

STATE OF ORISSA & ANR.

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v.

DHIRENDRA SUNDAR DAS & ORS.

(Civil Appeal No. 4646 of 2019)

MAY 06, 2019

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[UDAY UMESH LALIT AND INDU MALHOTRA, JJ.]

Service Law – Appointment – On 28.04.08 the appellant-State issued letter to all the Departments inviting recommendations for appointment by way of promotion to the Orissa Administrative Service Class-II (OAS Class-II) cadre having 150 vacancies – Recruitment process was to be undertaken in accordance with the 1978 Rules and the 1978 Regulations – Concerned Departmental Authorities forwarded the names of 559 candidates, including the Respondents, for consideration – State decided to keep the recruitment process for OAS Class-II posts for the recruitment year 2008 on hold, till the process of recruitment for the years 2001-2005 was completed – Aggrieved by the delay, OAs filed by the Respondents before the Tribunal – State undertook restructuring of the Orissa Administrative Service in Feb. 2009 – Existing cadre of OAS Class-II posts was abolished and corresponding cadre of the Orissa Revenue Service Group ‘B’ cadre was created – State appointed candidates on OAS Class-II posts for the recruitment years 2001 to 2005 – 1978 Rules under which the 2008 recruitment process had been initiated, repealed– Tribunal directed the State to take immediate steps to fill up Class- II/Group ‘B’ posts in the Orissa Revenue Service cadre – Challenge by the Respondents –Judgment of the Tribunal set aside –On appeal, held: Respondents cannot claim an accrued or vested right for selection or promotion to OAS Class-II posts, merely on the basis of their names being forwarded – Their names were merely recommended by their respective Departmental Authorities under Regulation 6 – Recruitment process did not proceed any further in accordance with Regulations 7-10 – Respondents can not be considered to be ‘eligible’ for appointment under the erstwhile 1978 Regulations, since the steps set out in the aforesaid regulations had not been completed prior to the repeal of the old 1978 Rules and the 1978 Regulations – Further, the respondents did not challenge

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- A *either the abolition of OAS Class-II posts, or the creation of the corresponding Orissa Revenue Service Group 'B' posts – To the contrary, some of them participated in the proceedings of the D.P.C. convened on 30.04.2013 for recruitment to the newly created Orissa Revenue Service Group 'B' cadre – Judgment of the Division Bench set aside – Orissa Administrative Service, Class II (Recruitment) Rules, 1978 – Orissa Administrative Service, Class-II (Appointment by Promotion and Selection) Regulations, 1978 – Orissa Administrative Services (Method of Recruitment and Conditions of Service) Rules, 2011 – Orissa Revenue Service (Recruitment) Rules, 2011.*
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- C *Practice & Procedure – In limine dismissal of SLP – Effect of – Held: Dismissal of a S.L.P. in limine simply implies that the case before the court was not considered worthy of examination for a reason, which may be other than the merits of the case – Such in limine dismissal at the threshold without giving any detailed reasons, does not constitute any declaration of law or a binding precedent u/Art.141 – Constitution of India – Art.141.*
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Allowing the appeals, the Court

- HELD: 1.1** Contesting Respondents cannot claim an accrued or vested right for selection or promotion to OAS Class -II posts in the year 2008, merely on the basis of their names being forwarded by the respective Departmental Authorities. When the recruitment process for 2008 was initiated *vide* Letter dated April 28, 2008 by the State, the extant rules and regulations occupying the field for selection and promotion to OAS Class-II posts were the Orissa Administrative Service, Class II (Recruitment) Rules, 1978 and the Orissa Administrative Service, Class-II (Appointment by Promotion and Selection) Regulations, 1978. Rule 6 of the OAS Class II Rules, 1978 provided for the determination of vacancies by the State Government. [Paras 7.1-7.3] [208-B-D]
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- G **1.2** Rule 3 of the OAS Class II, Rules 1978 provided that recruitment to OAS Class II posts was to be made by three methods– *first*, direct recruitment by competitive examination [Rule 3(a)]; *second*, promotion from amongst Gazetted Officers of a certain class [Rule 3(b)]; and *third*, selection of non-Gazetted
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Officers [Rule 3(c)]. The proportion of candidates to be recruited by the methods specified above as per Rule 8 of the OAS Class II Rules, 1978 was— 50% by direct recruitment, 30% by promotion, and 20% by selection. In accordance with Regulation 6(i) of the OAS Class II Regulations, 1978, any recruitment process by way of selection or promotion was to be initiated by the State by calling for recommendations from Collectors, Heads of Departments and Departments of Governments, who were required to forward a list of candidates considered suitable to the Administrative Department (*i.e.* the Revenue Department). On receipt of the recommendations, the Administrative Department (*i.e.* the Revenue Department) was required to place a list of recommended candidates in a tabular form before a Selection Board constituted under Regulation 3. [Paras 7.4-7.6] [208-G; 209-A-E]

