
(2014) 08 OHC CK 0011
In the Orissa High Court
Case No : O.J.C. No. 8894 of 2000

Akhilanath Sahoo

APPELLANT

Vs

Joint General Manager, OSFC

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16
State Financial Corporations Act, 1951 — Section 29, 40(3)

Citation : (2015) 119 CLT 281 : (2014) LabIC 4579

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J.—The petitioner, who is working as a Security Assistant under the Orissa State Financial Corporation, has filed this application seeking the following reliefs:

(i) Admit the writ application;

(ii) Call for records;

(iii) Issue rule NISI calling upon the opposite parties to show cause as to why the impugned order dated 6.9.2000 under Annexure-15 and 15/A issued by the opposite party no. 1 to the opposite party no. 3 shall not be quashed for the grounds and averments made in the writ application;

If the opposite parties do not show cause or show insufficient cause, the impugned order of the opposite party no. 1 dated 6.9.2000 under Annexure-15 and 15/A be quashed by issuing a writ in the nature of certiorari or any other appropriate writ/writs;

(iv) Further, be pleased to issue a writ of mandamus or any other appropriate writ/writs directing the opposite parties to confirm the joining of the petitioner and to release his salary within a stipulated time to be fixed by this Hon'ble

Court;

(v) Further, be pleased to direct any independent agency to enquire into the matter against the action of the opposite party no. 1 and after getting enquiry report to take appropriate action against them and the signature of the opposite party no. 1 be sent to any hand writing expert with regard to genuineness of the signature of the opposite party no. 1 and after getting the report if it is found that it is the signature of the opposite party no. 1, then appropriate action as deemed fit and proper be taken against the opposite party no. 1 for causing hardship to the petitioner in this manner and misutilising his position as a public officer.

(vi) Further be pleased to pass any other appropriate order/orders, direction/directions, writ/writs as this Hon"ble Court deemed fit and proper for the ends of justice."

2. The short facts of the case in hand are that the Orissa State Financial Corporation, in short, " the Corporation", is a body Corporate engaged in augmenting the industrial activities of the State by providing financial assistance to the individual entrepreneurs/firms/institutions etc. u/s 29 of the State Financial Corporation Act, in short, "the Act". For that purpose the Corporation has to recruit Security Assistants for watch and ward duty to protect the articles from theft and destruction. The petitioner, being a Matriculate applied for appointment as Security Assistant, which being considered he was engaged as a Security Assistant on 27.2.1980 on daily wage basis for watch and ward duty along with many others. He having been retrenched from service on 1.8.1989 without following due procedure of law, challenging the order of retrenchment, he filed O.J.C. No. 529 of 1990 before this Court, which was disposed of on 12.1.1996. Other similarly situated retrenched employees also filed O.J.C. No. 3833 of 1989. In O.J.C. No. 3833 of 1989, this Court appointed a Committee headed by Justice V. Gopalaswamy (Retd.) as Chairman to enquire into the matter and report with regard to the work load of the organization and the requirement of employees. The Committee submitted its report suggesting engagement of 241 employees for watch and ward duty in respect of the industrial units of the Corporation. On receipt of such report of the Committee, this Court disposed of the said writ application on 20.7.1999 directing the Corporation to re-engage 241 employees in phased manner and to pay a sum of Rs. 2500/- as compensation to each of the employees. In the list of candidates under Annexure-1, the petitioner's name found place at Sl. No. 86, but subsequently another list of daily wage employees was also submitted by the counsel for the Corporation. In the said list under Annexure-1/A, the petitioner's name found place at Sl. No. 74. Accordingly, the petitioner was asked to furnish the necessary data, such as, date of birth, educational qualification before the Deputy Manager of the Corporation on 26.4.1992 vide Annexure-2, which was supplied by the petitioner. At this point of time, notice was published on 14.10.1999 vide Annexure-3, in daily news paper "the Samaj" asking the

