
(2016) 01 OHC CK 0084
In the Orissa High Court
Case No : O.J.C. No. 15595 of 1998

Bhabani Sankar Mishra

APPELLANT

Vs

Divisional Manager, S.E. Rly., Khurda Road

RESPONDENT

Date of Decision : 21-01-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2016) 1 ILRCuttack 759

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

Bench : Single Bench

Advocate : Mr. P.K. Mishra-1, Mrs. P. Mishra, Advocates, for the Petitioner; Mrs. P. Mohanty, N. Mohanty & R. Mohanty, Advocates, for the Opp. Party

Final Decision : Disposed Off

Judgement

Dr. B.R. Sarangi, J.—The petitioner, who is an applicant for recruitment of physically handicapped persons in Group-C category under the

South Eastern Railway pursuant to advertisement issued in Annexure-2 dated 3.3.1997 has filed this application seeking to quash the said

notification in Annexure-2 dated 3.3.1997 and in the alternative declare the petitioner as qualified in the written test in Grade-C categories under

the opposite parties and also allow him to appear in the viva-voce test conducted for ten posts for orthopedically handicapped persons.

2. The factual matrix of the case in hand is that petitioner being a Physically Handicapped person applied for the job pursuant to the advertisement

issued in Annexure-2 dated 3.3.1997 under South Eastern Railway which was not accepted by the authorities. Consequentially, he approached

this Court by filing OJC No. 5262 of 1997 seeking for a direction to the opposite parties to accept his application and allow him to sit in the

examination scheduled to be held amongst the handicapped persons for the post reserved for physically handicapped persons. While entertaining

the said writ application, this Court vide order dated 10.4.1997 relying upon the decision in *Susanta Kumar Kar v. Registrar (Judicial)*

Orissa High Court, Cuttack reported in 83 (1997) CLT 335 directed the opposite party nos. 1 and 2 to accept the application of the

petitioner directly for the post of Group-C and not to insist for sponsoring the name of the petitioner by the employment exchange. In compliance

to the same, the petitioner submitted his application form directly before the opposite parties which was duly accepted by them on 11.04.1997

vide Annexure-A to the rejoinder affidavit filed by the petitioner. But in spite of such application being submitted, neither he has been called upon

to appear in the written test conducted for recruitment to the post of physically handicapped persons in Group-C category against physically

handicapped quota nor has he been permitted to appear the viva-voce test scheduled to be held on 14.11.1998 and 16.11.1998. Hence, this

petition.

3. Mrs. P. Mishra, learned counsel for the petitioner strenuously urged that pursuant to the advertisement in Annexure-2 dated 3.3.1997 though

the petitioner submitted his application, the same has not been duly accepted since the Puri Employment Exchange did not sponsor the name of the

petitioner for the said purpose. Therefore, the petitioner approached this Court by filing OJC No. 5262 of 1997, which was disposed of vide

order dated 10.4.1997 directing the opposite parties to accept the application and allow the petitioner to appear in the written test and viva voce

test to be conducted pursuant to the advertisement so issued. Though the petitioner submitted his application directly as per the acknowledgement

receipt vide Annexure-A to the rejoinder filed by the petitioner, he has not been called upon to appear the test to be conducted by the authority,

therefore he has approached this Court by filing the present writ application stating inter alia that the authorities have acted vindictively and

malafidely. Hence, he seeks for quashing of the advertisement issued in Annexure-2 and further seeks for a direction to allow the petitioner to

participate in the process of selection in consonance with the advertisement issued in Annexure-2. It is further urged that the petitioner being a

physically handicapped person, he should be treated at par with other similarly situated persons those who have already been considered pursuant

to such advertisement and non-consideration of the candidature amounts to arbitrary and unreasonable exercise of power by the authorities.

4. Mrs. P. Mohanty, learned counsel for the opposite parties refuted the allegation made against the opposite parties and urged that in the

meantime the process of selection having been completed and persons those who have selected pursuant to advertisement in Annexure-2 having

been given appointment, the writ application can not sustain in the eye of law and also she raises question of maintainability of the writ application

stating that the General Manager, S.E. Railway, GRC, Calcutta, who is the necessary party and Head of Railway Administration, S.E. Zone has

not been made as party to the proceeding. As cause of action comes under the exclusive jurisdiction of the Central Administrative Tribunal, this

Court has no jurisdiction to entertain this application. It is further urged that without availing alternative remedy, the petitioner has approached this

Court by filing the present writ application, therefore the writ application cannot sustain and accordingly she claims for dismissal of the same. It is

stated that the application stated to have been submitted by the petitioner having not been received by the authorities in consonance with the order

passed by this Court in the earlier writ application, the petitioner has not been called upon to appear in the interview. Accordingly, she seeks for

dismissal of the writ application.