1.3 Under Regulation 7, the Selection Board was required to consider the recommendations so received from the Administrative Department, scrutinise the records relating to the candidates who had been recommended, and prepare a list of candidates who in the opinion of the Selection Board are suitable for appointment to OAS Class – II posts. Thereafter, as per Regulation 8, the list prepared by the Selection Board under Regulation 7 was required to be referred to the Orissa Public Service Commission by the State Government, along with the service records of the all candidates whose names feature in the list. The list of candidates recommended by the Orissa Public Service Commission under Regulation 9 was required to be placed before the State Government. The said list, after any approval with modification, was to form the final list from which appointments were to be made to OAS Class-II posts by way of selection or promotion in accordance with Regulation 10. In the present case, the names of 559 candidates, including the contesting Respondents, were merely recommended by their respective Departmental Authorities under Regulation 6. The recruitment process did not proceed any further in accordance with Regulations 7, 8, 9 and 10. No final list of selected candidates was placed by the Orissa Public Service Commission before the State Government for the purposes of appointment as against

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A the vacancies of 2008. There was no time-frame prescribed for completion of the recruitment process under the erstwhile OAS Class-II Rules, 1978 or the OAS Class-II Regulations, 1978. [Paras 7.7-7.9, 7.10, 7.12 and 7.14] [209-F-H; 210-A-C; 211-C-D; 213-D-E]

B 1.4 The contesting Respondents have not challenged either the abolition of OAS Class – II posts, or the creation of the corresponding Orissa Revenue Service Group ‘B’ posts. To the contrary, some of them participated in the proceedings of the D.P.C. convened on 30.04.2013 for recruitment to the newly created Orissa Revenue Service Group ‘B’ cadre. After being considered, 6 of the contesting Respondents were selected, while 1 was kept on the Waiting List. The State appointed the said Respondents to the Orissa Revenue Service Group ‘B’ posts. However, only two out of the five contesting Respondents who were appointed, joined the posts. Subsequently, during the pendency of the W.P.s, another D.P.C. was convened to consider the promotion of employees working in the Orissa Revenue Services Group ‘B’ posts to Orissa Administrative Service Group A (Junior Branch) posts. 1 contesting Respondent was promoted to the OAS Group A (Junior Branch) cadre. The contesting Respondents cannot claim any lien over the abolished OAS Class-II posts, which were governed by the old OAS Class II Rules, 1978 and OAS Class II Regulations, 1978. The appointments of persons as against the vacancies for the years 2001 to 2005 were made *vide* two Notifications dated December 7, 2010, which were issued prior to the repeal of the old OAS Class II Rules, 1978 and the OAS Class II Regulations, 1978. [Paras 7.15-7.19 and 7.21] [213-G-H; 214-A-D; 216-D-E]

G 1.5 The dismissal of a S.L.P. *in limine* simply implies that the case before this Court was not considered worthy of examination for a reason, which may be other than the merits of the case. Such *in limine* dismissal at the threshold without giving any detailed reasons, does not constitute any declaration of law or a binding precedent under Article 141 of the Constitution. The Judgment of the Division Bench is liable to be set aside since the contesting Respondents did not have a vested or fructified right of promotion to OAS Class II posts which had

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arisen during the recruitment year 2008. The direction of the Division Bench to appoint the contesting Respondents in the vacancies which had occurred in the abolished cadre, in accordance with the repealed 1978 Rules, was contrary to law, and liable to be set aside. [Paras 7.22 and 8] [217-A-D] A

Union of India & Ors. v. Krishna Kumar & Ors. 2019 (1) SCALE 691 ; *Deepak Agarwal & Another v. State of Uttar Pradesh & Ors.* (2011) 6 SCC 725 : [2011] 4 SCR 149 ; *State of Tripura & Ors. v. Nikhil Ranjan Chakraborty & Ors.* (2017) 3 SCC 646 ; *Rajasthan Public Service Commission v. Chanan Ram* (1998) 4 SCC 202 ; *Supreme Court Employees' Welfare Association v. Union of India & Anr.* (1989) 1 SCC 187 : [1989] 3 SCR 488 ; *State of Punjab v. Davinder Pal Singh Bhullar* (2011) 14 SCC 770 : [2011] 15 SCR 540 – relied on. B

Y.V. Rangaiah & Ors. v. J. Sreenivasa Rao & Ors. (1983) 3 SCC 284 ; *Mukti Ranjan Acharya & Ors. v. State of Orissa & Ors.* 2012 (II) OLR 61 – referred to. C D

