

(1999) 07 OHC CK 0046

In the Orissa High Court

Case No : O.J.C. No's. 9464 and 9850 of 1996, O. J.C. No's. 2234, 2235, 2236, 2237, 5145, 14117 and 16063 of 1997

A Aurobinda Panda, Debendra Kumar Patra and Ajoy Kumar Biswal

APPELLANT

Vs

Orissa State Co-operative Union and Others
 Alok Ranjan Patnaik, Basant Kumar Barik, Bibhuti Bhusan Mishra and Baikuntha Mohapatra Vs Registrar, Co-operative Societies, Orissa and Others
 Jyoti Ranjan Baliasingh and Niranjan Mohapatra Vs State of Orissa and Others

RESPONDENT

Date of Decision : 23-07-1999

Acts Referred:

Orissa Co-operative Societies Act, 1962 — Section 123(A)

Citation : (1999) 07 OHC CK 0046

Hon'ble Judges : R.K. Patra, J;Pradipta Ray, J

Bench : Division Bench

Advocate : B.B. Ratho, Biswanath Rath, B. Senapati, S.N. Mohapatra, K.R. Mohapatra, S. Ghose, J. Rath, S.K. Jethy, P.S. Samantara and S.B. Mohanty, in O.J.C. No. 14117/97, B.S. Tripathy, K. Kar, N. Sarkar, J.S. Sahoo and H.S. Sahoo, in O.J. C. Nos. 9464 and 9850/96 and Nos. 2234 to 2237 of 1997, Manoranjan Kar, in O.J.C. No. 16063/97, K.P. Mishra, S. Rath, J.K. Khandayat Ray and M. Kar, in O.J.C. No. 5145/97, for the Appellant; K. Patnaik, A.G.A. for O.P. No. 1 in O.J.C. Nos. 2234 to 2237/ 97 and O.J.C. No. 5145/97, M.S. Panda, for O.Ps. 2 and 3 in O.J.C. Nos. 2234 to 2237/97 and O.Ps. 1 and 2 in O.J.C. Nos. 9464 and 9850/96 O. P. No. 1 in O.J.C. No. 16063/97 and O.Ps. 3 to 5 in O.J. C. No. 5145/97, for the Respondent

Judgement

R.K. Patra, J.—All-the aforesaid-nine cases were heard together for the sake of convenience and are disposed of by this judgment.

2. O.J. C. No. 14117 of 1997 is a writ petition filed initially at the instance of 21 Petitioners. During its pendency, one of them namely Petitioner No. 16 Pradeep Kumar Sahu sought permission to withdraw himself from the case. His prayer having been allowed by order dated 4-8-1998. there are now 20 Petitioners who

seek quashing of the order dated 26-9-1997 (Annexure-2) passed by the Government in the Cooperation Department u/s 123-A of the Orissa Cooperative Societies Act, 1962 directing the Orissa State Cooperative Union Limited opposite party No. 3 to cancel their (petitioners) appointment orders.

The common grievance of the Petitioners in O.J. C. Nos. 9464/96, 9850/96, 2234/97, 2235/97, 2236/97, 2237/97 and 16063/97 is that although each of them was provisionally selected for being appointed as District Co-operative Instructor yet no formal order of appointment has yet been issued by the Union. Petitioner in O.J. C. No, 5145/97 claims that he was provisionally selected as Junior Assistant but no order of appointment has yet been issued. They have prayed for a direction to the Union to appoint them.

