A STATE OF ORISSA

v.

KISHORE CHANDRA SAMAL AND OTHERS

MARCH 24, 1999

B [S. RAJENDRA BABU AND S.N. PHUKAN, JJ.]

Service Law :

Orissa Municipal Act, 1950 & Rules—Cadre—Constitution of—Section C *81—Rule 3 (2) providing that the posts of equal time scales having duties and degree of responsibilities of the same nature in the Municipalities shall form one cadre—Respondents appointed as L.D.C. cum Asst. Octroi Superintendents—Posts in Octori and general section, interchangeable—Notification issued, under which respondents were transferred—Notification challenged as violative of Rule—Held—Impugned Notification, valid.*

D

Promotions—Circulars issued by State, directing reversion of employees promoted irregularly—On challenge, High Court set aside the promotions of employees—Held—Reversions made under the impugned circular not valid.

Initially, the respondents were appointed as Lower Division Clerk-cum- E **Assistant Octroi Superintendents. On several occasions, respondents had been transferred to the general section and from the general section to the octroi section.**

There is no separate cadre of superintendent or inspectors. The F **appellant—State issued a notification grouping different posts in Municipalities within a Cadre. As a result the respondents were transferred to other section. The respondents challenged the notification before High Court, which quashed the impugned notification.**

In the connected appeal, the appellant-employees challenged before the G **High Court, a circular issued by State Government directing reversion of employees irregularly. The High Court set aside the promotions given in view of the impugned circular. Hence, these appeals.**

Allowing the Appeals, this Court

H **HELD : 1.1. The impugned notification dated 31.8.1976 is valid and**

there is no violation of guidelines contained in the Rules. [194-B] A

1.2. The impugned Circular dated 17.11.1990 is quashed. Consequently promotion of employees working as clerks is also valid.

2.1. In the present case, respondents belong to one cadre and it is the first time when the State is constituting the cadre as provided under the Rules. Therefore, when the posts are interchangeable and the responsibilities discharged by the respondents and others were identical, in constituting such a service the action of the State appear to be unexceptionable.[193-E] B

Rabinarayana Vyas **v.** *State of Orissa,* **OJC No. 930 of 1979, approved.**

Kishore Chandra Samal and 39 others **v.** *State of Orissa,* **(1992) 1 OLR 544, overruled.** C

2.2. The question of parity in pay and duties and responsibilities would arise only in case of constituting a cadre by integrating several cadres. In the present case, there is no integration of cadres in as much as the respondent and others working in the common cadre would constitute one single cadre as notified by the High Court. If that position is correct it hardly lies in the mouth of the respondent to contest that they cannot be equated with other employees working in other sections of the Municipalities. [193-D] D

3. In the instant case, posts are inter changeable prior to the impugned rules and when the finding of the High Court is that those working in the octroi section do not constitute a separate cadre, one fails to understand as to how the respondents cannot be grouped along with others working in the general sections. [193-C] E

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4875-76 of 1992 Etc. Etc. F

From the Judgment and Order dated 28.1.92 of the Orissa High Court in O.J.C. Nos. 1938 and 1941 of 1989.

P.N. Mishra and R.S. Jena for the Appellant in C.A. No. 4674-76/94 for Respondent in C.A. No. 1684 /99. G

Raj Kumar Mehta for the Appellant in C.A. No. 4877/92.

G.S. Chatterjee for Petitioner in C.A. No. 1684/99.