Case Law Reference

2019 (1) SCALE 691	relied on	Para 5.2	
(1983) 3 SCC 284	referred to	Para 6.4	E
[2011] 4 SCR 149	relied on	Para 7.11	
(2017) 3 SCC 646	relied on	Para 7.11	
(1998) 4 SCC 202	relied on	Para 7.11	
2012 (II) OLR 61	referred to	Para 7.22	F
[1989] 3 SCR 488	relied on	Para 7.22	
[2011] 15 SCR 540	relied on	Para 7.22	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4646 of 2019. G

From the Judgment and Order dated 30.04.2018 of the High Court of Orissa at Cuttack in Writ Petition (Civil) No. 14831 of 2013.

With

Civil Appeal Nos. 4647, 4648, 4649, 4650, 4651, 4652 of 2019. H

A Ravi Prakash Mehrotra, Ankit Agarwal, Advs. for the Appellants.
 Ms. Meenakshi Arora, Sr. Adv., Soumyajit Pani, B. S. Tripathy,
 Vinodh Kanna B., Shibashish Misra, Advs. for the Respondents.

The Judgment of the Court was delivered by

B **INDU MALHOTRA, J.** Leave granted.

1. The present Civil Appeals arise out of S.L.P. (C) Nos. 4976-4980/2019 and S.L.P. (C) Diary Nos. 13938 and 13946/2019.

C S.L.P. (C) Nos. 4976-4980/2019 arise out of the common impugned Judgment and Order dated 30.04.2018 passed by a Division Bench of the Orissa High Court in W.P. (C) Nos. 14831/2013, 18749/2012, 6720/2013, 25961/2017 and 9200/2016.

D S.L.P. (C) Diary Nos. 13938 and 13946/2019 arise out of the impugned Orders dated 08.08.2018 and 10.08.2018 passed by a Division Bench of the Orissa High Court whereby W.P. (C) Nos. 7383 and 14665/2018 were disposed of in terms of the common impugned Judgment and Order dated 30.04.2018.

2. The factual matrix in which the present Civil Appeals arise for consideration, briefly stated, are as under:

E 2.1. On 28.04.2008, a Letter was issued by the Appellant – State of Orissa (“**State**”) to all Departments, Heads of Departments, and Collectors inviting recommendations for appointment by way of promotion to the Orissa Administrative Service Class – II (“**OAS Class – II**”) cadre having 150 vacancies. The recruitment process was to be undertaken in accordance with the Orissa Administrative Service, Class II (Recruitment) Rules, 1978 (“**OAS Class II Rules, 1978**”) and the Orissa Administrative Service, Class – II (Appointment by Promotion and Selection) Regulations, 1978 (“**OAS Class II Regulations, 1978**”).

G 2.2. The concerned Departmental Authorities forwarded the names of 559 candidates, including the contesting Respondents, for consideration to be promoted/selected to OAS Class – II posts.

H 2.3. The State issued Office Order dated 07.06.2008, for implementation of the Judgment dated 11.04.2007 passed

by the Orissa Administrative Tribunal, Cuttack Bench A
("O.A.T.").

The O.A.T. had directed the State to separately assess
the vacancies for the years 2001 to 2005 year wise, conduct
the process of calling for names, hold a D.P.C. in accordance B
with established procedure, and make appointments within
a period of six months.

2.4. In this background, the State decided to keep the recruitment
process for OAS Class – II posts for the recruitment year
2008 on hold, till the process of recruitment by way of C
promotion/selection for the years 2001-2005 was completed.

2.5. Pursuant to the Judgment of the Tribunal, the State *vide*
Letter dated 19.06.2008 called for recommendations for the
years 2001 to 2005 from all Departments, Heads of
Departments, and Collectors for recruitment to OAS
Class – II posts under Rule 3(c) of the OAS Class II Rules, D
1978.

2.6. Aggrieved by the delay in completion of the recruitment
process for the years 2007-2008, various O.A.s were filed
by the contesting Respondents, and other similarly situated
persons, who had been recommended for consideration to E
OAS Class – II posts against the vacancies for 2008 before
the O.A.T. The Applicants prayed for completion of the
recruitment process by convening a D.P.C.; and declaration
of the selection list for the years 2007-2008 within a month,
and issuance of appointment letters.

2.7. The State undertook restructuring of the Orissa
Administrative Service in February 2009. F

The re-structured Orissa Administrative Service cadre
would comprise of different Grades, *viz.* – OAS Class – I
(Junior Branch), OAS Class I (Senior Branch), OAS G
(Supertime Scale), OAS (Senior Grade in Supertime Scale),
OAS (Superior Administrative Grade), and OAS (Special
Secretary).

