
(2010) 03 OHC CK 0045
In the Orissa High Court

Dr. Rajani Kanta Samal

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Orissa Civil Services (Zone of Consideration for Promotion) Rules, 1988 — Rule 2, 3
Orissa Education Services (Professors Grade) Recruitment Rules, 1990 — Rule 5, 5(2)

Citation : (2010) 110 CLT 130

Hon'ble Judges : B.P. Das, J;B.K. Nayak, J

Bench : Division Bench

Judgement

B.P. Das, J.—The Petitioner has filed this Writ Petition challenging the Order Dated 11.9.2008 passed by the Orissa Administrative Tribunal, Cuttack Bench, in O.A. No. 2186 (C) of 2008, in which the copy of the paper book has been sent to the Special Secretary, O.P.S.C, with a direction to verify the contention of the Petitioner & if for some reason he has not been called for interview or is not found eligible for promotion for the post of Professor in Chemistry then the reason be communicated to him within two days. The Petitioner in this case makes an allegation that the procedure adopted by the Orissa Public Service Commission (hereinafter, "OPSC") for selection to the post of Professor in Chemistry is contrary to the provision or Rule 5(2)(c) of the Orissa Education Services (Professors" Grade) Recruitment Rules, 1990 & prays for quashing the same.

2. This Court by Order Dated 15.9.2008 while issuing notice to the O.Ps. had given liberty to the Petitioner to appear at the interview but his result would be kept in sealed cover until further orders.

3. The undisputed facts are that the State Government, Department of Higher Education, by letter dated 29.8.2006 asked all the Principals of Government Colleges to furnish the required information in prescribed proforma-A to the Department for facilitating the selection & appointment of Professors in different colleges. Thereafter, the Department of Higher Education by letter dated

15.5.2007 sent a list of 61 eligible Readers & C.C.Rs. of such O.E.S. Officers in discipline wise to the OPSC for recruitment of Professors in Orissa Education Service (Professors Grade).

It is admitted by the State in its counter affidavit that the list was in conformity with the Gradation List. It is further not disputed that in the selection of Professors, Orissa Education Services (Professors Grade) Recruitment Rules, 1990 is applicable. Rule-5(2)(c) of the Orissa Education Services (Professors Grade) Recruitment Rules, 1990, which has been amended in 2006, provides for different criteria required for selection to the post of Professor. Third proviso of the said Rules is as follows:

5(2)(c). xxxx xxxx xxxx

Provided also that for the purpose of selection of a candidate to the service the Commissioner shall follow the system of evaluation as prescribed under Schedule "A" of the University First Statutes, 1990, subject to the following;

(a) For Graduation Degree to marks will be awarded for the "Pass" category

(aa) For Graduation Degree with Distinction "two" marks will be awarded irrespective of a candidate passing with or without Honours.

(b) Interview marks will be 15 instead of 25.

It is worthwhile to mention here that the relevant portion of the Orissa Universities First Statutes, 1990, provides for the objective system of evaluation of candidates for teaching posts (Annexure 12 to the rejoinder affidavit).

4. It is the admitted case of the OPSC as well as the Petitioner & the State that the provisions of Orissa Civil Services (Zone of Consideration for Promotion) Rules, 1988 is applicable to the case of the Petitioner. Rule-2(c) of the said rules defines "Zone of Consideration" as follows:

2(c)- "Zone of consideration" means the zone in the gradation of seniority list of officers, employees, incumbents whose cases are considered (or promotion to any Civil Service or Post of the State in a recruitment year.

Rule-3 of the said Rules which stipulates the proportion of candidates as to the vacancies runs as under:

3. Except in cases where the provisions of the Orissa Reservation of Vacancies in Post & Services (for Scheduled Castes & Scheduled Tribes) Act, 1975 & the rules framed thereunder are applicable, in every case of promotion made by way of selection to any Civil Service or Post of the State for which zone of consideration has been prescribed in the relevant recruitment rules; such zone of consideration shall be three times the estimated number of vacancies meant to be filled up from the general category in such service or post notwithstanding anything to the contrary contained in the respective recruitment rule.

Provided that where the estimated number of vacancies meant to be filled up is

not more than three the zone of consideration shall be ten.

According to the Learned Counsel for the Petitioner, the OPSC instead of taking recourse to Rule-2(c) & the proviso to Rule-3 of the Orissa Civil Services (Zone of Consideration for Promotion) Rules, 1988 after receipt of the list from the Government chose ten candidates from amongst the eligible Readers to form the zone of consideration. In other words, for three vacancies, instead of taking ten eligible candidates as per the gradation list into the zone of consideration, the OPSC by devising erroneous & illegal method selected certain candidates those who would be included in the zone of consideration & called them to the interview. At this stage, the Petitioner approached this Court & by virtue of the interim Order Dated 15.9.2008 he was allowed to appear at the interview.

5. According to Mr. B. K. Dash, Learned Counsel for the OPSC, there is nothing wrong in choosing ten candidates out of 61 because not only the seniority of the candidates will be considered but also they have to be outstanding scholars with reputation, for which as per Rule-5 of the Orissa Education Services (Professors' Grade) Recruitment Rules, 1990, the OPSC has selected ten candidates & included them in the zone of consideration, who were to be called for the interview. The fact that the Petitioner's name finds place at serial No. 18 of the gradation list sent by the Government is not disputed. The further fact that on 6.8.2008, i.e., cut off date by which information about the candidates was to reach the OPSC, the position of the Petitioner in the gradation list became 8 is also not disputed.

