

(2012) 09 OHC CK 0016
In the Orissa High Court
Case No : Writ Petition (C) No. 16843 of 2010

Bhoja Raj Parija

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Citation : (2012) 09 OHC CK 0016

Hon'ble Judges : L. Mohapatra, J;C.R. Dash, J

Bench : Division Bench

Advocate : P.K. Jena, D.K. Mohapatra, D.P. Mohapatra and Pratima Jena, for the Appellant;

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This is the second journey of the petitioner to this Court. In this Writ Petition the petitioner assails the order dated 23.12.2009 passed by the Commissioner-cum-Secretary to Government of Orissa, Department of Higher Education rejecting the proposal for approval of promotion of the petitioner to the post of Head Clerk. The petitioner having been selected by the Governing Body of Sarbati Devi Women's College, Rajgangpur in the district of Sundargarh for appointment to the post of L.D. Clerk-cum-Typist joined the said post on 29.9.1981. His appointment as L.D. Clerk-cum-Typist was approved w.e.f. 29.9.1981 with 1/3rd salary cost from 29.9.1984. After completing 5 1/2 years of service the Governing Body of the College considered the case of the petitioner for promotion to the post of U.D. Clerk and by Resolution dated 19.8.1987 promoted the petitioner to the post of U.D. Clerk w.e.f. 01.6.1982. The decision of the Governing Body was communicated to the petitioner by letter dated 25.8.1987. The petitioner joined in the promotional post on the same day i.e. 25.8.1987. The case of the petitioner is that as per the yardstick for non-teaching staff in Non-Government Colleges published on 08.7.1977 by the erstwhile Education and Youth Services Department, Colleges having roll strength of 250 are eligible for one U.D. Clerk, one L.D. Clerk and one L.D. Clerk-cum-

Typist. Colleges having roll strength of 350 can admit one Head Clerk, one U.D. Clerk and one L.D. Clerk-cum-Typist. The College in which the petitioner was serving was having roll strength of more than 350 students in the year 1985 and accordingly one post of Head Clerk was admissible as per the yardstick. The Governing Body of the College therefore, promoted the petitioner to the post of Head Clerk w.e.f. 01.6.1985 and the petitioner joined the post of Head Clerk w.e.f. 01.6.1985. The petitioner while serving as Head Clerk successfully completed the Final Accounts Examination conducted by the Board of Revenue, Orissa, Cuttack in the year 1999 and therefore, the Governing Body of the College also made a recommendation for approval of promotion of the petitioner to the post of Head Clerk. The earlier recommendation of the Governing Body of the College for approval of promotion of the petitioner to the post of U.D. Clerk was also pending with the Government. The petitioner, therefore, approached this Court in OJC No. 5017 of 2001, which was disposed of on 30.4.2001 directing the Department to consider the case of the petitioner. In compliance thereof, opposite party no. 1 vide office order dated 22.1.2002 approved the promotion of the petitioner to the post of U.D. Clerk w.e.f. 19.10.2000 but rejected the recommendation for approval of promotion to the post of Head Clerk on the ground that the petitioner had not completed four years of qualifying service as U.D. Clerk from the date of receipt of grant-in-aid as U.D. Clerk as per the provisions of O.M.S. Rules, 1963. This order was intimated to the Director, Higher Education, Orissa for necessary action.

2. The Directorate of Higher Education, Orissa, Bhubaneswar in turn approved the promotion of the petitioner to the post of U.D. Clerk w.e.f. 19.10.2000 but rejected the prayer of the petitioner for approval of his promotion to the post of Head Clerk. The petitioner again approached this Court in W.P.(C) No. 11580 of 2008 and this Court disposed of the said Writ Petition on 08.9.2008 with an observation that the petitioner having already completed four years of qualifying service as U.D. Clerk, his case be considered by the Secretary, Department of Higher Education for approval of promotion to the post of Head Clerk. In compliance of the said order, the impugned order dated 23.12.2009 has been passed under Annexure-21 rejecting the prayer of the petitioner for approval of his promotion to the post of Head Clerk on the ground that the case of the petitioner is covered by the Orissa Non-Government Aided Colleges Ministerial Service (Method of Recruitment and Conditions of Service) Rules, 1999, which came into force w.e.f. 11.11.1999 and accordingly promotion of the petitioner to the post of Head Clerk has to be governed by Rule 11 of the said Rules and Departmental Promotion Committee headed by the Director, Higher Education is to decide the promotion as per the said Rule.

3. Mr. Jena, learned counsel appearing for the petitioner submitted that the Governing Body of the College promoted the petitioner to the post of U.D. Clerk w.e.f. 01.5.1982 and therefore, the approval of promotion of the petitioner to the post of U.D. Clerk should have been done w.e.f. 01.5.1982. The petitioner was thereafter, promoted to the post of Head Clerk w.e.f. 01.6.1985 when the 1963

Rules were governing the field and accordingly the case of the petitioner should have been considered in terms of the said Rules and approval should have been granted by the competent authority in respect of promotion of the petitioner to the post of Head Clerk.

4. Learned Addl. Government Advocate appearing for the State with reference to the counter affidavit submitted that the promotion of the petitioner to the post of U.D. Clerk was approved under Annexure-9 w.e.f. 19.10.2000 and by the said date the 1999 Rules had already come into force. The further promotion of the petitioner to the post of Head Clerk has to be done in terms of Rule 11 of 1999 Rules and the Governing Body of the College did not have the authority to promote the petitioner to the post of Head Clerk.

5. Undisputedly the petitioner was promoted to the post of U.D. Clerk by the Governing Body by its resolution dated 19.8.1987 w.e.f. 01.6.1982. The petitioner joined as U.D. Clerk on promotion on 25.8.1987. Further the proposal for approval of such promotion to the post of U.D. Clerk remained pending with the Government and the Department of Higher Education only on 22.1.2002 approved the promotion of the petitioner to the post of U.D. Clerk w.e.f. 19.10.2000. The said order of the Department of Higher Education dated 22.1.2002 was not challenged by the petitioner. Accordingly when the question of approval of petitioner's promotion to the post of Head Clerk came for consideration, the Government found that the 1999 Rules had already come into operation and therefore, the promotion to the post of Head Clerk was to be done in terms of the said Rules by a Departmental Promotion Committee headed by Director, Higher Education. Though it was contended by Mr. Jena, learned counsel for the petitioner that the order of approval dated 22.1.2002 under Annexure-9 has also been challenged by the petitioner in this Writ Petition; it appears that the petitioner thought of challenging the said order in this Writ Petition only in 2010, almost eight years after the said order was passed. The petitioner was aware of the fact that 1999 Rules had already come into existence by the time the order of approval in respect of promotion to the post of U.D. Clerk was passed and accordingly he should have challenged the said order immediately without waiting for eight years. 1999 Rules having already come into force by the time an order of approval by the Department of Higher Education in relation to promotion of the petitioner to the post of U.D. Clerk was passed, his further promotion to the post of Head Clerk has to be regulated in terms of 1999 Rules. Accordingly we find no infirmity in the impugned order dated 23.12.2009 passed by opposite party no. 1 under Annexure-21.

The Writ Petition being devoid of merit is dismissed.

C.R. Dash, J.

I agree.