2.8. By Resolution dated 25.05.2009, the Orissa Revenue Service
Group 'B' cadre was constituted. H

- A The existing cadre of OAS Class – II posts was abolished. The corresponding cadre of OAS Class – II was the Orissa Revenue Service Group ‘B’ cadre.
- 2.9. The State *vide* two Notifications dated 07.12.2010 appointed candidates on OAS Class – II posts by way of selection and promotion for the recruitment years 2001 to 2005.
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- 2.10. The State framed the Orissa Administrative Services (Method of Recruitment and Conditions of Service) Rules, 2011 (“**OAS Rules, 2011**”) under Article 309 of the Constitution of India. The Rules came into force on 25.06.2011.
- C Rule 17 of the OAS Rules, 2011 repealed the OAS Class II Rules, 1978 under which the 2008 recruitment process had been initiated.
- D Rule 4 of the OAS Rules, 2011 provides for recruitment by promotion to Group ‘A’ (Junior Branch) posts of the re constituted Orissa Administrative Service cadre from members of the Orissa Revenue Service.
- E Similarly, the Orissa Revenue Service (Recruitment) Rules, 2011 (“**ORS Rules, 2011**”) came into force on June 27, 2011 to regulate the method of recruitment, and conditions of service, of persons appointed to the Orissa Revenue Service, including Group ‘B’ posts.
- 2.11. The O.A.T. *vide* Judgment dated 14.03.2012 decided the O.A.s filed by the contesting Respondents and other similarly situated persons who were under consideration for the vacancies for the recruitment year 2008. The State was directed to take immediate steps to fill up Class – II/Group ‘B’ posts in the Orissa Revenue Service cadre. 50% of the vacancies were to be filled up by direct recruitment, and 50% by promotion from amongst Class – III/Group C employees as early as practicable, and preferably within six months. The relief claimed by the contesting Respondents and other similarly situated persons could not be granted unless 50% of the available vacancies were first filled up by direct recruitment in accordance with the Rules. The contesting Respondents had merely been recommended by
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their respective Departmental Authorities for promotion selection to OAS Class – II (Group B) posts. There was no Selection Board/D.P.C. which was convened, nor was any Select List/Merit List prepared. The contesting Respondents who were continuing against Class III posts, could be considered for promotion only to Class – II (Group B) posts, and not directly to Class – I (Group A) posts. No right had accrued in favour of the contesting Respondents to seek convening of a Selection Board/Department Promotion Committee for appointment on OAS Class – II posts. The contesting Respondents would be eligible for consideration against the available Class – II/Group B posts in the promotional quota, after 50% of the vacancies were filled up by direct recruitment.

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2.12. Aggrieved by the common Judgment and Order dated 14.03.2012 passed by the O.A.T., the contesting Respondents filed W.P.s before the Orissa High Court seeking quashing of the Judgment dated 14.03.2012 passed by the O.A.T.; issuance of directions to the State to complete the recruitment process to OAS Class – II posts on the basis of the recommendations made in favour of the contesting Respondents; and, grant promotion to the contesting Respondents to OAS Class – II posts with all service and promotional benefits from the date such benefits were due.

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2.13. The Division Bench by the common impugned Judgment and Order dated 30.04.2018 disposed of the W.P.s filed by the contesting Respondents, and set aside the Judgment dated 14.03.2012 passed by the O.A.T. The State Authorities were directed to call for a review D.P.C. to consider the cases of the contesting Respondents, and other eligible officers, and complete the recruitment process for 150 vacant OAS Class – II posts as against the recruitment year of 2008 within 3 months. The High Court held that the 150 vacant OAS Class – II posts for which recommendations were made in the year 2008, prior to the abolition of the OAS Class – II posts, and re-constitution of the Orissa Revenue Service cadre, be filled up under the OAS Class II Rules, 1978.

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A 3. Aggrieved by the impugned Judgment and Order dated 30.04.2018 as well as the impugned Orders dated 08.08.2018 and 10.08.2018 passed by the Division Bench, the State has filed the present Special Leave Petitions.

B 4. The issue which arises for our consideration in the present Civil Appeals is whether the Division Bench of the Orissa High Court was justified in directing the State to convene a review D.P.C. for considering the case of the contesting Respondents and other eligible officers, and directing it to complete the recruitment process for recruitment year of 2008 to the 150 vacant posts.

C 5. SUBMISSIONS OF PETITIONERS

5.1. Mr. Ravi Prakash Mehrotra, Advocate on behalf of the State submitted that the Division Bench had committed a palpable error in directing the State to convene a review D.P.C.