5. On the basis of the facts pleaded above, the admitted fact is that opposite parties have issued an advertisement vide Annexure-2 for recruitment

of physically handicapped persons on different categories and pursuant to the said advertisement though the petitioner submitted application, the

same has not been entertained. Therefore, the petitioner has approached this Court by filing writ application and this Court directed the opposite

parties to accept his application and allow him to appear in the test along with others to adjudge his suitability for such appointment. Though the

petitioner submitted his application in compliance to the order passed by this Court which has been duly acknowledge by the authority vide

Annexure-A to the rejoinder affidavit, he has not been called to appear the interview test. Thereby, the authorities have acted arbitrarily and

unreasonably. The submission of application of the petitioner has been refuted by the opposite parties. Therefore, there is disputed question of fact

whether the petitioner has submitted the application for consideration in compliance to order passed by this Court or not. In any case, even if the

petitioner submitted an application, that ipso facto cannot give a right to allow him to appear in the examination. Merely on filing of an application,

no right is created in favour of the petitioner so as to allow him to appear in the examination.

6. Mrs. P. Mohanty, learned counsel for the opposite parties disputed the document filed in Annexure-A to the rejoinder, wherein it is indicated

that in compliance to earlier order passed by this Court, the petitioner submitted the application before the authority. But in the meantime, the

selection process has been concluded and the persons, those who have been appointed have not been made party to the proceeding. Mrs. P.

Mishra, learned counsel for the petitioner stated that to ascertain the address of the persons those who have been selected pursuant to Annexure-

2, the petitioner has applied for the same by invoking the jurisdiction under Right to Information Act, but no information has been provided on the

ground that records are not traceable. In course of hearing, learned counsel for the opposite parties insisted for production of the selection file and

to that extent, a memo incorporating the letter of Dy. Railway Manager (P), Khurda dated 16.12.2015 address to the counsel for the opposite

party has been filed, paragraph-4 of which reads as follows:

4. In obedience to the Hon''ble Court's order dated 29.9.2015, through search has been made in the Recruitment Section of this Office to find

out the Records but the same could not be available at this distant date. During the period of 18 years, so many incumbents have been

retired/transferred from the said section. At this distant date, the said file is not available. The opposite parties tenders unconditional apology for the

inconvenience caused to the Hon''ble Court.

7. In that view of the matter, for non-production of selection process file before this Court for just and proper adjudication of the case in hand,

adverse inference can be drawn against the opposite parties. To facilitate the opposite parties to produce the records, several adjournments have

been granted by this Court earlier, but Mrs. P. Mohanty, learned counsel for the

opposite parties expressed her inability to produce the records because the records are not available. The above factual conduct of the opposite parties clearly creates a doubt on the fairness in conducting the interview by the opposite parties. Since the petitioner has filed the application form on 11.04.1997 which has been duly acknowledged by the Sr. Divisional Personnel Officer, S.E. Railway, Khurda Road vide Annexure-A to the rejoinder affidavit, this Court is of the considered view that the opposite parties should consider the case of the petitioner for selection to the post of Group-C under the physically handicapped category pursuant to advertisement in Annexure-2. Though it has been brought to the notice of the Court that in the meantime the process of selection has been over and some persons have already been appointed, but due to non-furnishing of the names of such candidates, the petitioner has not been able to make them party to the writ application. Therefore, this Court vide order dated 10.12.2014 called upon the counsel for the opposite parties to produce the names of those persons, but she has expressed her inability and stated that since the file is not traceable, she is not able to produce the same. So also the petitioner has not been provided with the information sought under the R.T.I. Act. Consequentially the petitioner is handicapped by not impleading the selected candidates as party to the proceeding and more so all endeavour has been taken on behalf of the petitioner to ascertain the name of the selected persons but he has not been cooperated by the opposite parties. While entertaining this application, this Court vide order dated 12.11.1998 in Misc. Case No. 14343 of 1998 passed interim order that any appointment made pursuant to the viva voce and written test shall be subject to result of the writ application. Since the petitioner has not been provided with the names of the selected candidates either under the Right to Information Act or through process of Court in compliance to order dated 10.12.2014, he could not be able to implead the selected candidates as parties to the writ application.

8. In that view of the matter, it appears that the opposite parties have not with a clean hand so far as recruitment to the post of physically handicapped persons in Group-C pursuant to advertisement in Annexure-2 is concerned. As the persons, those who have been selected pursuant to Annexure-2 following due procedure of selection have already rendered

service for so many years, this Court is not proposing to quash the appointment of such candidates, rather it will suffice to say that the petitioner should be considered for the post of Group-C, which has been advertised in Annexure- 2 dated 3.3.1997.

9. In that view of the matter, let the opposite parties act on the form submitted by the petitioner, which is said to have been acknowledged vide

Annexure-A to the rejoinder affidavit and consider his candidature for selection pursuant to the advertisement in Annexure-2 after subjecting him to

written and viva voce test. The entire exercise shall be completed within a period of two months from the date of communication of this judgment.

10. With the above observation and direction, the writ petition stands disposed of. However, there would be no order to costs.