6. Now in order to ascertain the truth of the allegation of the Petitioner & the rebuttal made in the counter affidavit by the OPSC, we called for different records of the interview held for the post of Professor in chemistry & from the record, we find that the OPSC on 28.8.2008 has taken a decision, which is as follows:

For selection of candidates to be called for interview, the Commission lay down the following parameters:

I) Candidates not having PHD degree are not to be considered.

II) Candidates having PHD degree but not having any research paper published in referral/index journal are not to be considered.

III) Keeping in -view the provision of Orissa Civil Services (Zone of Consideration for Promotion) Rules, 1988, candidates are to be selected for interview basing on relative merit list arrived at after taking into consideration the total marks given in the assessment sheet.

Accordingly, the OPSC short-listed ten Readers for interview. According to the Learned Counsel for the Petitioner, even if the Petitioner's position in the gradation list was at No. 8, he was not called for the interview though Sri Mukesh Kumar Ravel, O.P.5 & Sri Ajay Kumar Patnaik, O.P.6, who are at serial Nos. 36 & 54 respectively in the list sent by the Government & at serial Nos. 20 & 38

respectively on the cut off date, were called to the interview.

7. In paragraph-9 of the counter affidavit filed by Sri Ajay Kumar Patnaik, O.P.6, it is indicated that the OPSC has completed interview of short-listed candidates & sent its recommendations to the State Government & the selected candidates have already joined their posts. However, all the legal questions raised have not been in any manner answered by him.

8. In paragraph-5 of the counter affidavit filed by the OPSC, it is indicated that the OPSC has strictly followed the provisions laid down in the Recruitment Rules, evaluation system as prescribed in Schedule "A" of the Orissa Universities first Statutes, 1990, the norms & guidelines prescribed in the U.G.C. Regulations & decided to short-list the candidates for the interview by making a preliminary screening on the basis of marks awarded in respect of five aspects, i.e., academic career, research degree, teaching experience, research publications & C.C.Rs. assessments. The provisions laid down in the Orissa Civil Services (Zone of Consideration for Promotion) Rules, 1988 were followed while short-listing the candidates for the interview since it is a case of promotion by way of selection from among the eligible Readers. So out of 61 candidates sponsored by the Higher Education Department for recruitment to three posts of Professor in Chemistry, ten candidates were short-listed after the aforesaid preliminary screening. The record also confirms the stand taken in this counter affidavit.

9. Admittedly, there is no law or rule empowering the OPSC to devise its own method for screening & short-listing eligible candidates in order to bring them into a zone of consideration for the purpose of selection for promotion to the posts of Professor. Since admittedly the Orissa Civil Services (Zone of Consideration for Promotion) Rules, 1988 applies, the OPSC should have considered the eligible candidates who were coming within the zone of consideration as per the said Rules. For the purpose of filling up three vacant posts of Professor, the OPSC should have followed the provisions of Rule-2(q) & Rule-3 along with its proviso of the said Rules & called ten candidates (Readers) in order of their seniority in the gradation list, who were fulfilling the eligibility criteria as per the Recruitment Rules, 1990 on the cut off date.

Here the undisputed position is that the Petitioner in the gradation list is at serial No. 8 & O.Ps 4, 5 & 6 are respectively at serial Nos. 2, 20 & 38 on the cut off date. So it is totally a procedural error as the OPSC had no other option than to be guided by the Orissa Education Services (Professors' Grade) Recruitment Rules, 1990, the University First Statute & the Orissa Civil Services (Zone of Consideration for Promotion) Rules, 1988. By devising its own method of screening & short-listing candidates to be called to face the interview without following the Zone of Consideration Rules, 1988, the OPSC committed procedural irregularity & illegality whereby eligible candidates like the Petitioner, who should have been called to the interview, were left out & candidates like O.Ps. 5 & 6, who should not have been called, were called to the interview & got selected. The faulty procedure adopted by the OPSE in forming a zone of consideration in

violation of the Rules has vitiated the interview & selection whereby O.Ps. 5 & 6, namely Sri Mukesh Kumar Ravel & Sri Ajay Kumar Pattnaik, have been selected & promoted illegally. We, therefore, quash the entire process of selection & the promotion of O.Ps.5 & 6 to the post of Professor. O.P.4, namely Dr. Hara Prasad Panda, who was at serial No. 2 in the seniority list on the cut off date, was well within the zone of consideration as per the Zone of Consideration Rules, 1988. He was selected & promoted & in the meantime, he has retired. In the facts & circumstances of the case, we do not feel it proper to quash his promotion.

10. At the same time, let us see, what relief we can give to the Petitioner. By virtue of our Order Dated 15.9.2008, the Petitioner was allowed to appear of the interview. The assessment sheets of his interview relating to the post of Professor were produced before us. It is stated that in the meantime, the Petitioner-Dr. Rajani Kanta Samal has retired. As the Petitioner has already retired, we are now unable to pass any order granting any relief to him. The records & three assessment sheets with sealed cover produced by the OPSC, which are opened & perused are returned to Mr. B. K. Dash, Learned Counsel for the OPSC. Perused the show cause reply filed today in Court by Sri Laxmi Narayan Mishra, Secretary, OPSC, wherein it is stated that he could not produce the records because of some technical problem in his vehicle. His show cause reply is accepted. Personal appearance of Sri Mishra is dispensed with.

Fresh process of selection for promotion to the post of True Copy Professor be initiated within three months from today.

The Writ Petition is accordingly disposed of.

B.K. Nayak, J.

11. I agree.

12. Writ Petition disposed of.