D 5.2. Placing reliance on a recent decision of this Court in *Union of India & Ors. v. Krishna Kumar & Ors.*¹, it was submitted that no right had accrued in favour of the contesting Respondents merely on account of their names being recommended by the respective Departmental Authorities to be considered for selection/promotion against the vacancies in the recruitment year 2008. The list of persons recommended cannot be considered to be the approved list of candidates for selection/promotion, since no D.P.C. or Selection Committee was convened for the same.

E 5.3. It was further submitted that the contesting Respondents did not challenge the abolition of the OAS Class – II cadre, and the consequent creation of the Orissa Revenue Service Group ‘B’ cadre.

F 5.4. The contesting Respondents could not claim a lien over the OAS Class – II cadre, which had since been abolished in 2009, and replaced by the Orissa Revenue Service Group ‘B’ cadre.

G 5.5. Some of the contesting Respondents had submitted themselves before the Selection Committee convened in 2013, and another in 2018, under the new ORS Rules, 2011

H ¹ 2019 (1) SCALE 691.

for appointment to vacant posts in the Orissa Revenue Service Group 'B' cadre. A

It was, therefore, not open to claim appointments to the OAS Class – II posts under the repealed Rules in an abolished cadre.

5.6. The claim of the contesting Respondents cannot be considered at par with the candidates for the years 2001 to 2005 as their appointments were made prior to the repeal of the OAS Class II Rules, 1978 and the OAS Class II Regulations, 1978. B

5.7. It was further submitted on behalf of the State that if the directions of the Division Bench were to be carried out, supernumerary posts would be required to be created to accommodate the contesting Respondents which was not possible. This would create a serious precedent, since there were 559 candidates who were similarly situated as the contesting Respondents, and had been recommended by various Departments in 2008. C D

6. SUBMISSIONS OF RESPONDENTS

6.1. Ms. Meenakshi Arora, learned Senior Advocate, submitted that 150 vacant OAS Class – II posts were available in 2008. The contesting Respondents were eligible, and were duly recommended for appointment by way of selection promotion under the OAS Class II Rules, 1978 and the OAS Class II Regulations, 1978. E

6.2. The State, being a model employer, cannot discriminate in the matter of selection/promotion to OAS Class – II posts on a 'pick-and-choose' basis. F

6.3. Admittedly, the OAS Class II Rules, 1978 and the OAS Class II Regulations, 1978 were in force at the time when the State decided to fill up 150 OAS Class – II posts on 28.04.2008. The vacancies were required to be filled up under the OAS Class II Rules, 1978. G

6.4. Reliance was placed by Ms. Arora, learned Senior Advocate, on the decision of this Court in *Y.V. Rangaiah & Ors. v. J.*

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A *Sreenivasa Rao & Ors.*². It was submitted that vacancies which had occurred prior to the repeal of the OAS Class II Rules, 1978 and OAS Class II Regulations, 1978; and the coming into force of the OAS Rules, 2011 and the ORS Rules, 2011, would be governed by the old Rules, viz. OAS Class II Rules, 1978 and OAS Class II Regulations, 1978.

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7. DISCUSSION AND ANALYSIS

7.1. The contesting Respondents cannot claim an accrued or vested right for selection or promotion to OAS Class – II posts in the year 2008, merely on the basis of their names being forwarded by the respective Departmental Authorities.

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7.2. When the recruitment process for 2008 was initiated *vide* Letter dated April 28, 2008 by the State, the extant rules and regulations occupying the field for selection and promotion to OAS Class – II posts were the OAS Class II Rules, 1978 and the OAS Class II Regulations, 1978.

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7.3. Rule 6 of the OAS Class II Rules, 1978 provided for the determination of vacancies by the State Government. Rule 6 has been reproduced hereinbelow for ready reference:

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“6. Filing of vacancies. –

The State Government may decide the number of vacancies in the service as may be required to be filled up in any particular year:

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Provided that no recruitment to the service shall be made without the prior consultation with the Commission”

(emphasis supplied)

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7.4. Rule 3 of the OAS Class II, Rules 1978 provided that recruitment to OAS Class II posts was to be made by three methods – *first*, direct recruitment by competitive examination [Rule 3(a)]; *second*, promotion from amongst Gazetted Officers of a certain class [Rule 3(b)]; and *third*, selection of non-Gazetted Officers [Rule 3(c)].

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² (1983) 3 SCC 284.

