bhikari Charan Panda became thus infructuous and was dismissed as such.

The records depict that as against the order of this Court dated 28th November, 1995 the State Government filed a Review Petition but the same was dismissed and by reason whereof on 25th April, 1997, the State Government issued Notification by way of implementation of the order of this Court dated 28th November, 1995. Subsequent thereto, an application for modification of the order dated 28th November, 1995 and impleadment was filed by some of the petitioners claiming to be affected by the aforesaid order and some others moved the Orissa Administrative Tribunal on the ground that the order is not binding on them. The records further depict that by an order dated 13th January, 1998 this court converted the application for modification and impleadment to a Review Petition and by order dated 16th April, 1998, the Review Petition was allowed and order dated 28th November, 1995 was recalled and so also the Writ Petition bearing No. 692 of 1993 was restored. However, it has been clarified that the benefits granted pursuant to the order dated 28th November, 1995 were not to be disturbed and as such the same were not disturbed. By reason of the aforesaid, the entire factual edifice is now again thrown open and the matter comes up for further disposal - it is this process which we referred to earlier as may be a deterrent factor for the people to repose confidence in our justice delivery system.

In the order of restorting this Court has, however, been rather specific and on a limited question available for fresh adjudication before this Court. For convenience sake paragraph 4 [1998] 6 SCC 176 at 179 entitled Ashok Kumar Pattanaik and Ors. v. State of Orissa and Anr. of the order of restortation is noted hereinbelow for its proper appreciation:

"4. Having given our anxious consideration to these rival contentions we find that the decision rendered in Sisir Kumar Mohanty v. State of Orissa, [1996] 7 SCC 120 had not noticed the relevant rules to which our attention was invited by the learned Senior Counsel for the review petitioners. Unfortunately these rules do not seem to have been pointed out to the Court while it passed the said order. Whether these rules had any bearing on the ultimate decision or not is not a question for our consideration at this stage. However, we do find that all relevant aspects of the matter which had a direct bearing on the result of the civil appeal were not placed for consideration of the Court when it decided the aforesaid civil appeal. On this short ground and without expressing any opinion on the merits of the controversy

between the parties, we deem it fit to recall the order of this Court in Sisir Kumar's case (supra) and restore the civil appeal to the file of this court for a fresh decision on the limited question whether by virtue of Government of Orissa resolution dated 7.9.1974 any fusion of two erstwhile cadres of ministerial staff working in the offices of DIG, IGP and DGP at headquarters and the ministerial staff working in the districts under the District Superintendents of Police was effected till 24.2.1995 when the subsequent rules came into force treating them as separate cadres and if so, what would be its consequences. (emphasis supplied). It is made clear that so far as the question of equal pay for equal work made available to the four appellants in the said appeal is concerned, the decision in the civil appeal in their favour will not be open for reconsideration as review proceeding on this aspect has already been rejected by our aforesaid order dated 13.1.1998, meaning thereby, whatever, monetary benefits on the ground of equal pay for equal work are already made available to the original four appellants in Sisir Kumar's case (supra) will not get adversely affected even if ultimately they lose in the civil appeal restored to the file of this Court pursuant to the present order. It is also made clear that even if ultimately the civil appeal of the original four appellants gets dismissed and if it is held that there was no fusion of the two cadres of ministerial staff aforesaid and still on the ground of equal pay for equal work the original four appellants remain entitled to the monetary benefits as indicated hereinabove, the right, if any, of other similarly situated ministerial staff employees working in district establishments for being treated alike on the question of equal pay of equal work despite belonging to a separate cadre will obviously remain subject to scrutiny in any appropriate legal proceedings that such ministerial staff members of the district cadre may think fit to pursue against the State authorities, (Emphasis Supplied) We may also note that as the order in Sisir Kumar (supra) will be recalled for the aforesaid limited purpose, the consequential order dismissing Writ Petition (c) No. 692 of 1993 as infructuous on account of the order passed in the civil appeal will also necessarily have to be recalled as the writ petition was not decided on merits but was disposed of by the very same common order by which Civil Appeal No. 2091 of 1990 was allowed."

