

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 873 OF 2020
(@ SLP (C) No(s). 5826/2018)

SHAMSHER ALI

Appellant(s)

VERSUS

THE STATE OF ORISSA & ORS.

Respondent(s)

O R D E R

Leave granted.

This appeal is directed against the order of the High Court dated 26.07.2017 rejecting the writ petition filed by the appellants herein.

The respondent no. 5 before us was engaged as multi purpose Health Worker (male) pursuant to the advertisement issued to contractual engagement of staff under the establishment of Chief District Medical Officer, Koraput on 20th August, 2005.

The selection was made on the basis of the marks obtained in the Higher Secondary

Examination. Respondent no. 5 was found suitable and on 28.5.2008 a letter was issued to him appointing him against the vacancy fallen to the category Scheduled Tribes. The respondent no.5 does not belong to a Scheduled Tribe and had not applied in the category of Scheduled Tribe. It is also important to note that all the courts have held that the Respondent no.5 had higher marks than the appellant.

When the regularisation of these contractual employees was to take place after rendering more than six years of service, the respondent no.5 was asked to produce the certificate showing that he belonged to the Scheduled Tribe category. His response was that he had never applied in the Scheduled Tribe category and therefore the question of his producing such certificate does not arise. Thereafter when the names were sent for regularisation, the name of respondent no.5 was not approved for regularisation only on the ground that he did not have a certificate showing that he belonged to the scheduled tribe. The appellant is also working since 2008 and he was

regularised in the year 2015.

The respondent no.5 filed a Petition which was allowed by the Orissa Administrative Tribunal. The appellant herein unsuccessfully challenged the order of the Tribunal before the High Court and therefore the present appeal.

On the last date also, we had suggested that both the parties i.e. appellant and respondent no. 5 should be adjusted as neither of them are at fault. The respondent no. 5 had not applied under the Scheduled Tribe Category and merely because his appointment was made against that post by the authorities concerned does not mean that he was bound to supply the Scheduled Tribe certificate. He had never claimed that he belonged to the reserved category. Even otherwise, on merits his marks have been found to be much higher even under the general category. At the same time we find that the appellant also should not suffer for the fault of the State. For the last two dates, we have adjourned the matter awaiting the appearance on behalf of the State of Orissa but none has

appeared for the State of Orissa.

Therefore, we dispose of this appeal by upholding the order of the High Court but we further direct that the services of the appellant which have already been regularised shall not be dispensed with, and if necessary Supernumerary post be created by the State of Orissa. However, it is made clear that respondent no.5 shall be higher up in the merit list and shall be entitled to all the back wages and all other benefits from the date of regularisation of his colleagues and shall be entitled to all consequential benefits which must be paid to him by the State within three months from today failing which the State shall be liable to pay interest at the rate of 12% p.a. on such benefits from the date of regularisation till payment.

It is made clear that since we have directed that the services of the appellant should not be dispensed with, he shall also be paid his emoluments if not already paid.

We make it clear that we have passed this order in the peculiar facts of this case where

the entire fault is of the State of Orissa and neither the appellant nor the respondent no.5 are at fault and therefore this order should not be treated as precedent in any other matter.

With the aforesaid observations, the appeal is disposed of.

.....J.
(DEEPAK GUPTA)

.....J.
(ANIRUDDHA BOSE)

NEW DELHI
JANUARY 31, 2020

ITEM NO.50

COURT NO.14

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 5826/2018

(Arising out of impugned final judgment and order dated 26-07-2017 in WP No. 14853/2017 passed by the High Court of Orissa at Cuttack)

SHAMSHER ALI

Petitioner(s)

VERSUS

THE STATE OF ORISSA & ORS.

Respondent(s)

Date : 31-01-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Petitioner(s) Mr. Abhay Anand Jena, AOR
Ms. Surbhi Kapoor, Adv.

For Respondent(s) Ms. Priya Hingo Rani, Sr. Adv.
Mr. Sachin Das, Adv.
Mr. Azim H. Laskar, Adv.
Mr. Aditya Kumar Archiya, Adv.
Mr. Chandra Bhushan Prasad, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.
Pending applications, if any, are disposed of.

(NEELAM GULATI)
COURT MASTER (SH)

(PRADEEP KUMAR)
BRANCH OFFICER

(Signed Order is placed on the file)