

(2007) 11 OHC CK 0043
In the Orissa High Court

Dillip Kumar Sahoo and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-11-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 229

Citation : (2008) 1 OLR 162

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Judgement

B.P. Das, J.—The petitioners in this writ application under Articles 226 & 227 of the Constitution of India have prayed for a direction to the O.Ps. to upgrade fifteen posts of Bench Clerk/Peskar attached to the Hon''ble Judges of the Orissa High Court to that of Court Master in the rank of Superintendent Level-II.

2. The brief facts leading to this writ application are as follows:

The petitioners were recruited to the establishment of this Court as Junior Assistants and in usual course promoted to the next higher grade, i.e., Senior Assistant. On the date of filing of this writ application, all the petitioners except petitioner No. 1 were continuing in the cadre of Senior Assistant and D. K. Sahoo-petitioner No. 1 was promoted to the cadre of Superintendent, Level-II and all of them were posted to work as Peskar/Bench Clerks in different Benches of the Court. According to the petitioners, this Court had recommended to the State Government for designating the Bench Clerks/Peskars as Court Rasters and permitting them the scale of pay as admissible to the Superintendent, Level-II, which is the next higher post of Senior Assistant in the establishment of the Court as the nature of duties performed by the Peskars was distinguishable than that of the duties performed by other Senior Assistants in the Court's establishment. Since the recommendation was not accepted by the Government, some of the petitioners approached this Court in O.J.C. No. 256/1997 and this Court by its judgment dated 6.1.1998 (Annexure-4) directed the Chief Secretary to the State Government to examine and process the proposal and put up the

same before the highest authority of the Government for consideration. In the said judgment, it was also made clear that in the event of difference of opinion, there shall be proper and effective consultation with the High Court and the entire exercise was directed to be completed within three months.

According to the petitioners, they belong to the cadre of Senior Assistant, which falls under Class-III category of non-gazetted post. Article 229(1) of the Constitution of India empowers the Chief Justice of a High Court to make appointment of officers and servants of that Court. Article 229(2) provides that subject to the provisions of any law made by the State, the conditions of service of the officers and servants of the High Court shall be such as may be prescribed by Rules made by the Chief Justice of the Court provided that the rules made under this Clause, shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State. Accordingly, in exercise of the powers vested under Article 229 of the Constitution of India, the Hon"ble Chief Justice of this Court framed two sets of Rules in respect of the staff of the Court, namely, "The Orissa High Court (Appointment of Staff).Rules, 1963" and "The Orissa High Court Conditions of Service of Staff Rules, 1963". All the petitioners entered into service as Junior Assistants, which are the lowest posts among the ministerial staff and the next promotional post is Senior Assistant and thereafter Superintendent, Level-II and this post is filled up by way of promotion from amongst the Senior Assistants. All the petitioners entered into service as Junior Assistants and in due course were promoted to the posts of Senior Assistant. While working as Senior Assistant, the petitioners on different dates were chosen to work as Peskars (Bench Clerks). Annexure-1 shows the dates of joining of the petitioners as Peskars. According to the petitioners, the job of a Peskar is completely different from that of a Senior Assistant and the duties performed by a Peskar are very onerous and arduous in nature.

In pursuance of the judgment dated 6.1.1998 passed in O.J.C. No. 256/1997, the State Government in Home Department issued a letter dated 11.3.1998 in Annexure-5 conveying sanction of the Governor to the upgradation of fifteen posts of Bench Clerk to that of Court Masters in the rank of Superintendent, Level-II in the scale of pay of Rs. 1800-60-2400-EB-75-3000/- with dearness allowance and other allowances as admissible under the Rules. Thereafter, some of the petitioners made a representation on 3.2.1999 (Annexure-6) to the Hon"ble Chief Justice of the Court to consider their cases for absorption in the posts of Court Master with effect from 11.3.1998 in the scale of pay and other allowances as admissible under the Rules. Consequent upon sanction of the Governor to upgradation of fifteen posts of Bench Clerk to that of Court Master in the rank of Superintendent, Level-II, vide Annexure-5, this Court issued the Notification dated 30.3.1999 promoting temporarily some of the Senior Assistants to officiate in the cadre of Superintendent, Level-II, vide Annexure-7.

