

being heard as it involves valuable rights of the parties. The reserved category employees submitted that Rule-5 of our Rules unambiguously provides that reservation of vacancies for Scheduled Castes and Scheduled Tribes shall be made in accordance with the provisions of the Orissa Reservation of Vacancies in Posts and services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and the rules made there under. This Rule is applicable to both direct recruitment and promotion. They have filed information obtained under Right to Information Act, 2005 (here-in-after referred to as 'RTI Act') given by PIO-cum-Under Secretary to Government of Odisha, Law Department that the ORV Act, ORV Rules and circulars issued by SC & ST Department in this respect are applicable to the employees of SC & ST community in the District Subordinate Courts Non-Judicial Staff Services. They have filed information obtained under RTI Act given by PIO-cum-Under Secretary to Government of Odisha, SC & ST Development Department that in the matter of promotion up to lower rung of Group-A, the following percentage has been earmarked in respect of the Posts and Services under the State, such as for ST-22.50% and for SC-16.25%. A copy of the relevant circular, i.e, order No.9144-Emp.(v)-18/94-(T.W.) dt.15.03.1994 of the erstwhile Tribal Welfare Department, Government of Orissa was enclosed with it.

5. The unreserved category employees submitted that Rule-5 of our Rules provides for reservation of vacancies of base level Group-C employees and not for promotional posts. So, the rule speaks of reservation of vacancies and not for promotional posts. Rule-11 which deals with promotion is completely silent regarding reservation in promotional posts. Judiciary requires suitable hands based on merit and seniority of Group-C employees in promotional posts for efficient and quick disposal of litigations and as such the rule making authority deliberately omitted reservation to promotional posts in Rule-11 of our Rules. The rules regarding other departments is specific as to reservation in promotion. All the rules of other departments separately speak of reservation in direct recruitment and reservation in



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promotion. But there is no such provision of reservation in our Rules as regards reservation in promotion. Rule-5 of our Rules by necessary implication speaks of reservation only for direct recruitment to vacancies for Junior Clerks, Typists, Copyists and Jr. Stenographers. The information obtained under RTI Act never solves this issue and is not a law to be followed.

6. I have carefully gone through the relevant Act and Rules, information obtained under RTI Act and decision of Hon'ble Apex Court by Hon'ble Justice Ms. Indira Banerjee and Hon'ble Justice Dr. D.Y. Chandrachud in Pankaj Prakash Vs. United India Insurance Co. Ltd & another, decided on 10.07.2019. Information obtained under RTI Act are not law and the answer to the question, whether reservation is applicable to promotion as per our Rules, can only be answered from the laws relating to reservation. In Section-10 of ORV Act, it is mentioned as follows:

“10. Promotion based on seniority-cum-fitness- (1) Where promotion is to be made on the basis of seniority subject to fitness, the Scheduled Caste and Scheduled Tribe officers shall be promoted to the next higher post or grade against reserved vacancies provided they possess the minimum qualifications and experience required for such promotion.

(2) The number of reserved vacancies shall be determined on the basis of the reserved points shown in the roster maintained under Sec.5.

(3) There shall be no zone of consideration in respect of promotions based on seniority subject to fitness.”

As per delegation of power under Section-18 of the 'ORV Act', the 'ORV Rules' was framed. Hon'ble Apex Court in **Indira Sawhney, etc Vs. Union of India: AIR 1993 SC 477** at para-697(4) has held as follows:

“(4) Reservation being extreme form of protective measure or affirmative action, it should be confined to minority of seats. Even though the constitution does not lay down any specific bar but the


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constitutional philosophy being against proportional equality the principle of balancing equality ordains reservation, of any manner, not to exceed 50%."

In view of this decision of Hon'ble Apex Court, it was found that the roster arrangement as mentioned in the ORV Rules exceeds 50% reservation after 27% of posts reserved for Socially and Economically Backward Classes in Odisha Reservation of Posts and Services for (Socially and Economically Backward Classes) Act, 2008 was passed. So, ST & SC Development Department, Government of Odisha vide Notification No.17025-Emp-I-(A)-51/2013 dt.24.06.2014 fixed reservation at 22.50% for ST, 16.25% for SC and 11.25% for SEBC, making the roster points in Section-5 and Section-10(2) of ORV Act and ORV Rules ineffective. Now we have to go by our Rules guiding the rules for promotion. Rule-11 of our Rules provides as follows:

"11. Promotion to Higher posts- Promotions to the higher posts shall be subject to passing of the departmental examination and shall be based on merit and suitability in all respects with due regard to seniority and be made in the following manner, namely:-

(a) Promotion to the post of senior clerks shall be made from amongst the junior clerks, who have passed the departmental examination as laid down in Appendix-B annexed to these rules; provided that, if no junior clerk as aforementioned is available, a junior clerk who has put in not less than 5 years of service as such and is otherwise suitable may be promoted to the post of senior clerk on temporary basis subject to the condition that he shall not be allowed any increment in the time scale of pay of the said post of senior clerk and shall be reverted as soon as a passed junior clerk is available.