Jitendra Sharma, P. Gaur and Ms. Jasmine Ahmed for the Respondent H

A in C.A. No. 4875-76/92.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. The State of Orissa issued a notification on August 31, 1976 grouping different posts in the municipalities within a cadre and as a result thereof the respondents were transferred from the posts of B Octroi Inspector to Lower Division Clerk or Junior Assistant and Octroi Superintendent as Senior Assistant. The stand of the appellants before the High Court and in this Court is that all the respondents had been initially appointed as Lower Division Clerk-cum-Assistant Octroi Superintendents and on several occasions they have been transferred to the general section C and from the general section to the octroi section. There is no separate cadre of Octroi Superintendents or Inspectors. When all the respondents and other Lower Division Clerks were holding the posts which were inter-changeable and within one cadre, transfer from one post to another cannot be really questioned. The stand of the respondents has been that under Section 81 of the Orissa Municipal Act [hereinafter referred to as 'the Act'] the State D Government is empowered to create a Local Fund Service and can make rules regulating the classification, method of recruitment, conditions of service, pay and allowances, discipline and conduct of the officers and servants belonging to the Local Fund Service and such rules may vest jurisdiction in relation to such service in the State Government or in such other authority or authorities E as may be prescribed therein. The proviso to Section 81 stipulates that the terms and conditions of service shall not be less favourable than which were applicable immediately prior to such constitution. Rule 3(1) prescribes that the Local Fund Service shall be constituted by the State Government as provided under Section 81(1) of the Act which includes such of the posts of the municipalities as specified by the Government from time to time by order in F that behalf. Sub-rule (2) therein indicates that on constitution of the service under sub-rule (1) the posts of the equal time scales having duties and degree of responsibilities of the same nature in the municipalities shall form one cadre. It is submitted that a combined reading of these two provisions would make it clear that the State Government while constituting the Local Fund G Service and while constituting a cadre of the municipal employees is guided by the two conditions, namely, (i) that they must be in equal time scales and, (ii) their duties and degree of responsibilities of the posts must be of the same nature. Therefore, it is contended that the action of the respondents in constituting a common cadre of officials in the octroi section and the general section is not proper. This argument was accepted by the Full Bench of the H Orissa High Court and, therefore, the action taken by the appellants was set

aside.

The High Court took the view that the respondents who were working in the octroi section cannot claim to constitute an independent cadre by themselves. But it took the view that the guidance as to nature of responsibilities and duties discharged by respondents provided under Rule 3(2) of the Rules, adverted to earlier, was ignored by the authorities and, therefore, they could not class in the same cadre as those in the general cadre.

In this batch of appeals the arguments advanced by the respective parties before the High Court are reiterated before us. When the respondents had been appointed as Lower Division Clerk-cum-Assistant Octroi Superintendents and the posts in the octroi section and the general section in the municipalities were inter- changeable prior to impugned Rules and action thereto and when the finding of the High Court is that those working in the octroi section do not constitute a separate cadre, we fail to understand as to how the respondents can claim that while constituting the cadre they cannot be grouped along with others working in the general section.

The question of parity in pay and duties and responsibilities would arise only in case of constituting a cadre by integrating several cadres. In the present cases, there is no integration of cadres inasmuch as the respondents and others working in the common cadre would constitute one single cadre, as noticed by the High Court. If that position is correct, it hardly lies in the mouth of the respondents to contend that they cannot be equated with other employees working in the other sections of the municipalities. In the present case, all of them belong to one cadre and it is the first time when the State is constituting the cadre as provided under the Rules. Therefore, when the posts were inter- changeable and the responsibilities discharged by the respondents and others were identical in constituting such a service the action of the State appears to us to be unexceptionable.

In this view of the matter, we think the High Court was not justified in quashing the transfer order and the view taken in *Rabinarayan Vyas* v. *State of Orissa,* in O.J.C. No. 930 of 1979 appears to be correct and not the view taken in other cases referred to in the course of the judgment of the Full Bench decision.

The appeals, therefore, stand allowed. However, in the circumstances of the case, each of the parties would bear their own costs.

Civil Appeal No. 1684/99 [@ S.L.P. (C) No. 16192/93]

A Leave granted.

In this appeal, the appellants called in question circular dated November 17, 1990 from the State Government to the Executive Officers of all the Municipalities in the State to revert employees promoted irregularly and report compliance by December 15, 1990. The appellants approached the B High Court and status quo was continued under interim orders. Thereafter the High Court, after considering the entire matter observed that they would not have allowed reversion of the appellants on the grounds mentioned in the impugned circular. But the High Court found that because of the decision in *Kishore Chandra Samal and 39 others* v. *State of Orissa and Ors.*, (1992) C 1 OLR 544, the persons like the appellants who were serving in the octroi section could not be brought or appointed or promoted as clerks. On that short ground, the High Court set aside the promotions given. Following the said Full Bench decision, the High Court further directed the Government to reconsider the matter while the promotions given had to be set aside. Now that we have allowed the State's appeals against the decision in the *Kishore* D *Chandra Samal* case in C.A.Nos.4875-76/92, this appeal has to be allowed and the order made by the High Court shall stand set aside and the reversions made under impugned circular shall stand quashed. Thus the writ petition filed by the appellants shall stand allowed. The appeal is disposed of accordingly.

E P.T. Appeals allowed.