3. According to Mr. A.K. Mishra, learned Counsel for the petitioners, in the letter dated 11.3.1998 issued by O.P.1 vide Annexure-5, it was made clear that the

posts of Bench Clerk in the High Court had been upgraded to that of Court Master in the rank of Superintendent, Level-II. It was submitted that the posts, which were created by way of upgradation, were only meant for the Bench Clerks and the same were created in terms of the direction issued by this Court in the judgment in O.J.C. No. 256/1997 as well as the letter issued by the Registrar of the Court to the State Government. The sum and substance of the argument of the learned Counsel for the petitioners is that it is only the petitioners, who were continuing as Bench Clerks, would get such benefit of upgradation because the specific creation of posts was only meant for the persons, who were holding the posts of Bench Clerk and as such, the right can only be conferred on the petitioners. Since the Government while creating fifteen posts of Court Master had undertaken to upgrade fifteen posts of Bench Clerk, the persons, who were holding the posts of Bench Clerk, should have been given the benefit by way of upgradation to the posts of Court Master. It is alleged that O.P.2-the Registrar (Judicial) of this Court has acted in a wrong manner in issuing the notification dated 30.3.1999 in Annexure-7 and filled up the upgraded posts by way of promotion from amongst the Senior Assistants, who were not holding the posts of Bench Clerk. It is submitted that as the upgradation does not constitute promotion, issuance of Annexure-7 in promoting O.Ps.3 to 13 and some others is illegal and, therefore, Annexure-7 should be quashed.

4. A counter affidavit has been filed on behalf of O.P.2, Registrar (Judicial) of this Court, wherein a stand has been taken that though fifteen posts of Bench Clerk were upgraded to that of Court Master in the rank of Superintendent, Level-II, no principles were there as to how these posts were to be filled up. Some of the Senior Assistants, who were senior to some of the petitioners, made a representation on 6.8.1998 claiming to be posted as Court Masters against the newly created posts. As per the previous practice, the Bench of Clerks were being drawn from the cadre of Senior Assistant on pick and choose basis, as their posting was not based on seniority. According to the learned Counsel for the State, if the claim of the petitioners is accepted, the Junior persons in the cadre of Senior Assistant would be taken as Court Masters without considering the case of their seniors in the cadre of Senior Assistant. In order to iron out the aforesaid anomaly, the Hon"ble Chief Justice was pleased to constitute a Committee of three Hon"ble Judges for suggesting the procedure for selection of Court Masters. Accordingly, the Committee consisting of three Hon"ble Judges of the Court considered and recommended the procedure for selection of persons to man the posts of Court Master. The copy of the representation dated 6.8.1998 and the copy of the report of the Committee are annexed as Annexure-A/2 and B/2 respectively to the counter affidavit. On acceptance of the report of the said Committee by the Hon"ble Chief Justice on 25.1.1999, promotions were given to O.Ps.3 to 13 and some others as per the Notification dated 30.3.1999 (Annexure-7).

5. In this factual background, let me examine the claim of the petitioners. Admittedly, the petitioners were discharging their duties as Court Masters, which

have been included in the cadre of Superintendent, Level-II carrying the higher scale. It is well settled in law that if an employee is ordered to work in a higher post though temporarily and in an officiating capacity, he is entitled to the salary attached to the higher post, as payment of higher salary shall not amount to promotion.

6. A bare perusal of the letter dated 11.3.1998 issued by O.P.1 in Annexure-5 indicates that fifteen posts of Bench Clerk were upgraded to that of Court Master in the rank of Superintendent, Level-II and there is no dispute that on that date the petitioners were working as Bench Clerks. O.P.2 in his counter affidavit has stated that as no principles were laid down as to how the upgraded posts were to be filled up, a Committee of Hon"ble Judges was constituted by the Hon"ble Chief Justice for the purpose and as per the report of the said Committee, promotion was given vide the Notification in Annexure-7. The Committee report suggested that fifteen posts of Bench Clerk, as upgraded by the Government order to that of Court Master in the rank of Superintendent, Level-II, be treated as addition to the cadre of Superintendent, Level-II and steps as per Rule 6(2) of the Orissa High Court (Conditions of Service of Staff) Rules, 1963 may be taken to promote fifteen Senior Assistants to the cadre of Superintendent, Level-II and out of that cadre suitable persons may be selected to man the posts of Court Master. All the petitioners except petitioner Nos. 6 & 8 have been promoted to the rank of Superintendent, Level-II. However, considering all these aspects, I am of the opinion that without quashing the notification dated 30.3.1999 in Annexure-7, i.e., promotion of O.Ps.3 to 13, I direct that the petitioners, who have worked as Court Masters during the relevant period be paid salary in the scale of pay of Superintendent, Level-II, i.e., Rs. 1800-3000/- (pre-revised) and thereafter, at the revised scale of pay of Rs. 5900-9700/-. This may be calculated and the differential amount be paid to the petitioners within a period of three months from today.

With the aforesaid observations/direction, the writ application is disposed of.