Since, however, the order has already been recalled, though limited in its operation, we once again have to "start at the very beginning". The Tribunal by its order dated 11 th July, 1988 dismissed the petition, upon an interpretation of the resolution dated 7th September, 1974. Before we proceed further in the matter, we also deem it fit to refer to the resolution in extenso for its proper appreciation:

Copy of Resolution No. PlB/1-43/73-pt-34227/F., dated the 7th September, 1974 of Government of Orissa, Home Department, Bhubaneswar:

The police ministerial Officers have been representing for some time for treating them on a footing different from their counterparts employed in other departments of Government on the ground that Government have imposed certain restrictions on them in regard to their affiliation with any other association in the interest of Police Administration and discipline and that they have been isolated from other associations. Government, while according recognition, have stipulated that the association of Police Ministerial Officers and their Branches will not federation with any other association because of the very peculiar nature of their work. In emergencies relating to law and order situations and other emergencies like election, flood, natural calamities etc., executive police Officers have to work over-time and undertake arduous nature of work to fulfil their responsibilities. The functioning of executive Police officers very much depends on the functioning of the police ministerial officers who have to discharge their responsibilities under the same conditions. The nature of discipline with which these ministerial officers of the Police Department have to abide is different from that of other ministerial officers in the State.

2. After careful consideration of all these aspects Government have been pleased to decide that henceforward the Police Ministerial Officers will be recruited under Section 7 of the Police Act-V of 1861 like the staff of the Police Radio Grid, P.M.T. Workshop, State Police Band etc. and the staff thus recruited along with the existing police Ministerial Officers will form a separate cadre within the general cadre of the Orissa Police and will be designated as Police Officers (Ministerial). They will be issued the certificate under Section 8 of the said Act. The existing Police Ministerial Officers will have to give option for their recruitment under Section 7 of the Police Act-V of 1861 within a time to be stipulated by the Inspector General of Police.

3. Since the duties assigned to them are different, they will have no occasion to exercise the power and functions of the executive Police Officers. They will, however, be subject to the Police discipline as far as it will be applicable to their sphere of duties. They will not be entitled to appointment or promotions to the executive posts and the present procedure regarding their appointment and promotion will continue to operate.

4. Government have further decided that, on the recruitment of the police Ministerial staff under Section 7 of the Police Act, 1861, they along with the existing Police Ministerial Officer who will give option to be recruited under Section 7 of the Police Act, will be conferred with the equivalent executive ranks and will get special pay as shown against each ministerial rank in the schedule below:

Existing Ministerial ranks			Corresponding Police executive Ranks,	
Special pay at the rate of 20% subject to the maximum as noted Hereunder against each.				
1	2	3		
Sr. Head Assistant H.A. Inspector			Rs. 120/-PM	
Special Branch Junior Head Assistant.				
Grade I Asstt.			Sr. Sub-Inspector	Rs. 95/-PM
Sr. Auditor Stenographer Gr. I				
Grade II Asstt.			Sub-Inspector	
Rs. 80 PM				
Head Clerk, Jr. Auditor, Gr. 11 Stenographer, Store Clerk.				
Accountant Gr.III .			Sr.A.S.I.	
Rs. 70 PM				
Asstt S.B. F.P.B. Clerk				
U.D. Typist				
U.D. Diarist				
U.D. Clerk, Asst. Librarian				
L.D. Asstt. L.D. Typist			A.S.I.	
Rs. 60 PM				
L.D.-cum-Typist				
Dispatcher				
L.D. Diarist Asstt.				
Accountant L.D. Clerk,				
Record Supplier			Sr. Constable	
Rs. 50 PM				
Daftry etc.				
of Similar Status				
Peon				
Literate Peon			Constable	
Rs. 45 PM				

5. Further, the Police Ministerial Officers on conferment of the executive ranks will be entitled to rent free accommodation or house-rent allowance at the rate of 10% of their pay in lieu thereof.

6. Since the sphere of duties of the Police Ministerial Officers is different from the executive Police Officers, they will have no occasion to claim the benefits excepting those mentioned in paragraph 4 and 5 above,

which are available to any other executive Police Officers of the same cadre.

7. This will take effect from the 29th August, 74 when the proposal was approved by the Cabinet.

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By Order of the Governor

Sd/- P. Misra

Secretary To Govt."

