

Shri Justice S.K. Ray vs State Of Orissa And Ors on 20 January, 2003

Equivalent citations: AIR 2003 SUPREME COURT 924, 2003 AIR SCW 402, (2003) 1 JT 166 (SC), (2003) 4 ALLINDCAS 139 (SC), 2003 (1) JT 166, (2003) 1 SCR 434 (SC), 2003 (1) SCALE 328, 2003 (1) ACE 446, 2003 (4) SCC 21, 2003 (1) SLT 424, 2003 SCC (L&S) 375, (2003) 1 LAB LN 780, (2003) 1 SUPREME 490, (2003) 1 WLC(SC)CVL 288, (2003) 96 FACLR 586, (2003) 1 ORISSA LR 531, (2003) 3 SCT 747, (2003) 2 SERVLR 84, (2003) 1 SCALE 328, (2003) 2 ESC 119, (2003) 2 INDLD 345, (2003) 4 KCCR 2535, (2003) 1 CAL LJ 227, (2003) 2 CURLR 68

Bench: S. Rajendra Babu, P. Venkatarama Reddi

CASE NO.:

Appeal (civil) 2421 of 2001

PETITIONER:

SHRI JUSTICE S.K. RAY

RESPONDENT:

STATE OF ORISSA AND ORS.

DATE OF JUDGMENT: 20/01/2003

BENCH:

S. RAJENDRA BABU & P. VENKATARAMA REDDI

JUDGMENT:

JUDGMENT 2003 (1) SCR 434 The Judgment of the Court was delivered by RAJENDRA BABU, J. The appellant was Chief Justice of the Orissa High Court and retired on 5.11.1980. He was appointed as Lokpal on 17.8.1989 under Section 3 of the Orissa Lokpal and Lokayukta Act, 1970 [hereinafter referred to as 'the Act']. Prior to his appointment as Lokpal, he had also functioned as the Chairman of the Commission of Enquiry into certain disputes involving the States of Tamil Nadu, Kerala and some of their Ministers. Pursuant to the repeal of the Act by the Orissa Lokpal and Lokayuktas [Repeal] Ordinance, 1992, which came into effect on 16.7.1992, he ceased to hold the office of Lokpal. The said Ordinance was subsequently replaced by the Orissa Lokpal and Lokayuktas [Repeal] Act, 1995.

The appellant filed a writ petition before the High Court contending that he had incurred certain liabilities in ceasing to hold the office being ineligible further employment under the State Government or for any other employment under an office in any such local authority, corporation, Government Company or society registered under the Societies Registration Act, 1860, which is

subject to the control of the State Government and which is notified by the Government in that behalf. He claimed for-

- (i) Compensation for loss of salary for the remainder period of his tenure as Lokpal.
- (ii) pension with effect from 16.7.1992 as per Rule 7 of the Orissa Lokpal [Conditions of Service] Rules, 1984.
- (iii) refund of the amount of pension deducted from his salary during the period 17.8.1989 to 16.7.1992, and
- (iv) payment of encashment value of unutilised leave which accrued to him during the period 17.8.1989 to 16.7.1992.

Of the four claims made by the appellant, the High Court held that the appellant was not entitled to compensation for loss of salary for the remainder period of his tenure as Lokpal as well as for payment of pension with effect from 16.7.1992. However, insofar as the encashment of value of unutilised leave and the deduction of amount of pension during the period from 17.8.1989 to 16.7.1992 were concerned, appropriate reliefs were given. In this appeal, the said order is in challenge.

Shri Raj Kumar Mehta, learned counsel appearing for the appellant, submitted that the view taken by the High Court insofar as refund of the amount of pension deducted from the salary of the appellant for the period from 17.8.1989 to 16.7.1992 as well as payment of encashment of value of unutilised leave accrued to him during the said period is in order and that part of the order is to in challenge. The State also has not filed any appeal in respect of that part of the order.

Thus the sole question that has to be considered in this case is whether the appellant is entitled to any compensation for loss of salary for the remainder period of his tenure as Lokpal which stood curtailed by reason of the later enactment. The appellant was appointed as Lokpal in terms of Section 5 of the Act, The said section provides that every person appointed as the Lokpal shall hold office for a term of five years from the date on which he enters upon his office but shall not be eligible for reappointment. The proviso to Section 5 enables the Lokpal to resign his office or he may be removed from office in the manner specified in Section

6. Sub-section (3) of Section 5 makes it clear that on ceasing to hold office, the Lokpal shall be ineligible for further employment under the State Government or for any other employment under or office in such local authority, corporation, Government Company or society as is referred to in Clause (k) of Section 2 of the Act, Section 4 of the Act provides that when the Lokpal enters the office, he shall not hold any office of trust or profit and if he is connected with any political party, he should sever his connection with it and he should also sever his connection with the conduct and management of the business if he is carrying on any business- Second proviso to sub-section (5) of Section 5 of the Act provides that the allowances and other conditions of service of the Lokpal shall not be varied to his disadvantage after his appointment, "the High Court examined the question as

to the effect of abolition of a post and whether an incumbent in office is entitled to compensation therefor. The law is well settled that even in the case of tenure appointments, if the post itself is abolished, entitlement to compensation would not arise at all. Therefore, the view taken by the High Court to the extent that the appellant would not be entitled to any compensation on the term of his office coming to an end on repeal of the enactment under which he WAS appointed by reason of curtailing his tenure, though may be correct, may have to be examined from another perspective.