employees like that of the petitioner to produce their documents/certificates. In compliance with the same, the petitioner submitted his documents/certificates on 25.10.1999 vide Annexure-4. But unfortunately when the list was published as per Annexure-5 by the opposite parties for engagement of daily rated Security Assistants, the name of the petitioner did not find place though the names of some juniors were there in the said list. The petitioner made a representation to the Managing Director on 27.12.1999 as per Annexure-6, but the same did not receive his consideration. Therefore, he made a representation to the concerned Minister of the State, who by letter dated 12.5.2000 forwarded the same to the Managing Director of the Corporation vide Annexure-8, stating that the petitioner had had a genuine claim for appointment pursuant to the list accepted by this Court. This way, the petitioner moved from pillar to post to get engagement order. Finally, on 12.6.2000 the petitioner's case was considered and a letter of appointment was issued to him by the Joint General Manager, OSFC, opposite party no. 1. In compliance with the order of appointment, the petitioner joined as Security Assistant in the office of the OSFC, Rourkela on 22.6.2000 vide Annexure-11. Thereafter, the Branch Manager, OSFC, Rourkela informed opposite party no. 1 about the joining of the petitioner and forwarded the original certificates of the petitioner to him on 26.6.2000, vide Annexure-12. On 13.7.2000 vide Annexure-12 series, the Secretary, OSFC intimated about the joining of the petitioner in the service of the Corporation to the General Manager, OSFC along with the original certificates submitted by him. On 4.9.2000 as per Annexure-13 though the petitioner had joined the service with effect from 22.6.2000, his salary was not paid. He, therefore, submitted a representation to the Managing Director, OSFC for payment of the same. He also made a similar representation to the Minister concerned on 5.8.2000 vide Annexure-14, but the opposite party no. 5 issued a letter to opposite party no. 3 for giving clarification on the petitioner's appointment on 22.6.2000 vide Annexure-15. The Joint General Manager, opposite party no. 5 informed the Branch Manager, Rourkela not to act upon such appointment letter on the ground that no such letter of appointment was issued by the Head Office vide his letter Annexure-15/A. The petitioner submitted a representation to the Principal Secretary, Industries Department on 4.9.2000 vide Annexure-16. But the Branch Manager, Rourkela Branch informed the opposite party no. 5 vide letter Annexure-17 dated 21.9.2000 clarifying the position in favour of the petitioner. Hence, this writ application.

3. While entertaining the writ application, this Court passed an interim order to maintain status quo vide order dated 7.11.2000, but as submitted by the learned counsel for the petitioner, the concerned authorities of the Corporation managed to get the petitioner out of service in a crafty and subterfuge manner.

4. On being noticed, the opposite parties entered appearance and filed their counter affidavit stating that the then Secretary of the Corporation had not issued any letter to opposite party no. 3 to cancel the joining of the petitioner or to file FIR and disputed with regard to discharge of duty by the petitioner under

opposite party no. 3, and denied his claim for getting salary or wages and it is stated that the petitioner along with others was engaged to guard the seized units by the Branch Manager, Baripada Branch of the Corporation on 27.2.1988. It is further stated that the petitioner was not retrenched, but was disengaged as there was no work to be provided at the relevant point of time, but admitted the fact that the petitioner had approached this Court by filing OJC No. 529 of 1990, which had been disposed of on 12.1.1996 directing to formulate a scheme to consider the question of absorption of daily rated employees on regular basis. The Corporation formulated a scheme but did not implement the same for various reasons and accordingly, submitted the same in O.J.C. No. 3833 of 1989 in which case the scheme was under scrutiny and also admitted that the Committee constituted by this Court headed by Justice V. Gopalaswamy (Retd.) had submitted a report to this Court that there was scope for appointment of 241 daily rated Security Assistants on daily wage basis, but subsequently, the Board of Directors appointed a Sub-Committee of Directors of the Corporation headed by its Managing Director was appointed to look into the scope of appointment of daily rated Security Assistants on regular basis. Therefore, fresh appointment on regular basis up to maximum number of only 150 daily rated Security Assistants, who were in service by 25.9.1989, i.e. the date of filing of the said writ application (O.J.C. No. 3833 of 1989) be taken into consideration for absorption subject to their fulfilling certain conditions. Considering the report of Justice V. Gopalaswamy (Retd.) Committee and other relevant documents, this Court disposed of O.J.C. No. 3833 of 1989 on 20.7.1999 with the following directions:

"(i) The O.S.F.C. will issue appointment order to 100 persons (petitioner) as security assistants in the first phase on 1st of Sept., 1999.

