
(2023) 02 OHC CK 0032

In the Orissa High Court

Case No : Writ Petition (C) No. 29089 Of 2020

Abhaya Kumar Padhi & Others

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 10-02-2023

Acts Referred:

Citation : (2023) 02 OHC CK 0032

Hon'ble Judges : Sanjay Kumar Mishra, J

Bench : Single Bench

Advocate : B. Mohanty, G.N. Rout, S.K. Das

Final Decision : Disposed Of

Judgement

Sanjay Kumar Mishra, J

I.A. No.10287 of 2021

1. The matter is taken up through hybrid mode.
2. The matter is taken up today on being listed under the heading 'To be mentioned' seeking some clarifications from the learned Counsel for the Petitioners.
3. Mr. Das, learned Counsel for the Opposite Party Nos. 4 to 6, relying on the judgment of the apex Court in case of Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, Bihar and another, reported in AIR 1963 SC 786, submitted that though the proposed prayer for amendment is to quash the Order of promotion in respect of direct recruit of ASOs from Sl. No.7 to 533 of the Order of promotion dated 23.07.2021, but in the schedule of amendment, as proposed in the I.A., it has not been prayed/proposed to add those Assistant Section Officers as Opposite Parties, who are going to be affected in case the Writ Petition is allowed. To substantiate his argument, Mr. Das, learned Counsel for the Opposite Party Nos. 4 to 6, relied on paragraphs 7, 12 and 13 of the said judgment, which are extracted below.

"7. To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled: it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

12. To summarize in a writ of certiorari not only the tribunal or authority whose order is sought to be quashed but also parties in whose favour the said order is issued are necessary parties. But it is in the discretion of the court to add or implead proper parties for completely settling all the questions that may be involved in the controversy either suo motu or on the application of a party to the writ or an application filed at the instance of such proper party.

13. In the present case Phudan Manjhi and Bhagwan Rajak were parties before the Commissioner as well as before the Board of Revenue. They succeeded in the said proceedings and the orders of the said tribunal were in their favour. It would be against all principles of natural justice to make an order adverse to them behind their back; and any order so made could not be an effective one. They were, therefore, necessary parties before the High Court. The record discloses that the appellant first impleaded them in his petition but struck them out at the time of the presentation of the petition. He did not file any application before the High Court for impleading them as respondents. In the circumstances, the petition filed by him was incompetent and was rightly rejected."

Mr. Das, learned Counsel for the Opposite Party Nos. 4 to 6, further submitted that the ASOs from Sl. Nos. 7 to 533 of the Order of Promotion dated 23.07.2021 are necessary and proper Parties to the present proceeding and no prayer has been made in the I.A. to implead them as Opposite Parties in the Writ Petition, though a prayer has been made in the I.A. to challenge the said Order of promotion dated 23.07.2021 by way of amendment.

4. In response to the said submission made by Mr. Das, Mr. Mohanty, learned Counsel for the Petitioners, relying on the judgment of the apex Court in case of Ajay Kumar Shukla and others v. Arvind Rai and others, reported in 2021 SCC Online SC 1195, submitted that it is not essential to implead each and every one who could be affected but if a section of such affected employees is impleaded then the interest of all is represented and protected. He further submitted that similarly placed some of the ASOs, who are going to be affected, have been arrayed as Opposite Party Nos. 4 to 7 in the Writ Petition. To substantiate his argument, Mr. Mohanty, learned Counsel for the Petitioners relied on paragraph-47 of the said judgment, which is reproduced below.

"47. The present case is a case of preparation of seniority list and that too in a situation where the appellants (original writ petitioners) did not even know the marks obtained by them or their proficiency in the examination conducted by the Commission. The challenge was on the ground that the Rules on the preparation

of seniority list had not been followed. There were 18 private respondents arrayed to the writ petition. The original petitioners could not have known who all would be affected. They had thus broadly impleaded 18 of such Junior Engineers who could be adversely affected. In matters relating to service jurisprudence, time and again it has been held that it is not essential to implead each and every one who could be affected but if a section of such affected employees is impleaded then the interest of all is represented and protected. In view of the above, it is well settled that impleadment of a few of the affected employees would be sufficient compliance of the principle of joinder of parties and they could defend the interest of all affected persons in their representative capacity. Non-joining of all the parties cannot be held to be fatal.”

(Emphasis supplied)

5. As is revealed from Notification dated 23rd July, 2021, vide which 533 A.S.Os. were promoted to the rank of Section Officer in OSS Cadre (Group-B) in Level-10 in terms of ORSP Rules, 2017, it has been clearly indicated that the said Notification shall be subject to the outcome of number of Writ Petitions, including W.P.(C) No.29089 of 2020 pending before this Court and other cases, if any. Hence, it can be well presumed that the said beneficiaries in terms of the Notification dated 23rd July, 2021 are well aware about pendency of the present Writ Petition, so also other connected Writ Petitions. That part, it is ascertain from the said Notification dated 23rd July, 2021 that Sarbasree P. Sriram Prasad, Sambit Kumar Swain, Bikash Ranjan Sahoo and Truptilata Naik, whose names find place at Sl Nos.7, 8, 15 and 527 in the said Notification, have already been arrayed as Opposite Party Nos. 4 to 7 in the Writ Petition.

6. In view of the reasons indicated above, so also settled position of law, this Court is inclined to allow the I.A. for amendment of the Writ Petition.

7. Accordingly, the I.A. is disposed of.

8. Learned Counsel for the Petitioners is directed to file the consolidated Writ Petition with annexures after serving copy of the same on the learned Counsel for the State, so also learned Counsel for the private Opposite Parties on 15.02.2023, to which date the other connected Writ Petitions have been posted. The same will be accepted on the adjourned date upon advance copy served on the learned Counsel for the Opposite Parties.

9. Matter be listed along with other connected Writ Petitions on 15.02.2023.

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