3. At the threshold, it would be appropriate to deal with the case of the Petitioners in O.J. C. No. 14117 of 1997. Their case is that the Orissa State Co-operative Union Limited (hereinafter referred to as "the Union") is a registered cooperative society and has been declared as the apex co-operative organisation in the State. The committee of management in early part of 1995 decided to fill up different vacant posts of the Union. Accordingly applications from intending candidates were called for through advertisement. A Sub-Committee comprising of the Chairman, two Faculty members of the Institution of Co-operative Management the Joint Registrar of Co-operative Societies (Training and Project) and the Joint Director, Cooperative Societies and four other Directors" of the Committee of Management conducted written and viva voce tests of the candidates. On 27-6-1995, the Committee of Management approved the selection made by the Sub-Committee and provisionally selected 55 candidates for different categories of posts by drawing up a merit list. They were to be appointed subject to their successful completion of training. The Petitioners and Ors. were provisionally selected for being appointed as Lecturers/District "Co-operative Instructors/Junior Assistants/Film Operators. They were deputed to undergo training at respective places earmarked for them. After successful completion of training only 22 persons i.e. the Petitioners in O.J. C. No. 14117 of 1997 and two others came to be appointed in September, 1996 against different posts referred to above. In the meantime they also successfully completed probationary period of service of one year. The management of the Union in its resolution dated 12-8-1997 at Annexure-8 resolved to regularise the services of all the Petitioners in their respective posts. While the Petitioners were continued in their service the Government passed the impugned order purported to have been made in exercise of power conferred" on it u/s 123-A of the Orissa Co-operative Societies Act, 1962 (hereinafter referred to as "the Act") instructing their employer to cancel their orders of appointment. According to the Petitioners the said order is illegal void and is in violation of the principles of natural justice.

4. The Union (opposite party No. 3) through its Deputy Secretary has filed counter affidavit. Its case is that the Union has its Committee of Management which takes all policy decisions to manage its affairs. To carry out the day-to-day

management and the objectives of the Union it has its own staff recruited by it. The erstwhile committee of management decided to fill up different vacant posts of the Union. For the purpose of recruitment, a Sub-Committee was constituted consisting of the Chairman and other officers. It duly conducted the written and viva voce tests and provisionally recommended 55 candidates for different categories of posts by drawing up a merit list. The committee of management in its meeting held on 27-6-1995 approved the aforesaid selection made by the Sub-Committee. Those 55 candidates so selected were deputed for training. It was about three times the number of existing vacancies. On receipt of certain allegation made by one Minati Sahu and S. Acharya that there were irregularities in the process of recruitment of Junior Assistants, the Government in its order dated 22-9-1995 (Annexure-A/1) required the Deputy Secretary (Scheme) of the Government in the Co-operation Department to conduct an enquiry in respect of the allegations and submit a report. The Deputy Secretary scrutinised all documents relating to the recruitment but the Union has been kept in dark whether the Deputy Secretary submitted any report. The Registrar, Cooperative Societies in letter No. 17667 dated 27-6-1996 approved the staffing pattern of the Union. As per the approved staffing pattern, 22 posts of different categories were lying vacant for being filled up and the 55 candidates who were had already completed their training were awaiting appointment Orders. Out of the 55 candidates empaneled in the merit list only 22 candidates who had successfully completed the training were appointed on probation in September, 1996. Appointment of those if persons (inclusive of the Petitioners) had been approved by the Committee of Management on 15-3-1997. The Committee of Management has also regularised their services following completion of their probationary period of one year in its resolution dated 12-8-1997, At this stage, the impugned Government order was passed. According to opposite party No. 3 it has no knowledge about the result of any enquiry conducted by the Department as well as the Vigilance Department. Although the said order was passed in violation of the principles of natural justice the Committee of Management in obedience to the said order decided to cancel the appointment of the Petitioners in its resolution dated. 4-8-1997 (Annexure-B/3) with a further request to the State to reconsider their order.

5. The State Government in the Co-operation Department (opposite party No. 2) has filed counter affidavit. Its case is that the Union functions on the basis of funds received by it from different co-operative societies of the State and from the Government. According to the State Government the appointment of the Petitioners cannot be supported as it was done during the ban period. The enquiry report submitted by the Deputy Secretary is self-explanatory. It indicates that lot of irregularities and illegalities were committed, Some of the Petitioners in the connected cases, i.e. O.J. C. No. 2234 of 1997 are intervenors. They have opposed the prayer of the Petitioners in O.J. C. No. 14117 of 1997.