(ii) In the second phase, 50 more such persons will be appointed as security assistant on 1st of November, 1999;

(iii) The appointments will be subject to the O.R.V. Act and in the event no candidate from the reserved category is available, the posts would be de-reserved to accommodate persons covered under this order;

(iv) The appointees shall discharge any work assigned to them with priority of watch and ward duty. The fresh appointees meant for watch and ward duty will be placed under the General Manager (Recovery) who would be competent to place them on watch and ward duty for such time as may be necessary.

(v) In view of the finding of the Committee that there is scope for fresh appointment of 241 security assistants at present, the Corporation will create requisite number of posts to accommodate the petitioner and others who are similarly situated;

(vi) So far as the ban order of the State Government is concerned, it may be stated that the employment of the petitioner as indicated in the report of the committee being of perennial in nature, the Government is directed to waive the ban so far as it relates to the appointment of security assistants governed by this

order.

(vii) The petitioner will be given fresh appointment and his past service may be taken into account for the purpose of retiral benefits and notional security and

(viii) Each of the appointees will be paid a sum of Rs. 2500/- as a token of compensation as he was out of employment for about a decade."

Accordingly, the first phase 100 persons were to be issued with appointment letters as on 1st September, 1999 and thereafter 50 numbers as on 1st November, 1999.

5. In view of the report of the Committee that there was scope for fresh appointment of 241 Security Assistants, the Corporation may create requisite number of posts to accommodate the petitioner and others, who were similarly situated. It is stated that fresh appointments shall be given to the candidates, who shall be of minimum age of 18 years and maximum age of 32 years for general cases and relaxation of five years in case of SC/ST candidates as on 1st engagement as a daily rated workman in the Corporation. It is stated that by the time the petitioner submitted his joining report at Baripada Branch on 27.2.1988, he had not submitted any certificate showing that he belonged to any reserve category. At the same time, it is disputed that the Managing Director had not issued any appointment letter to the petitioner under Annexure-10 and as such, the said order of appointment under Annexure-10 bearing No. 43 dated 12.6.2000 was not issued to the petitioner and rather Letter No. 43 was issued on 19.6.2000 to the Cuttack Diesels as per the dispatch register under Annexure-A.

6. So far as acceptance of joining report of the petitioner is concerned, it is submitted on behalf of the Corporation that the same had not been accepted and he had never been asked to sign the declaration of Fidelity and Secrecy as required u/s 40(3) of the Act, which was mandatory before employee entered into the service. It is emphatically stated that opposite party no. 1 had not issued the impugned order as stated, and the Corporation has also right to nullify the joining report, if any, provided the same is contrary to law and the direction of this Court, and the authority having considered all aspects found the petitioner an unreserved candidate, not eligible for appointment as the question of de-reservation or otherwise was pending consideration on a petition filed by the Corporation before this Court in O.J.C. No. 3833 of 1989. Therefore, the joining report of the petitioner was neither accepted nor any duty was allotted to him and the very fact that he submitted a medical certificate shows that he was on leave and had returned from leave shows that he was not on duty. Therefore, the petitioner neither joined duty nor did he submit any leave application to be eligible to join duty after availing leave. Therefore, the opposite parties seek dismissal of the writ application.

7. Mr. N.C. Panigrahi, learned Sr. Counsel appearing for the petitioner strenuously urged that a right accrued to the petitioner by virtue of consideration

made by this Court in the earlier writ application, i.e., O.J.C. No. 3833 of 1989. Referring to two lists produced by the learned counsel for the Corporation, he submitted that in the first list as per Annexure-1, the petitioner's name finds place at Sl. No. 86 and in Annexure-1/A, his name finds place at Sl. No. 74. Since on the basis of the report of the Sub-Committee out of 241 employees recommended by Justice V. Gopalaswamy (Retd.) Committee, 150 nos. of daily rated employees had to be absorbed as per the recommendation of the Sub-Committee constituted by the Board of Directors. In both the cases, the case of the petitioner can be taken into consideration as his name finds place as against Sl. No. 86 and 74 in Annexure-1 and Annexure-1/A respectively. Therefore, on consideration of the list, appointment order had been issued in favour of the petitioner irrespective of the fact that "letter no. 43" mentioned in the engagement order may not be correct. But pursuant to such engagement order, the petitioner joined in service and discharged his duties, which is apparent from the letter of the Branch Manager, OSFC, Rourkela vide Annexure-17. Therefore, under no circumstances, it can be said that engagement order was neither issued to the petitioner nor did he join and discharged his duties, which is contrary to the documents available on record as per Annexure-17.