Provided that, a Typist who has been appointed as junior clerk, after passing the departmental examination shall not be required to pass a similar examination again to be eligible for promotion to the post of



senior clerk.

(b) Promotion to the post of Senior clerk (Head Clerk Grade) shall be made from amongst the senior clerks who have passed the Accounts Training Examination laid down in sub-rule-(2) of Rule-14.

(c) Promotion to the post of sheristadar of the District Court shall be made from amongst the Bench Clerks-Grade-I.

(d) Promotion to the post of Grade-II stenographer and Grade-I stenographer respectively.

(e) The promotion to the post of senior typist shall be made from the post of junior Typist who have passed the Departmental examination laid down in Appendix-B. The promotion to the post of Head Typist shall be made from amongst the senior typists after completion of at least five years of service. (as amended in 2010).

(f) For recruitment to the post of Salaried Amin, a candidate shall

(i) Have passed the Revenue Inspector Training.

(g) The Salaried Amin shall be appointed by directly recruitment as well as by promotion of process Servers who possess requisite qualification for such promotion. The percentage between the direct recruitment and promotion shall be determined by the High Court from time to time."

There is no provision of reservation in promotion in Rule-11. Rule-5 of our Rules provides for reservation but the question remains whether Rule-5 is applicable to only base level vacancies or to promotional posts as well. Rule-5 of our Rules is as follows:

"5. Reservations-*Notwithstanding anything contained in these rules, reservation of vacancies for-*

(a) Scheduled Castes and Scheduled Tribes shall be made in accordance with the provisions of the Orissa Reservation of Vacancies in the Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and the rules made there under.



(b) SEBC, women, sports persons, ex-servicemen and physically handicapped persons shall be made under rules, orders or instructions issued in that behalf by the Government from time to time."

7. This Rule speaks of reservation for Scheduled Castes, Scheduled Tribes, SEBC, women, sports persons, ex-servicemen and physically handicapped persons. But reservation in promotion is only in respect of Scheduled Castes and Scheduled Tribes as per ORV Act and ORV Rules. So, Rule-5 necessarily speaks of reservation in base level direct recruitment and not for promotional posts. It is now necessary to refer to other Rules of Odisha Government and Hon'ble High Court of Orissa for recruitment of clerical or similar posts which are *pari materia* with our Rules to ascertain the intent behind omission of provision of reservation in Rule-11 of our Rules dealing with promotion. Section-8 of The High Court of Orissa (Appointment of Staff and Conditions of Service) Rules, 2015 speaks as follows:-

"8. Reservation- In case of direct recruitment for any post, the Rules of reservation as prescribed by the State Government from time to time, shall be applicable, but in no circumstances, the number of posts reserved shall exceed 50% of the total number of posts.

In case the reservation as per the State Act & Rules exceeds 50%, the decision of the Chief Justice shall be final so as to restrict the reservation upto 50% of vacancy."

In Rule-13 (c) of this Rule, it is mentioned as follows:-

*"13. Promotion and Reservation:- xxxxx xxxxx xxxxx xxxxx xxxxx xxx
(c) The provisions of Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and the Rules made thereunder, and the provisions of other Law and Rules for the time being in force in the matter of reservation shall apply to appointments on promotion subject to the decision of the Chief Justice in this regard, wheresoever necessary."*

Section-11 of Orissa High Court (Method of Recruitment and Conditions of Service of Senior System Officer, System Officer and System Assistants including in such e-courts services) Rules, 2013 is as follows:-

*“11. **Reservation-** Notwithstanding anything contained in these rules, reservation to the posts or vacancies as the case may be, for Scheduled Castes and Scheduled Tribes shall be made 18 and 20 per cent respectively in case of direct recruitment. In case of promotion, reservation of posts or vacancies for Scheduled Castes and Scheduled Tribes shall be made in accordance with the provisions of the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and the Rules made thereunder.”*

Section-5 of Odisha Ministerial Services (Method of Recruitment and Conditions of Service of Junior Assistants, Senior Assistants and Section Officers in the District Offices and offices Sub-ordinate thereto) Rules, 2019 is as follows:-

*“5. **Reservations-**Notwithstanding anything contained in these rules, reservation of vacancies or posts, as the case may be, for-*

(a) Scheduled Castes and Scheduled Tribes shall be made in accordance with the provisions of the Orissa Reservation of Vacancies in the Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and the rules made there under; and

(b) SEBC, women, sports persons, ex-servicemen and physically handicapped persons shall be made under rules, orders or instructions issued in that behalf by the Government from time to time.”

