

(2008) 12 OHC CK 0023
In the Orissa High Court

All Orissa Judicial Employees Association	APPELLANT
Vs	
State of Orissa and Others	RESPONDENT

Date of Decision : 03-12-2008

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2009) 107 CLT 36

Hon'ble Judges : B.S. Chauhan, C.J.;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This Writ Petition has been filed by the Association of Ministerial staff of sub-ordinate Courts of Orissa through its General Secretary in 2001 seeking direction to the Opposite Parties/authorities to create 13 posts of Head-Clerk in different S.D.J.M. Courts of the State.

2. In fact, considering the requirement of such post, this Court on administrative side vide letter dated 2nd December, 1997 asked the State Government to create 13 posts of Head Clerk for some Courts of the S.D.J.M. having excessive criminal workload. This petition was filed to fulfill the said demand of the High Court, that the Court should issue direction to the State Government to create the said posts.

3. This Writ Petition is pending since August, 2001. The counter affidavit has been filed on 24th June, 2004 contending that Writ Petition is not maintainable at the behest of the said Association. After receiving the demand from the High Court, matter was referred to the Finance Department of the Government and it has refused to create the said posts because of the policy decision taken by the Government not to create any post for paucity of funds. However, it has been advised to resubmit the proposal after improvement of the financial condition of the State and lifting the ban imposed vide Circular No. 11172 dated 20.3.1998 of the Finance Department for creation of new posts. Subsequently, decision has been taken by the Government on 14.3.2001 for reduction of some

establishments and abolition of posts.

4. Such measures were found to be necessary by the Finance Department for improvement of the financial condition of the State.

In this regard, it may also be necessary to point out that a letter vide No. SJE/1-36/03 50648 dated 18.11.2003 had been communicated by the Home Department of Government to the Registrar (Admn.) of this Court expressing their regret to the proposal due to financial constraints.

5. Learned Counsel for the Petitioner is not able to satisfy the Court regarding the locus standi of the association to maintain the Writ Petition when the demand had been put by the high Court itself and in case High Court had received the regret letter five years ago how the matter can be pursued by the Association.

Be that as it may, it is settled legal proposition that creation and abolition of posts is a policy matter and lies exclusively within the domain of the Executive. The Court has no jurisdiction to interfere in such matters.

6. A Constitution Bench of the Supreme Court in *M. Ramanatha Pillai Vs. The State of Kerala and Another*, , has held as under:

The discharge of a civil servant on account of abolition of the post held by him is not an action which is proposed to be taken as a personal penalty but it is an action concerning the policy of the State whether a permanent post should continue or not the abolition of post may have consequence of the termination of service of a government servant. Such termination is not dismissal or removal within the meaning of Article 311 of the Constitution. The abolition of post is an executive policy decision. Whether after abolition of the post the government servant who was holding the post would or could be offered any employment under the State, would therefore be a matter of policy decision of the government because the abolition of the post does to confer on the person holding the abolished post any right to hold the post.

7. In *K. Rajendran and Others Vs. State of Tamil Nadu and Others*, , the Supreme Court held as under:

In modern administration it is necessary to recognise the existence of the powers with the legislature or the executive to create or abolish post in the civil service or State. The volume of administrative work, the measures of economy and the need for stream-line of the administration to make it more efficient may induce the State Government to make alteration in the staffing pattern of the civil services necessitating either the increase or decrease in the number of posts. This power is inherent in the very concept of governmental administration. To deny that power to the government is to strike at the very right of the proper public administration. The power to abolish a post which may result in the holder thereof ceasing to a government servant has got to be recognised.

8. In *Union of India and others Vs. Tejram Parashramji Bombhate and others*, ,

the Supreme Court held that "direction to create or abolish a post cannot be issued by the Court being a policy matter involving financial burden. The Courts cannot compel the State to change its policy involving expenditure."

9. Similarly, in State of Haryana and others Vs. Piara Singh and others etc. etc., , the Supreme Court held as under:

Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature.... The Court comes into the picture only to ensure observance of fundamental rights, statutory provisions, Rules and other instructions, if any, governing the conditions of service. The main concern of the Court in such matters is to ensure the rules of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16.

In view of the aforesaid settled legal proposition the creation and abolition of posts is exclusively within the domain of the executive and Court lacks competence to issue direction to create the post. In such a fact-situation, we are not inclined to entertain the same and the petition is accordingly dismissed.

10. However, it shall be open to the High Court on administrative side to re-submit the proposal for consideration of the State authorities for creating the said posts. For that purpose, we request the Learned Registrar General of this Court to take appropriate action in the matter.

B.N. Mahapatra, J.

11. I agree.