8. On a flimsy ground the impugned order under Annexure-15/A has been passed depriving the petitioner of his legitimate claim to continue in service accrued to him pursuant to order passed by this Court in the earlier writ application.

9. In order to substantiate his case, he has relied upon the judgments in the cases of The Manager, Government Branch Press and Another Vs. D.B. Belliappa, Ajay Mohanty v. Union of India, represented by the Ajaya Mohanty Vs. Union of India (UOI) and Others, and Union of India (UOI) Vs. Madhusudan Prasad,

10. Mr. C.A. Rao, learned Sr. Counsel appearing for the Corporation referring to the contentions raised in the counter affidavit reiterated the facts and has submitted that no appointment order had been issued to the petitioner and the so-called appointment order, which has been relied upon by the petitioner appears to bear a fake letter number, which was never issued. Therefore, the claim of the petitioner cannot be sustained and the authorities are justified by issuing the impugned order, which should not be interfered with by this Court.

11. As it appears from the pleadings of the parties, there is no dispute that the petitioner had never been appointed as a Security Assistant under the Corporation. Had the petitioner not been engaged/appointed as a Security Assistant, his name would not have been found place in the list submitted before this Court in O.J.C. No. 3833 of 1989 for consideration and as such, before Justice V. Gopalaswamy (Retd.) Committee considered the availability of work, recommendation was made for giving appointment to 241 nos. of Security Assistants in which list as submitted by the counsel appearing for the Corporation, the petitioner's name found place as against Sl. Nos. 86 and 74 vide Annexure-1 and Annexure-1/A respectively.

12. In the counter affidavit filed by the opposite parties, they have not disputed with regard to inclusion of the name of the petitioner in the list itself, rather the Sub-Committee, which was constituted by the Board of Directors stated that 150 employees were to be engaged to meet the situation immediately. Even if cases of 150 candidates were to be considered, since the petitioner's name found place at Sl. No. 86 in the first list and at Sl. No. 74 in the 2nd list, Annexure-1 and Annexure-1/A respectively, he was entitled to get engagement order. To the additional affidavit filed by opposite party no. 1 on 22.3.2001, a statement was annexed being Annexure-C, which showed that the number of persons appointed was 126, number of persons appointed out of the candidates listed on 20.7.1999 was 67, number of persons appointed from the listed cases was 32, number of appointments from the listed cases was 37, number of persons appointed from other cases was 65 and number of persons appointed having no cases was 29. Therefore, out of 126, 29 persons have been appointed from outside the cases as per the statement filed before this Court. In other words, the persons beyond the list, which was under consideration by this Court in the earlier writ application having been given engagement order to the exclusion of those whose rights had been adjudicated by this Court and who were entitled to be absorbed on the basis of the recommendation made by Justice V. Gopalaswamy (Retd.) Committee and subsequent Board of Directors Committee, that ipso facto indicates that the authorities tried to overreach the orders of this Court without engaging the persons, whose cases had been considered and appropriate orders had been passed for giving engagement order to 29 persons who were neither before this Court nor any direction had been given in their favour.

13. So far as the claim of engagement to the candidates belonging to reserved categories is concerned, it is stated by the opposite parties that such document vide Annexure-18 has been produced before the authorities claiming engagement under the reserved category, but that ipso facto cannot disentitle the petitioner to be absorbed or to get an engagement order in his favour in view of the fact that considering the situation that the petitioner, who was discharging his duties and responsibilities had been disengaged by the authorities, he had approached this Court by filing OJC No. 529 of 1990 and the said writ application was heard along with O.J.C. No. 3833 of 1989 in which a list had been produced by the Corporation indicating that the name of the petitioner was at Sl. No. 86 and Sl. No. 74 in Annexure-1 and Annexure-1/A respectively irrespective of the fact whether the petitioner belongs to reserved category or not he had a subsisting right to get engagement order being a retrenched employee of the Corporation. On consideration of such report of Justice V. Gopalaswamy (Retd.) Committee and of the subsequent Board of Directors as his name was within the required strength of 241 or 150 employees, he could not have been denied engagement.