The proportion of candidates to be recruited by the methods specified above as per Rule 8 of the OAS Class II Rules, 1978 was – 50% by direct recruitment, 30% by promotion, and 20% by selection. A

Further, Rule 8(5) also mandated that the State was required to consult the Orissa Public Service Commission before appointment by way of promotion and selection. B

7.5. As per Rule 5 of the OAS Class II Rules, 1978, recruitment to OAS Class II posts by way of selection or promotion shall be in accordance with the Orissa Class II Regulations, 1978, which outline the recruitment process. C

7.6. In accordance with Regulation 6(i) of the OAS Class II Regulations, 1978, any recruitment process by way of selection or promotion was to be initiated by the State by calling for recommendations from Collectors, Heads of Departments and Departments of Governments, who were required to forward a list of candidates considered suitable to the Administrative Department (*i.e.* the Revenue Department). D

On receipt of the recommendations, the Administrative Department (*i.e.* the Revenue Department) was required to place a list of recommended candidates in a tabular form before a Selection Board constituted under Regulation 3. E

7.7. Under Regulation 7, the Selection Board was required to consider the recommendations so received from the Administrative Department, scrutinise the records relating to the candidates who had been recommended, and prepare a list of candidates who in the opinion of the Selection Board are suitable for appointment to OAS Class – II posts. F

7.8. Thereafter, as per Regulation 8, the list prepared by the Selection Board under Regulation 7 was required to be referred to the Orissa Public Service Commission by the State Government, along with the service records of the all candidates whose names feature in the list. G

7.9. After considering the list prepared under Regulation 7 along with other documents and records received from the State H

A Government, the Orissa Public Service Commission was required to recommend a list of candidates suitable for selection or promotion, as the case may be, under Regulation 9.

B 7.10. The list of candidates recommended by the Orissa Public Service Commission under Regulation 9 was required to be placed before the State Government. The said list, after any approval with modification, was to form the final list from which appointments were to be made to OAS Class – II posts by way of selection or promotion in accordance with Regulation 10.

C Thus, the recruitment process by way of selection or promotion, as the case may be, initiated in accordance with Regulation 6 would culminate on the making of a final list as per Regulation 10. Appointments by way of promotion or selection could be made only from amongst the candidates whose names featured in the final list prepared by the Commission, and placed before the State Government.

D 7.11. In *Deepak Agarwal & Another v. State of Uttar Pradesh & Ors.*³ this Court had held that the right to be considered for promotion accrues on the date of consideration of eligible candidates.⁴

E The relevant extract of the decision is extracted hereinbelow for ready reference:

F “26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the “rule in force” on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with

G the candidate having acquired a right to be considered

³ (2011) 6 SCC 725.

⁴ See also *Union of India & Ors. v. Krishna Kumar & Ors.*, 2019 (1) SCALE 691 (para 11); and, *State of Tripura & Ors. v. Nikhil Ranjan Chakraborty & Ors.*, (2017) 3 SCC 646 (paras 8 and 9).

for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Y.V. Rangaiah case [(1983) 3 SCC 284 : 1983 SCC (L&S) 382] lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment.”

(emphasis supplied)

7.12. In the present case, the names of 559 candidates, including the contesting Respondents, were merely recommended by their respective Departmental Authorities under Regulation 6. The recruitment process did not proceed any further in accordance with Regulations 7, 8, 9 and 10. No final list of selected candidates was placed by the Orissa Public Service Commission before the State Government for the purposes of appointment as against the vacancies of 2008.

As such, the contesting Respondents who had merely been recommended by their respective Departmental Authorities could not be considered to be ‘eligible’ for appointment by way of promotion or selection under the erstwhile OAS Class II Regulations, 1978, since the steps set out in the regulations mentioned below had not been completed prior to the repeal of the old OAS Class II Rules, 1978 and the OAS Class II Regulations, 1978:

Regulation 7 – preparation of a list of suitable candidates by the Selection Board;

Regulation 8 – consultation with the Orissa Public Service Commission;

Regulation 9 – recommendation of the Orissa Public Service Commission; and,

Regulation 10 – preparation and placement of final list before the State Government for appointment.

A Thus, the contesting Respondents had not acquired an accrued or vested right of selection or promotion to OAS Class – II posts in accordance with the OAS Class II Rules, 1978 and the OAS Class II Regulations, 1978, since their names had never been considered for selection or promotion beyond the stage contemplated under Regulation 6.

B 7.13. Reliance placed by the Counsel for the Respondents on *Y.V. Rangaiah & Ors. v. J. Sreenivasa Rao & Ors.*⁵ in order to submit that the vacancies which had arisen under the old Rules would be governed by the old Rules, is of no avail.