Adverting to the rival contentions, it has been a definite assertion for the appellants herein that by virtue of the resolution noticed above, the police ministerial officers serving under the IG/DGP Orissa constitute a separate cadre within the general cadre of police officers and as such claim that police ministerial officers holding the post of Junior Clerks in the district offices besides being entitled for promotion in the district offices to the ranks of Senior Clerk and Junior Accountant, which are posts equivalent to the rank of Assistant Sub-Inspectors are entitled to promotion to the post of Senior Assistants in the office of the IG/DIG and in the same manner Head Clerks and Senior Assistants of district offices having the ranks of SI of police are entitled to promotion to the rank of Section Officer in the rank of Inspector of Police in the office of IG/DIG. It has ben contended that language itself having reference to paragraph 2 of the resolution cannot but depict a clear intent to create single cadre and not two irrespective of the offices in which they have to work and as such no artificial barrier can be introduced between the selfsame officers. The submissions advanced no doubt require a serious consideration as to the true interpretation of the resolution-no addition or deletion can ever be said to be permissible as otherwise an order which happen to be bad at the beginning may through the process of affidavits gets validated by additional grounds later brought out: As a proposition of law, there cannot be any manner of doubt in regard thereto. The effect of the resolution shall have to be judged on the basis of the document itself and no other external aid is permissible. A careful scrutiny of paragraph 2 of the resolution dated 7th September, 1974 (as noticed hereinbefore) and in particular the user of the language along with "the existing police ministerial officers will form a separate cadre within the general cadre of the Orissa Police and will be designated as Police Officers (Ministerial)" makes the situation abundantly clear as regards the creation of a separate cadre called "Police Officers (Ministerial)." By and under the said clause, option have been provided in terms of Section 7 of the Police Act of 1861, which reads as below:

"7. Appointment, dismissal etc. of inferior officers-Subject to the provision of Article 311 of the Constitution and to such rules as the State Government may from time to time make under this Act, the inspector-General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents of Police may at any time dismiss, suspend or reduce any police officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty or unfit for the same; or may award any one or more of the following punishments to any police officer of the subordinate ranks who shall discharge his duty in a careless or negligent manner, or who by any act his own shall render himself unfit for the discharge thereof, namely:-

- (a) fine to any amount not exceeding one month's pay;
- (b) confinement to quarters for a term not exceeding fifteen days, with or without punishment-drill, extra, guard, fatigue or other duty;
- (c) deprivation of good conduct pay;
- (d) removal from any office of distinction or special emolument."

Having regard to the provisions of Section 7 of the Police Act read with Clause 2 of the resolution, Clause 3 thereof becomes relevant and though noticed above, we deem it fit to reproduce the same once again as below:

"3. Since the duties assigned to them are different, they will have no occasion to exercise the power and functions of the executive Police Officers. They will, however, be subject to the Police discipline as far as it will be applicable to their sphere of duties. They will not be entitled to appointments or promotions to the executive posts and the present procedure regarding their appointment and promotion will continue to operate."

Let us, however, at this juncture note the recording of the Tribunal's order apropos para 2 of the resolution. In para 6 of the Tribunal's order it has been recorded as below:

"6. On a careful reading of the Resolution we find that no doubt there is mention in para 2 of the Resolution that ministerial police officers will constitute a separate cadre within the cadre of general Police and will be designated as Police Officers (Ministerial), but, nowhere it has been mentioned in the Resolution that the separate cadre of Police Ministerial officers so formed will be a single cadre for all the officers working in the Police Establishment irrespective of the offices and levels in which they are or would happen to be working.

In this context and in view of the specific duties assigned to them are different they will have no occasion to exercise the powers and functions of the executive police officers. They will, however, be subject to the Police discipline as far as it will be applicable to their sphere of duties. They will not be entitled to appointments or promotions to the executive posts and the present procedure regarding their appointment and promotion will continue to operate." (Emphasis ours), It is clear that the Resolution does not create a single cadre for police ministerial officers irrespective of the office/level in which they happen to be working. It seems to us that the main purpose of mentioning in para 2 that the police ministerial officers will form a separate cadre within the general cadre of the Orissa Police and will be designated as Police Officers (Ministerial) was to distinguish them from the executive police officers and as is clear from the mention in para 3 of the Resolution "since the duties assigned to them are different, they will have no occasion to exercise the powers and functions of the executive Police Officers. They will, however, be subject to the Police discipline as far as it will be applicable to their sphere of duties. They will not be entitled to appointments or promotions to the executive posts." As the position is well settled that while interpreting statutes/Government orders they have to be read as a whole and construction given has to be a harmonious one, considering the Resolution as a whole we are firmly of the view that the contention of the petitioners that a single cadre for all police ministerial officers irrespective of the office/level they were working had been created under this Resolution cannot be accepted. Consequently, we also conclude that there is no force/merit in the contention of the petitioners that they were entitled to be considered for promotion for posts occurring in the higher ranks in the office of D.I.G./I.G./D.G.P. after this Resolution was issued. (Emphasis Supplied)

Significantly, however, the entire police administration in the State of Orissa stands governed by the Orissa Police Manual, which in effect maintains two classes of ministerial staff to wit, in the office of the DG/IG of Police and in districts in the office of the Superintendent of Police. The educational qualifications required and the method of recruitment are different as regards the appointment in the aforesaid posts. The same reads as below:

"(a) Educational Qualification-

Except with the specific orders of Government in the Home Department no

person shall be appointed-

(i) as a lower division assistant in the Secretariat unless he holds as degree of a recognised University in Arts, Science or Commerce;

(ii) as a lower division assistant in the office of Heads of Departments unless he has passed the Intermediate Examination of a recognised University in Arts, Science or Commerce.