14. The dispute with regard to issuance of appointment order in favour of the petitioner as per Annexure-10 is concerned, it is stated that no such letter had been issued in favour of the petitioner bearing letter no. 43 and therefore, the

very same appointment letter was a fake one, as a consequence whereof, no relief can be granted to the petitioner. But as it appears from Annexure-17, the letter issued by the Branch Manager, Rourkela Branch addressed to the Joint General Manager, it was specifically stated therein as follows:

" xx xx xx xx

Again on 22.6.2000 another Security Asst. namely, Sri Akhil Nath Sahoo reached this Branch office to join as Sec. Asst. along with the letter No. EC/03-43/2000-2001 dated 12.6.2000 issued by Secretary with a copy endorsed to the Branch Manager, OSFC, Rourkela Branch vide No. EC/03-44/2000-2001 dated 12.6.2000 and submitted his joining report at our Branch office on dated 26.6.2000, which was verified with the original letter issued to Sri Akhil Nath Sahoo. Since the Memo issued to the Branch did not have the Letter No., the same was verified with the original letter to Sri Akhil Nath Sahoo and endorsement on the body of the memo was made to the effect that the Memo to B.M. is without Memo No. After receiving the Memo to the Branch, the requisite documents were sent by a special messenger to Head Office, J.G.M.(E.C.) on 29.6.2000. This was received by P.A. to JGM (E.C.) (copy enclosed)

It may be pertinent to mention that, in course of my working in OSFC, I am acquainted with the signature of all my senior officers of the Corporation and on my part there was no shade of doubt that the concerned was issued by JGM(EC).

Further we had intimated the General Manager (Recovery) vide our letter no. OSFC.RKL.551/00-01, Dated 13.07.2000 regarding the joining report of Sri Akhil Nath Sahoo, Sec. Asst. (enclosed the copy of the appointment letter). As per the telephonic instruction by Sri L.K. Nanda, Chief Co-ordinator, OSFC, we had sent the copy of the appointment order of Sri Akhil nath Sahoo vide Letter No. OSFC. RKL.586/00-01, Dated 17.7.2000 (the copy of the letter is enclosed). Again as per the telephonic instruction by Sri L.K. Nanda, Chief Co-ordinator, OSFC, again we had sent the original appointment order received by the Branch and the copy of the appoint order issued to Sri Akhil Nath Sahoo vide our Letter No. OSFC.RKL.793/00-01, which was received by Head Office on 16.08.2000 (the copy of the letter and the receipt of the letter is enclosed)."

15. In view of the endorsement given by the Branch Manager, there can be no iota of doubt that the petitioner had not joined the service before the Branch Manager, OSFC, Rourkela Branch basing upon which he was allowed to discharge his duties. But subsequent thereto, on flimsy ground as per Annexure-15/A, the same was cancelled stating that the appointment order with regard to the petitioner received by the Branch Manager was not the letter issued by the Head Office and therefore, that was directed not to be acted upon. This itself indicates that there was camouflage approach to the problem caused by the Corporation by their own act in order to just deprive the legitimate claim of a person, who was entitled to continue in service by virtue of orders passed by this Court in the

earlier writ applications.

16. The petitioner has got a subsisting right to be considered to continue in service being a retrenched employee, whose right had been adjudicated by this Court, more so, when his name found place in the list submitted by the Corporation. Depriving him of continuing in service on flimsy ground that such engagement order had never been issued by the Corporation in his favour, is sheer afterthought. Pursuant to the order passed by this Court dated 20.7.1999 in OJC No. 3833 of 1989, while some persons whose names found place below the petitioner's name in the list produced before this Court, namely, Laxmidhar Jena, P.K. Sathua, Bharat Chandra Mallick, Parikhita Behera, Niranjan Sahoo, Sridhar Martha, Ranjan Mohanty and many others who had joined much after the petitioner and also many outsiders, having been appointed, the petitioner's case was not considered. That apart, on a bare perusal of Annexure-21, it would be evident that the persons who did not file writ applications were appointed ignoring the case of the petitioner. While the other outsiders were appointed, no justifiable reasons have been shown in the counter affidavit why the petitioner's case was ignored. On the other hand, the petitioner's right having been adjudicated by this Court and whose name found place in the list produced by the opposite parties, he was eligible to continue in service. Ignoring the senior persons like the petitioner and giving engagement orders to juniors is itself violative of Articles 14 and 16 of the Constitution of India. In absence of any valid and cogent reason to deprive the petitioner to continue in service, the impugned letter as per Annexure-15/A has no legs to stand more particularly in the counter affidavit no explanation far less satisfactory explanation has been given why the petitioner has been discriminated in spite of his right having been adjudicated by this Court.