6. The direction of the Government to cancel the appointment of the Petitioners as contained in the impugned Government order is based on three grounds: (i)

the Deputy Secretary who conducted the enquiry-with regard "to the recruitment of 22 Staff has pointed out certain serious irregularities; (ii) the matter has been subsequently handed over to the Vigilance Department for investigation and (iii) the recruitment I was made without obtaining prior approval when there was ban on such recruitment.

7. It is an undisputed fact that the Petitioners on being appointed by orders dated 3-9-1996 and 5-9-1996 joined their respective posts in September, 1996. They were so appointed after having successfully completed the training. In the mean time they have also completed the period of probation. Neither the Petitioners nor their employer-Union was made aware of any irregularity illegality in the process of recruitment as reported by the Deputy Secretary. The Union in its counter affidavit has asserted that no report of any enquiry made by the Deputy Secretary was made available to it

8. A case similar to the present one came up for consideration before the Supreme Court in Benny T.D. and Others Vs. Registrar of Cooperative Societies and Another, . In that case, recruitment of clerks in the Bank was challenged on the ground that it was vitiated by large scale malpractice. The Registrar of Co-operative Societies had annulled the appointments on the basis of, report submitted by the Kerala Public Men's Commission. Their Lordships held that the report of the Commission or any finding regarding irregularities in the process of selection was not made available to the Bank or to the affected parties and hence the confusion of the Registrar that there was mal-practice in the selection was vitiated on the ground of violation of principles of natural justice. In the present case neither the Petitioners nor their employer - Union was made aware of any report made by the Deputy Secretary to Government in the Co-operation Department. The observation of the Government in the impugned order that the matter has been handed over to the Vigilance Department for investigation indicates that the probe if any made by the Deputy Secretary needs further investigation and the report is not conclusive.

9. Keeping in view, the ratio of the Supreme Court in Benny T.D. (supra) and for the reasons indicated we are of the opinion that the direction contained in the impugned Government order at Annexure-2 as well as the orders passed by the Union cancelling the appointment of the Petitioners as per Annexure-C/2 cannot be sustained which is hereby quashed.

10. As regards the common grievance of the Petitioners in O.J. C. Nos. 2234/97. 2235/97 2236/97. 2237/97. 9464/96. 9850/96. 5145/97 and 16063/97. in the counter affidavit filed on behalf of the Union it has been stated that although the Petitioners were provisionally selected for appointment they could not be appointed because of non-availability of vacancies beyond the sanctioned strength. In the merit list of District Co-operative Instructors, the position of Petitioners in O.J. C. Nos. 2234/97. 2235/97. 2236/97. 2237/97. 9464/96. 9850/96 and 16063/97 respectively was 30. 21. 27. 23. 24. 28 and 25 and the position of the Petitioner in O.J. C. No. 5145/97 in the merit list of Junior

Assistants was 10. As 12 posts of District Co-operative Instructors and five posts to Junior Assistants (Type knowing) were only available for being filled up and the position of the Petitioners in the merit list being far below they were not appointed, Law is now well settled that mere inclusion of one's name in the merit list does not confer any right on him to appointment. For the aforesaid reason, there is the merit in any of these cases.

11. In the result, O.J. C. No. 14117 of 1997 succeeds and is allowed. The Petitioners therein may be reinstated forthwith. Their reinstatement on the basis of this judgment, however, will be subject to action if any to be taken by the State Government on the basis of investigation/enquiry referred to in the Government order at Annexure-2 with notice to the Petitioners and the Union.

12. There is no merit in the other writ petitions, i. e, O.J. C. Nos. 9464/96, 9850/96, 2234/97. 2235/97, 2236/97. 2237/97. 5145/97 and 16063/97 which are dismissed.

13. There would be no order as to costs.

Pradipta Ray, J.

14. I agree.

Ordered accordingly.