(iii) as a clerk in the district offices unless he has passed the Matriculation Examination or its equivalent from a recognised University.

(b) Methods of recruitment-Recruitment shall be made by means of competitive examination which shall be separate for the Secretariat. Offices of Heads of Departments and district offices. The examination for the Secretariat shall be conducted by the Public Service Commission, that for the offices of Heads of Departments by a Board of Examiners to be appointed by Government in the Home Department and that for district offices by the Divisional Commissioner concerned. The Board of Examiners referred to above shall ordinarily consist of a Secretary to Government as President, the Principal of a College and the Under Secretary to Government in the Home Department as members. The Under Secretary to Government in the Home Department shall be the ex-officio Secretary to the Board."

During the course of hearing the appellants were rather vocal as regards the transfer of the staff of the district offices to that of the DG/IG of Police- the same, however, stands negated by the State-respondents with a positives assertion that there has not even been a single case of transfer from the district to the IG's office or vice-versa ever-since the formation of the police force in the State of Orissa.

It is also a redeeming feature to know that presently two sets of Recruitment Rules for ministerial staff to the office of the DG/IG of Police as well as to the district offices framed under proviso to Article 309 of the Constitution are available for proper guidance. Whereas the Orissa Ministerial Service (Method of Recruitment and Conditions of Service of Assistants and Section Officers in the Offices of the Heads of Department) Rules, 1994 govern the office of the DG/IG of Police, the Orissa District Police Ministerial Officers (Method of Recruitment and Conditions of Service) Rules, 1995 govern the area of district offices.

In fine, therefore, it appears that prior to the framing of the aforesaid recruitment rules, the field was covered under executive instructions and by reason of the methodology of recruitment and the qualifications being different for appointment for the two categories mentioned above, the distinction thus between the two sets of officers have always been maintained.

The learned advocate for the State further drew our attention, during the course of hearing, as regards the pay scales of the two categories but in the view we have taken is noticed hereinbefore, we do not deem it fit to further dilate thereon. Suffice it to note that the same also lends credence to the submissions of the State.

In that view of the matter, question of fusion of two erstwhile cadres of ministerial staff at the DG/IG of Police and in the districts does not and cannot arise and the subsequent framing of Rules under Article 309 lends credence to such an observation.

On the wake of the aforesaid, the order of the Tribunal cannot be faulted in any way. The appeal, therefore, fails and is dismissed.

The limited question as raised by this Court while passing the order of restoration (as noticed above) is thus answered in the affirmative to the effect that there has been no fusion at any point of time even prior to the

enactment of Rules coming into force from 24th February, 1995. As regards the consequence, be it, however, noted that by reason of specific direction of this Court that even if the appellants herein ultimately lose in the civil appeal and it is held that there was no fusion of the two cadres of ministerial staff but still on the ground of equal pay for equal work remain entitled to the monetary benefits as indicated in the judgment [1998] 6 SCC 176: paragraph 4

The aforesaid direction obviously has drawn inspiration from the earlier judgment of this Court in [1996] 7 SCC 120. We may be having a different view of the matter of restoration of an appeal but by reason of a specific decision of this Court to the effect as noticed above and the factum of judicial precedents being a valued consideration in our justice delivery system, we do not wish to depart therefrom and as such the monetary benefits, even after the dismissal of the appeal, as is otherwise available to the appellants in terms of the earlier judgment be made available so as to comply with the terms of the order.

Incidentally, further leave has also been granted for initiation of further legal proceedings in the order of restoration as regards the ministerial staff working in the district establishment for being treated alike on the question of equal pay for equal work despite belonging to a separate cadre : We are, however, not expressing any opinion in that regard neither any observation made hereinbefore in this judgment should be taken to mean expression of any opinion in that regard.

Re: WP (c) No. 692 of 1993

In the view as has been expressed in this judgment, Writ Petition (c) No. 692 of 1993 stands dismissed without, however, any order as to costs.

This order of dismissal, however, shall also be subject to the liberty as granted by this court earlier and noticed hereinbefore. There shall, however, be no order as to costs.