Rule-12(2)(a) of this Rule is as follows:-

*“12. **Procedure for Selection by the Committee-** xxx xxx xxx xx*

(2) The Committee while considering the promotion cases of suitable officers and preparing the list, shall follow the provisions of-

(a) the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and the Rules made

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there under:

xxxx xxxxx xxxxx xxxxx"

Sub-section-5 of Section-6 of Odisha Sub-ordinate Electrical Workers Service (Method of Recruitment and Condition of Service of Electrical Works Working under the administrative control of Works Department) Rules, 2005 is as follows:

"6. Departmental Promotion Committee- xxx xxx xxx xxx xxx x
 (5) While considering the suitability of eligible candidates for promotion to next higher grade, the Departmental Promotion Committee shall follow the provisions contained in the Orissa Civil Services (Zone of Consideration for Promotion) Rules, 1988, the Orissa Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and Rules framed there under, the Orissa Services Criteria for Promotion Rules, 1992, Orissa Civil Services Criteria for Selection for appointment including promotion) Rules, 2003."

Rule-10 of the Rules is as follows:-

"10. Reservation of vacancies- There shall be reservation of vacancies for candidates-

- (a) Belonging to Scheduled Castes and Scheduled Tribes shall be made in accordance with the provisions of the Orissa Reservation of Vacancies in the Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and the Rules made thereunder; and
 (b) Belonging to SEBC, women, physically handicapped, sportsman and ex-servicemen in accordance with Rules/Instructions issued by the State Government from time to time."

Rule-5 of Odisha Municipal Ministerial Service (Method of Recruitment and Conditions of Service) Rules, 2017 is as follows:

"5. Reservations- Notwithstanding anything contained in these rules, reservation of vacancies or posts, as the case may be, shall be made

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for Candidates belonging to,-

(a) Scheduled Castes and Scheduled Tribes shall be made in accordance with the provisions of the Orissa Reservation of Vacancies in the Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and the rules made there under; and

(b) SEBC, women, sportsmen, ex-servicemen and Persons with Disabilities shall be made in accordance with the provisions made under such Act, rules, orders or instructions issued in this behalf by the Government from time to time.”

Rule-13(2)(d) of this Rule is as follows:-

“13. Procedure for Selection by the Departmental Promotion Committee:- xx xx xx xx.

(2) The Committee while considering the cases of suitable officials and preparation of the list, shall follow the provisions of -

xxxx xxxx xxxxxxx xxxxxxxxxxx xxxxxx xxxxxxxxxxx

(d) The Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and the Rules made thereunder.”

Sub-rule-4 of Rule-4 of of Odisha Ministerial Services (Method of Recruitment and Conditions of Service of Clerks in the District Registration Offices) Rules, 1975 is as follows:-

“4. xxx xxx xxx xxx xxx xxx xxx xx

(4) Notwithstanding anything contained in these rules, reservation of vacancies or posts, as the case may be for,-

(a) Scheduled Castes and Scheduled Tribes shall be made in accordance with the provisions of the Odisha Reservation of Vacancies in the Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and the rules made there under, and

(b) SEBC, sportsman, Persons with Disabilities, Ex-servicemen and women shall be made under rules, orders or instructions issued in that

behalf by the Government from time to time.”

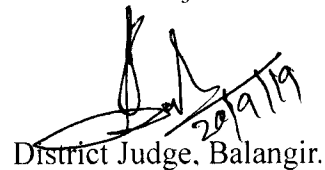
Clause(a) of Sub-rule-4 of Rule-12A of the Rules is as follows:-

“12A. Constitution of Departmental Promotion Committee:- xx xx x

(4) The Committee while considering the cases of promotion to different grades in the service and preparation of the list, shall follow the provisions of,

(a) The Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and the Rules made thereunder.”

8. It is found from all those Rules, taken as external aids for construction, that there are separate provision for reservation in promotion. But there is no such separate provision in our Rules. Rule-5 of our Rules is akin to other rules as referred above for reservation in recruitment to base level vacancies by direct recruitment. So, the Rule making authority deliberately omitted to insert the provision of reservation in Rule-11 of our Rules dealing with promotion. The provision of promotion as enshrined in Rule-5 of our Rules is meant for reservation for recruitment to base level vacancies by direct recruitment. I have already found that Rule-5 of our Rules speaks of reservation for Scheduled Castes, Scheduled Tribes, SEBC, women, sports persons, ex-servicemen and physically handicapped persons. But reservation in promotion is only in respect of Scheduled Castes and Scheduled Tribes as per ORV Act and ORV Rules. So, Rule-5 necessarily speaks of reservation in base level direct recruitment and not for promotional posts. The representation of reserved categories of employees claiming reservation in promotion having no base, crumbles to the ground and as such rejected.


District Judge, Balangir.