C A similar submission was rejected by this Court in *Deepak Agarwal & Another v. State of Uttar Pradesh & Ors.*⁶. The relevant excerpt of the decision is reproduced hereinbelow:

D “24. We are of the considered opinion that the judgment in *Y.V. Rangaiah case*[(1983) 3 SCC 284 : 1983 SCC (L&S) 382] would not be applicable in the facts and circumstances of this case. The aforesaid judgment was rendered on the interpretation of Rule 4(a)(1)(i) of the Andhra Pradesh Registration and Subordinate Service Rules, 1976. The aforesaid Rule provided for preparation of a panel for the eligible candidates every year in the *month* of September. This was a statutory duty cast upon the State. The exercise was required to be conducted each year. Thereafter, only promotion orders were to be issued. However, no panel had been prepared for the year 1976. Subsequently, the Rule was amended, which rendered the petitioners therein ineligible to be considered for promotion. In these circumstances, it was observed by this Court that the amendment would not be applicable to the vacancies which had arisen prior to the amendment. The vacancies which occurred prior to the amended Rules would be governed by the old Rules and not the amended Rules.

G 25. In the present case, there is no statutory duty cast upon the respondents to either prepare a yearwise panel of the

⁵ (1983) 3 SCC 284.

H ⁶ (2011) 6 SCC 725.

eligible candidates or of the selected candidates for promotion. In fact, the proviso to Rule 2 enables the State to keep any post unfilled. Therefore, clearly there is no statutory duty which the State could be mandated to perform under the applicable Rules. The requirement to identify the vacancies in a year or to take a decision as to how many posts are to be filled under Rule 7 cannot be equated with not issuing promotion orders to the candidates duly selected for promotion. In our opinion, the appellants had not acquired any right to be considered for promotion. Therefore, it is difficult to accept the submissions of Dr. Rajeev Dhavan that the vacancies, which had arisen before 17-5-1999 had to be filled under the unamended Rules.”

(emphasis supplied)

- 7.14. In the present case the contesting Respondents had merely been recommended by the respective Departmental Authorities under Regulation 6. The recruitment process had not proceeded any further thereafter. There was no time frame prescribed for completion of the recruitment process under the erstwhile OAS Class – II Rules, 1978 or the OAS Class – II Regulations, 1978.
- 7.15. In the meanwhile, the State restructured the Orissa Administrative Service cadre, and constituted the Orissa Revenue Service *vide* Resolutions dated 28.02.2009 and 25.05.2009.
- As a part of the re-structuring exercise, the erstwhile OAS Class – II posts were abolished, and a corresponding new cadre of Group ‘B’ posts in the newly constituted Orissa Revenue Service was created.
- 7.16. The contesting Respondents have not challenged either the abolition of OAS Class – II posts, or the creation of the corresponding Orissa Revenue Service Group ‘B’ posts.
- 7.17. To the contrary, some of them have participated in the proceedings of the D.P.C. convened on 30.04.2013 for recruitment to the newly created Orissa Revenue Service Group ‘B’ cadre.

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A After being considered, 6 of the contesting Respondents were selected, while 1 was kept on the Waiting List.

The State appointed the said Respondents to the Orissa Revenue Service Group ‘B’ posts. However, only two out of the five contesting Respondents who were appointed, joined the posts.

B 7.18. Subsequently, during the pendency of the W.P.s, another D.P.C. was convened to consider the promotion of employees working in the Orissa Revenue Services Group ‘B’ posts to Orissa Administrative Service Group A (Junior Branch) posts.

C 1 contesting Respondent was promoted to the OAS Group A (Junior Branch) cadre.

D 7.19. The contesting Respondents cannot claim any lien over the abolished OAS Class – II posts, which were governed by the old OAS Class II Rules, 1978 and OAS Class II Regulations, 1978.

E 7.20. In this context, reliance may be placed on two decisions of this Court in *Rajasthan Public Service Commission v. Chanan Ram*⁷ and *Union of India & Ors. v. Krishna Kumar & Ors.*⁸.

In *Rajasthan Public Service Commission v. Chanan Ram*⁹ this Court rejected a claim for filling up vacancies in posts which no longer existed, after an amendment of the extant Rules.

F The relevant excerpt of the decision is reproduced hereinbelow for ready reference:

G “14. ...Once it is held that the old vacancies were in posts which no longer existed after April 1995, there remained no occasion to consider whether these old vacancies could be filled in by applying earlier rules of recruitment to the very same posts...There were no such posts after April

⁷ (1998) 4 SCC 202.

⁸ 2019 (1) SCALE 691.

H ⁹ (1998) 4 SCC 202.

