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C.A.No. 6294 OF 1997

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6294 OF 1997@@
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State of Orissa & Ors. .. Appellants

Vs.

Malaya Kumar Sahu & Ors. .. Respondents

WITH

CIVIL APPEAL NO. 6295 OF 1997

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The respondent- Malaya Kumar filed an application before the Orissa Administrative Tribunal claiming that he had been appointed as a Junior Engineer, Agriculture by an order made on 23.6.1994 by the Director of Agriculture and he reported to duty before the Director on 28.6.1994 when his appointment became effective. When his services were placed at the disposal of the Commissioner & Ex-officio Director, Command Area Development, the respondent represented that he be posted in Soil Conservation Department in which he has specialisation and maximum interest. There being no response to this, the respondent filed an application before the Tribunal seeking for a direction to the Director of Agriculture to post him under the Director of Soil Conservation. By interim order made by the Tribunal, the respondent reported to duty before the

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Director of Agriculture but he was not paid his salary from that date. When he made a representation in that regard, he was informed that without the order of the Tribunal the question of payment of salary could not be considered. Thereafter, the Tribunal disposed of the matter finally stating as follows:

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" Since the applicant is continuing under the Directorate of Agriculture both by physically reporting as well by order of this Tribunal, Director shall see that the legitimate salary is paid to him as due and admissible within four months from the date of receipt of a copy of this order. If approval of any authority is necessary the same shall be obtained in the meantime."

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We may notice that not only that the respondent reported to duty to the Director of Agriculture but the Tribunal directed by an interim order to continue him in service when in fact he reported before the Command Area Development Organisation, it must be deemed that he is continuing in the Directorate of Agriculture. Twelve other persons who had been appointed provisionally as Junior Engineers for a period of six months along with the respondent by Order No. 7A(22)1/94-2271/Agril. dated 23.6.1994, the Public Service Commission having found them fit for being appointed, have been regularly

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appointed now. The respondent could not be so appointed because the appellant took the stand that he had not reported to duty at the place where he was posted while the Tribunal had held that he had continued to work under the Directorate of Agriculture and name of the respondent could not be sent to the Public Service Commission for being considered for his regularisation in service. In those circumstances no further steps were taken but much water has flown under the bridge between the date of appointment and today and it would not be equitable and just to ask the respondent to undergo that procedure at this stage. When he had been appointed after selection made by the Selection Committee consisting of Additional Director of Agriculture, Joint Director of Horticulture, Joint Director of Soil Conservation and Joint Director of Agriculture, it would be appropriate to state that he had been duly selected by experts in the field and was found fit to be appointed to the post for which he was selected and though stated to be provisionally posted, his case was formally to be examined by the Public Service Commission for regularisation. In these circumstances, we think in the peculiar features arising in this case, it is appropriate to declare that he should be deemed to have been regularised.

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Now the question arises as to from what date the respondent should be deemed to be regularised. This question was not raised by the respondent before the Tribunal because that occasion did not arise there. It is only for the reason that all the other twelve persons who were provisionally appointed for a period of six months along with the respondent have been regularly appointed, this point will have to be considered by us only. To do complete justice he be deemed to be regularised with effect from today, the date of this order. However, he will be paid his salary from the date he reported to duty till date, but inasmuch as he had not worked for any part of the period, it would be appropriate to limit the same to 50% which shall be paid within a period of three months from today. The appeals are disposed of accordingly.

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[S. RAJENDRA BABU]@@
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