17. In D.B. Belliappa case (supra), the Apex Court has held that where charge of unfair discrimination is levelled with specificity, or improper motives are imputed to the authority making the impugned order of termination of the service, it is the duty of the authority to dispel that charge by disclosing to the Court the reason or motive which impelled it to take the impugned action. Applying the same to the present case, nothing has been elucidated why the petitioner was not given appointment letter in spite of his rights being adjudicated by this Court. But on flimsy ground that the letter number was not a correct one and therefore, the petitioner should be disengaged from service is absolutely a misconceived approach made by the authorities concerned and without giving any engagement order, the authorities are trying to over-reach the orders passed by this Court in the earlier writ application. While engaging the juniors, the petitioner being a senior person not being allowed to continue, that itself is violative of Articles 14 and 16 of the Constitution of India.

18. Referring to the decision in D.B. Belliappa case (supra), this Court in Ajay Mohanty case (supra) has held that there was absolutely no allegation in the return filed by the opposite parties that the petitioner was considered unsuitable

or that his service was found to be unsatisfactory. The opposite parties did not further produce any material to show that the persons junior to the petitioner have better service records than that of the petitioner. Since no material with regard to the records of service was produced, the Court is not in a position to accede to the contention that the petitioner stood as a class by himself. In absence of any cogent material available on record, this Court has no hesitation to hold that the impugned order passed in Annexure-15/A can sustain. Accordingly, the same is quashed.

19. So far as "consequential benefits" is concerned, reliance has been placed on Madhusudan Prasad case (surpa), wherein the apex Court has held as follows:

"xxxxxx It may be noticed that the respondent was removed from service without any enquiry and he was not even given show cause notice prior to his dismissal from service. There was fault on the part of the employer in not following the principle of natural justice. These relevant facts were considered and the learned Single Judge and also the Division Bench ordered the payment of back wages. X x x"

20. This Court in Jute Corporation of India Ltd. Vs. Judhistira Swain, while considering a dispute under the Industrial Disputes Act in paragraph 11 has held to the following effect:

"In view of the above, "consequential benefit" to a person does not mean only back wages. It includes much more things beyond back wages, such as promotion, fixation of seniority and grant of financial benefits admissible to the post etc. Therefore, if the termination of the opposite party-workman in the guise superannuation has been declared as illegal and unjustified, then the opposite party-workman is entitled to get all the consequential service benefits admissible to the post. Back wages may be one facet of getting monetary benefits, but that is not the conclusive one. On the other hand, service benefit, which would have accrued to him had he continued in service cannot be denied by the petitioner-Management. Apart from the same, at best, the petitioner-Management may contend that since the opposite party-workmen has not rendered service for the period for which he was not in employment, he may not be entitled to get back wages. The said fallacy is not justified in view of the fact that it is the illegal and arbitrary action of the authorities for which the poor workman was out of employment on the plea of discrepancy in the date of birth. Had it been the out-come of a disciplinary proceeding and a punitive measure, then in that case consideration would have been different. But in the present case, because of the lapses on the part of the petitioner-Management, the opposite party-workman was out of employment and was deprived of discharging his duties. That ipso facto does not disentitle him to get the legitimate claim admissible to the post. X x x x "

21. In view of the aforesaid facts and circumstances, since the petitioner was deprived of discharging his duties due to the wrong act of the Corporation, the

impugned letter vide Annexure-15/A having been quashed, the petitioner is entitled to get the consequential service benefits as if continuing in service with all back wages, which shall be paid to him within four months hence.

22. With the aforesaid observation and direction, the writ application is allowed. No order as to costs.