Section 2 of the Repealing Act provides as follows:

"Section 2(1) The Orissa Lokpal and Lokayukta Act, 1978 is hereby repealed.

(2) On such repeal, no investigation, proceeding or remedy in relation to any right, privilege, obligation, liability, penalty, forfeiture or punishment pending under the Act so repealed shall be continued or enforced.

(3) Save as otherwise provided in sub-section (2) the provisions of Section 5 of the Orissa General Clauses Act, 1937 shall apply to such repeal."

Under the Orissa General Clauses Act, 1937, the effect of repeal is considered and is to the following effect:

"Section 5. Effect of repeal-Where any Orissa Act repeals any enactment hitherto made, or hereafter to be made, then, unless a different intention appears, the repeal shall not:

(a) xxx xxx
xxx

(b) xxx xxx
xxx

(c) affect any right privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or xxx xxx xxx The High Court, on examining these two provisions, held that inasmuch as an investigation, proceeding or remedy pending with the Lokpal on 16.7.1992, the date of coming into force of the Repealing Act, under the Act so repealed shall not be continued or enforced, the continuance of the office of Lokpal was wholly redundant and in that view, the right, if any, of the appellant to hold the office of the Lokpal for a term of five years is not preserved either in terms of Section 2 of the Repealing Act or Section 5 of the Orissa General Clauses Act. The matter has been looked at from the angle whether the office of Lokpal would continue and, therefore, whether the appellant would be entitled to any emoluments or compensation. But the entire scheme of the enactment has not been taken note of by the High Court. Under the scheme of the enactment under which the appellant was appointed, he cannot hold any office of trust or profit or he shall not be

a member of the legislature, central or state, or any other position, which may come in conflict with the office of Lokpal. Having deprived himself of holding any other office or position which may come in conflict with the office of Lokpal, he cannot also hold any office even after he ceases to hold the office of the Lokpal to which we have already adverted. Hence, what is to be looked at in a case of this nature is that even after ceasing to hold the office of Lokpal whether strings are attached to him by reason of his holding the office earlier and thus he has incurred any disqualification not to hold any office in terms of Section 5(3) of the Act. That means there is a disability attached to him for all time to come thereafter. We specifically asked the learned counsel appearing for the respondents as to whether the said disability would disappear on the repealing of the enactment and, of course, he submitted that it would not.

If that is the reasonable approach, then the appellant is put to a disadvantage by reason of holding the office of Lokpal, which was put to an end abruptly by repealing enactment. In that event, he certainly becomes entitled to compensation if not for loss of office but for carrying a burden of not holding any office or position thereafter. It thus becomes clear that such person must be adequately or appropriately compensated. It cannot be said that the Government will control the activities of a person who will incur certain liabilities or obligations but he shall not be suitably compensated for the same. In a situation of this sort, we think that adequate compensation will be the loss of his salary for the remainder tenure for which he would have held the office of the Lokpal. We, therefore, direct the respondents to work out and pay the difference in salary that the appellant will become entitled to by this order on ceasing to hold the office of the Lokpal and pay the same to him. But this direction will not entitle the appellant to claim any other allowances or perks to be converted into cash.

There are two ways of understanding the effect of abolition of the office of Lokpal, which resulted in curtailment of the tenure of the office of the appellant, One is that the appellant having held the office at least for some time is subject to all the restrictions arising under the provisions of the Act, including those which debar him from holding any office on his ceasing to be Lokpal. The other point of view be that on the abolition of the post the restrictions as to holding of office on the appellant ceasing to be the Lokpal will not be attached to him. The later view, if taken, would lead to incongruous results because the incumbent in office of the Lokpal, having functioned as such at least for some time, would have dealt with many matters and, therefore, to maintain the purity of that office, the restrictions imposed under the Act should be maintained. The only other reasonable way, therefore, is to interpret the provisions to the effect that even when such restrictions continue to be operative on abolition of the office the incumbent in office should be reasonably compensated not for deprivation of the office but for attachment of the restrictions thereafter.

The learned counsel for respondent contended that loss of employment in such a situation is only a contingency of service and the right to abolish the post is available with the Government in the same manner as the right to create a post and a person whose post has been abolished should not be entitled to salary. In our view, these arguments have absolutely no relevance to the question which we have examined. The crux of the matter in this case is the effect of the disqualification of not

holding any office after ceasing to hold the office of the Lokpal. He is deprived of all other offices or business interest when he holds the office, of the Lokpal and the office, which he holds, is also denied to him by reason of the Repealing Act. If the argument of the learned counsel for the respondents is accepted, it would lead to incongruity and would baffle all logic. The learned counsel for the respondents further submitted that the appellant had not presented his case or claimed compensation for loss of future employment but has claimed only the loss for the present tenure and, therefore, we should not grant any relief to him. A writ petition, which is filed under Article 226 of the Constitution, sets out the facts and the claims arising thereto. May be in a given case, the reliefs set forth may not clearly set out the reliefs arising out of the facts and circumstances of the case. However, the courts always have the power to mould the reliefs and grant the same.

In the result, the appeal is, therefore, allowed and the judgment of the High Court stands partly modified in terms of the aforesaid directions. In the circumstances, there shall be no order as to costs.