

ITEM NO.302

Court 2 (Video Conferencing)

SECTION XI-A

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

Petition(s) for Special Leave to Appeal (C) No(s). 6168-6173/2019

(Arising out of impugned final judgment and order dated 01-08-2018 in WP(C) Nos. 9546/2012, 11595/2012, 11596/2012, 12193/2012, 13134/2013 & 18617/2014 passed by the High Court Of Orissa at Cuttack)

THE STATE OF ODISHA &amp; ANR.

Petitioner(s)

VERSUS

SARADA KANTA TRIPATHY &amp; ORS.

Respondent(s)

(IA No. 72739/2019 - APPLICATION FOR SUBSTITUTION  
IA No. 55803/2020 - APPROPRIATE ORDERS/DIRECTIONS)

Date : 01-10-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT  
HON'BLE MR. JUSTICE VINEET SARAN

For Petitioner(s) Mr. C.U. Singh, Sr. Adv.  
Mr. Subhasish Mohanty, AOR

For Respondent(s) Mr. Deepak Nargolkar, Sr. Adv.  
Mr. Ankolekar Gurudatta, AOR

Mr. Vikas Singh, Sr. Adv.  
Mr. Abhijit Sengupta, AOR

Mr. Raghavendra Srivastava, Adv.  
Mr. Goutham Shivshankar, AOR

Mr. Basava Prabhu S. Patil, Sr. Adv.  
Mr. Purushottam Sharma Tripathi, AOR  
Mr. Ravi Chandra Prakash, Adv.  
Mr. Mukesh Kumar Singh, Adv.  
Mr. Abhishek Tripathi, Adv.

Mr. Suresh Chandra Tripathy, AOR

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

Application for substitution is allowed.

The decision of the High Court holding Rules 5 and 7 of the Orissa Secretariat Service (Amendment) Rules, 2001 to be *ultra vires* of Articles 14 and 16 of the Constitution of India is under challenge in these petitions.

The concluding part of the judgment of the High Court was to the following effect-:

"14. In that view of the matter, while upholding the impugned order passed by learned Tribunal, we declare the Amendment Rules, 2001 to be *ultra vires* of Articles 14 and 16 of the Constitution of India and strike down the same.

The State-Respondents are directed to convene review DPC for the applicants and other eligible officers for promotion to the cadre of Under Secretary as per the provisions of Rules, 1980 in respect of the vacancies of the year 2001 and also for subsequent years and grant all consequential benefits within a period of three months hence."

We have heard Mr. C.U. Singh, learned Senior Advocate for the State, and Mr. Basava Prabhu S. Patil, learned Senior Advocate for supporting respondents, who assail the decision of the High Court.

The submissions on behalf of the contesting respondents are advanced by Mr. Raghavendra Srivastva and Mr. Suresh Chandra Tripathy, learned advocates and Mr. Deepak M. Nargolkar, learned Senior Advocate.

We have also heard Mr. Vikas Singh, learned Senior Advocate for Intervenors in IA No. 64055/2019.

With the assistance of the learned counsel, we have gone through the entire record.

The conclusions drawn by the High Court, while holding the concerned Rules to be *ultra vires*, in our considered view, are absolutely right. We, therefore, affirm the view insofar as the issue of *vires* is concerned.

As regards, the directions granting consequential benefits, it is clarified :-

- a) In terms of directions issued in the latter part of para 14, review DPC for the applicants and other eligible officers for promotion to the cadre of Under Secretary as per provisions of Rules, 1980, in respect of the vacancies of the year 2001 and for subsequent years shall be held within two months from the date of this Order.
- b) In terms of such review DPC, the orders granting benefit of fixation of pay and consequential benefits on that account shall be finalized within a month thereafter.
- c) The applicants and other eligible officers shall be entitled to benefits in terms of such fixation as under:-

- (i) If the concerned applicants and other eligible officers had attained the age of superannuation on or before 01.08.2018, that is the day the decision of the High Court was rendered, their last drawn pay shall be re-fixed in terms of such fixation and the concerned applicants and other eligible officers shall be entitled

to consequential benefits in terms of upward revision of their retiral dues on and with effect from 01.08.2018.

(ii) In case of the applicants and other eligible officers had not attained the age of superannuation on or before 01.08.2018, all the monetary benefits on account of such fixation shall be granted to them on and with effect from 01.08.2018.

(iii) It is made clear that for the period prior to 01.08.2018 the applicants and other eligible officers will be entitled to only notional benefits and not monetary benefits.

d) As a result of such review DPC, no person shall be reverted and all administrative instructions issued and steps undertaken by the Department shall hold good and any monetary benefits availed by such person shall stand protected and secured. However, the seniority of such person in the cadre of Under Secretary shall be refixed in keeping with the decision of the High Court.

With aforesaid directions, the Special Leave Petitions are dismissed.

Pending applications, if any, also stand disposed of.

(INDU MARWAH)  
COURT MASTER (SH)

(PRADEEP KUMAR)  
BRANCH OFFICER