

(1995) 04 OHC CK 0028

In the Orissa High Court

Case No : Original Jurisdiction Case No. 4086 of 1992

Bishnu Shankar Swain and Others

APPELLANT

Vs

The Orissa State Electricity Board and Another

RESPONDENT

Date of Decision : 17-04-1995

Acts Referred:

Citation : (1995) 2 OLR 194

Hon'ble Judges : G.B. Patnaik, J; D.M. Patnaik, J

Bench : Division Bench

Advocate : J. Patnaik, for the Appellant; B.R. Sarangi, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—These sixteen petitioners who are continuing as N. M. R. Clerks, Stenographers, Typists and Welder under the Talcher Thermal Power Station which is an organisation of the Orissa State Electricity Board from different dates with effect from 1-10-1982 and 15-7-1985 have filed the present writ application for a direction to the opposite parties for regularisation of their services and for grant of equal pay as that of their counterparts. It has been alleged in the writ application that in respect of employees under the Thermal Power Station on NMR basis, a seniority list has been maintained as per Annexure-5. The petitioners, further aver that the Orissa State Electricity Board has taken a decision for regularisation of NMR workers of Talcher Thermal Power Station which had been communicated to the General Superintendent, TTPS on 5-6-1991, annexed as Annexure-4. It was stated in the decision that those of the workers who have completed 400 days as on 1-10-1986 and are also qualified for being absorbed against the vacant post under regular establishment, their cases should be considered for absorption in a phased manner in accordance with the guideline issued by the Board in the matter of absorption of NMR workers. But notwithstanding the same, the authorities have given appointment on regular basis to persons junior to the petitioners in the seniority list and thereby the petitioners' cases for absorption on regular basis have been

overlooked.

2. On behalf of the opposite parties a counter affidavit has been filed being sworn to by the General Superintendent of the Talcher Thermal Power Station. It has been stated in the said counter affidavit that the Board in exercise of power conferred upon it u/s 79(c) of the Electricity (Supply) Act, 1948 (hereinafter referred to as the "Act") has framed a Regulation called the OSEB NMR Workers' Absorption Regulation, 1981. The said Regulation makes specific provision indicating the criteria for NMR workers being considered for absorption on regular basis. All NMR workers under the Board who satisfy the conditions under the Regulation are eligible to be considered for absorption against posts in regular establishment by the authority competent to fill up the post in accordance with the prescribed procedure. An NMR worker has a right of consideration, but cannot claim an appointment until and unless he is found suitable by the competent authority on the basis of his performance. It is further stated that an NMR employee may be eligible for consideration, but question of absorption would arise only when a vacancy exists and the person concerned is found to be suitable to hold the post. It is specifically averred that the petitioners' cases will be duly considered in accordance with the Regulation for absorption.

A rejoinder affidavit has been filed by the petitioners stating therein that persons junior to the petitioners in the Gradation List have been absorbed on regular basis. According to the petitioners' who have filed a further affidavit, even though the petitioners' names find place in the seniority list at serial Nos. 7, 14, 15, 17, 20, 27, 28, 38, 47, 48, 49, 56, 62, 64, 69 and 71, but persons whose names find place at serial Nos. 79, 81, 83 to 86, 88 and 89 have been regularised and, therefore, there has been a violation of Article 16 of the Constitution. In view of the aforesaid affidavit of the petitioners, the Board was called upon to explain and on behalf of the Board, a further affidavit has been filed on 22nd of March 1995. It has been indicated in the said affidavit that persons who are at serials 79, 81, 83, to 86, 88 and 89 have been absorbed on regular basis in implementation of the direction of this Court in OJC Nos. 3901 to 3908 of 1993 and 3987, 3900 and 9076 of 1993, disposed of on 27-1-1994. In the aforesaid writ petitions, this Court had called upon the Board to consider the absorption of the petitioners therein under the Rehabilitation Assistance Scheme and while taking up the said rehabilitation assistance, cases of all such applicants claiming under rehabilitation assistance" scheme should be chronologically considered and appropriate orders should be passed thereon. Since persons in seniority list at serial Nos. 79 to 81, 83 to 86 and 87 to 89 were also applicants for absorption on rehabilitation basis, and petitioners in OJC Nos. 3901 to 3908 of 1993 as well as OJC Nos. 3937, 3900 and 9076 of 1993 were persons who had applied later than those whose names find place in serial Nos. 79 to 81, 83 to 86 and 87 to 89 in the seniority list, in implementing the direction for chronological consideration they have been absorbed on regular basis.

3. In the aforesaid premises, two questions really arise for our consideration:

(i) In view of the Regulation for regularisation framed by the employer itself in exercise of power u/s 79(c) of the Act, would this Court be competent to issue any further direction for regularisation of the NMR employees ? and

(ii) While considering the cases of absorption on regular basis under the Regulation, has there been any constitutional violation by absorbing the junior persons as indicated, ignoring the petitioners claim ?

So far as the first question is concerned, on the conceded position that the employer-the Orissa State Electricity Board has itself taken steps for regularisation by framing a Regularion, there is no further occasion for the Court to issue any direction for regularising such employees. The decision of the Supreme Court in the case of State of Haryana and others Vs. Piara Singh and others etc. etc., fully supports our aforesaid conclusion. The averments made by the Board in its counter affidavit further indicate that in accordance with the Regulation and depending upon the number of available vacancies in the regular establishment, question of absorption of NMR employees including the petitioners will be duty considered in the light of the provisions contained in the Regulation for regularisation. In this view of the matter, the grievance of the petitioners is wholly unfounded.

4. So far as the second question is concerned, we also find that persons junior to the petitioners in the seniority list have been regularised. But because of the earlier directions of this Court in a batch of cases directing rehabilitation assistance to the applicants whose near relations died while in service, implementation of that direction to consider all such cases chronologically, the junior persons as mentioned earlier have been absorbed on regular basis. Those persons are not similarly situated as the petitioners and they form a category of their own under the scheme of Rehabilitation Assistance; It is the settled position of law that persons claiming rehabilitation assistance should be given appointment on priority basis even in the absence of any available post by creating supernumerary posts. Therefore, In the circumstances under which those junior persons have been absorbed on regular basis it cannot be said that there has been any constitutional violation either of Article 14 or Article 16 of the Constitution of India. In that view of the matter, the petitioners' contention that there has been a violation of Articles 14 and 16 of the Constitution by appointing persons junior to them in the seniority list is devoid of any force.

In the premises, as aforesaid, we do not find any merit in this writ application which is accordingly dismissed, but In the circumstances, there will be no order as to costs.

D.M. Patnaik, J.

5. I agree.