1995 in the cadres of the Rajasthan Agricultural Marketing Service as seen earlier... A

15. ...On the contrary a three-Judge Bench *judgment* of this Court in the case of *Jai Singh Dalal v. State of Haryana* [1993 Supp (2) SCC 600 : 1993 SCC (L&S) 846 : (1993) 24 ATC 788] would squarely get attracted on the facts of the present case. A.M. Ahmadi J., speaking for the three-Judge Bench in para 7 of the Report relying on an earlier judgment of this Court in case of *State of Haryana v. Subash Chander Marwaha* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488] laid down that when the special process of recruitment had not been finalised and culminated into select list the candidate did not have any right to appointment. In this connection it was observed that the recruitment process could be stopped by the Government at any time before a candidate has been appointed. A candidate has no vested right to get the process completed and at the most the Government could be required to justify its action on the touchstone of Article 14 of the Constitution. B C D

(emphasis supplied)

In *Union of India & Ors. v. Krishna Kumar & Ors.*¹⁰ this Court was dealing with a similar situation of cadre restructuring. E

The relevant extract of the decision is reproduced hereinbelow for ready reference:

“14. In view of this statement of the law, it is evident that once the structure of Assam Rifles underwent a change following the creation of the intermediate post of Warrant Officer, persons holding the post of Havildar would be considered for promotion to the post of Warrant Officer. The intermediate post of Warrant Officer was created as a result of the restructuring exercise. The High Court was, in our view, in error in postulating that vacancies which arose prior to the amendment of the Recruitment Rules would F G

¹⁰ 2019 (1) SCALE 691.

A necessarily be governed by the Rules which existed at
the time of the occurrence of the vacancies. As the
decided cases noted earlier indicate, there is no such
rule of absolute or universal application. The entire
basis of the decision of the High Court was that those
B who were recruited prior to the restructuring exercise
and were holding the post of Havildars had acquired a
vested right of promotion to the post of Naib Subedar.
This does not reflect the correct position in law. The
right is to be considered for promotion in accordance
C with the Rules as they exist when the exercise is carried
out for promotion.”

(emphasis supplied)

7.21. The submission of the contesting Respondents that their case
be considered at par with the candidates appointed by way
of selection and promotion as against the vacancies for the
years 2001 to 2005 is not tenable.

D

The appointments of persons as against the vacancies
for the years 2001 to 2005 were made *vide* two Notifications
dated December 7, 2010, which were issued prior to the
repeal of the old OAS Class II Rules, 1978 and the OAS
Class II Regulations, 1978.

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7.22. Finally, the High Court had relied upon the decision in *Mukti*
*Ranjan Acharya & Ors. v. State of Orissa & Ors.*¹¹ [W.P.
(C) No. 19827/2009; Decided on 16.04.2012] to hold that
promotions could be given under the repealed OAS Class II
Rules, 1978 and the OAS Class II Regulations, 1978. The
S.L.P. against this judgment had been simply dismissed. The
Counsel for the contesting Respondents prayed for dismissal
of the present Civil Appeals by submitting that the said
decision had been affirmed by this Court *vide* Order dated
28.09.2012.

F

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It is a well-settled principle of law emerging from a
catena of decisions of this Court, including *Supreme Court*
Employees' Welfare Association v. Union of India &

¹¹ 2012 (II) OLR 61.

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*Anr.*¹² and *State of Punjab v. Davinder Pal Singh Bhullar*¹³, that the dismissal of a S.L.P. *in limine* simply implies that the case before this Court was not considered worthy of examination for a reason, which may be other than the merits of the case. Such *in limine* dismissal at the threshold without giving any detailed reasons, does not constitute any declaration of law or a binding precedent under Article 141 of the Constitution.

8. On the aforesaid grounds, we hold that the Judgment of the Division Bench is liable to be set aside since the contesting Respondents did not have a vested or fructified right of promotion to OAS Class II posts which had arisen during the recruitment year 2008. The names of the contesting Respondents were merely recommended for consideration. In the meanwhile, in 2009 the State had re-structured the cadre, and abolished the OAS Class II cadre. The re-constituted cadre *viz.* the Orissa Revenue Service Group 'B' cadre came in its place. Hence, the direction of the Division Bench to appoint the contesting Respondents in the vacancies which had occurred in the abolished cadre, in accordance with the repealed 1978 Rules, was contrary to law, and liable to be set aside.

In view of the aforesaid findings, the present Civil Appeals are allowed. The common impugned Judgment and Order dated 30.04.2018 passed by the Orissa High Court in W.P. (C) Nos. 14831 of 2013, 18749 of 2012, 6720 of 2013, 25961 of 2017 and 9200 of 2016 as well as the impugned Orders dated 08.08.2018 and 10.08.2018 passed by the Orissa High Court in W.P. (C) Nos. 7383 and 14665/2018 are set aside.

Pending Interlocutory Applications, if any, are disposed of in terms of the Judgment.

Ordered accordingly.

Divya Pandey

Appeals allowed.

¹² (1989) 1 SCC 187 (paras 22 and 23).

¹³ (2011) 14 SCC 770 (paras 112 and 113).