
(2002) 09 OHC CK 0010
In the Orissa High Court
Case No : Writ Petition (C) No. 1400 of 2002

Gyanaranjan Sahu

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 04-09-2002

Acts Referred:

Citation : (2002) 2 OLR 561

Hon'ble Judges : R.K. Patra, J; Pradip Mohanty, J

Bench : Division Bench

Advocate : R.K. Rath and N.R. Rout, for the Appellant; R.N. Acharya, A.G.A. for opp. parties 1 to 3, Budhadev Routray, B.K. Mohanty, N.K. Praharaj and R.K. Bisoi for opp. party No. 4, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—The present case clearly demonstrates how justice is "hijacked" because of a palpable wrong order made by the Orissa Administrative Tribunal which is vested with the power for adjudication of dispute arising out of service matters.

2. FACTS : The petitioner is a Senior Tassar Assistant (STA in brief) in the Directorate of Textiles and Handloom, Orissa, Bhubaneswar. The Director of Central Sericulture Research & Training Institute, Mysore in his letter dated 18.6.2002 requested the Additional Director of Textiles, Orissa to sponsor eligible candidates for selection to admission to two-years M.Sc. in Sericultural Technology course for the academic year 2002-2004. The Director of Textiles and Handloom, Orissa in his letter No. 11348 dated 29.6.2002 (Annexure-1) informed the Principal Secretary to Government of Orissa, Textiles and Handloom Department that one Sumanta Behera (opp. party No. 5) and the petitioner have been selected for the aforesaid course and sought for Government approval in the matter. The Government in the Departmental letter No. 3495 dated 8.7.2002 (Annexure-2) approved the proposal selecting Sumanta Behera (opp. party No. 5) and the petitioner for admission to the course. Accordingly, the Deputy

Director in the Directorate letter No. 11852 dated 10.7.2002 (Annexure-3) forwarded the applications filled in by the said Sumanta Behera (opp. party No. 5) and the petitioner to the Director, Central Sericultural Research & Training Institute (in brief C.S.R.T.I.). Mysore. The Director, C.S.R.T.I., by E. mail message dated 29.7.2002 informed the petitioner that he is provisionally selected for the course and advised him to join in the institute on 12.8.2002. At this stage, opposite party No. 4 filed O.A. No. 1102 of 2002 before the Orissa Administrative Tribunal, Bhubaneswar (hereinafter referred to as "the Tribunal") challenging the sponsoring of Sumanta Behera (opp. party No. 5) and the petitioner for the course on the ground that they are junior to him and as per the decision of the Government senior most employee should be sponsored for the purpose. On 11.7.2002 the Tribunal took up the matter and found that opposite party No. 4's application suffers from the vice of non-joinder of necessary party inasmuch as the candidates who have been selected for admission to the course have not been made parties and gave liberty to the counsel for the applicant (opp. party No. 4) to take necessary steps for impleadment of Sumanta Behera (opp. party No. 5) and the petitioner as respondents 3 and 4 in the case. Instead of awaiting any steps to be taken in the matter of impleadment of parties, the Tribunal disposed of the matter by the impugned order dated 11.7.2002 (Annexure-6) by sending the paper-books of the case to the Government to look into the grievances of the opposite party No. 4 (applicant) and communicate its decision within ten days. The State Government in its turn sponsored the name of opposite party No. 4 and dropped the name of the petitioner in its letter No. 3849 dated 30.7.2002 (Annexure-8).

3. Opposite party No. 4 has filed counter affidavit. He has alleged that the Directorate misplaced its sympathy with the petitioner by violating the Government order which provides that in sponsoring the name of a candidate for any inservice training course seniority should be followed. According to him, since he is senior to the petitioner as well as Sumanta Behera (opp. party No. 5) in the grade of S.T.A., his case should not have been ignored.

4. Let us first examine the validity of the order dated 11.7.2002 passed by the Tribunal in O.A. No. 1102 of 2002 which was filed by opposite party No. 4. The Tribunal rightly noticed that the prayer made by opposite party No. 4 cannot be considered because in his application he had not impleaded the selected candidates Sumanta Behera (opp. party No. 6) and the petitioner as parties. For non-joinder of necessary party, the application was liable to be rejected at the threshold. The Tribunal, however, gave liberty to opposite party No. 4's counsel to take steps for impleadment of necessary parties. That was a judicial discretion which was duly exercised by the Tribunal. But it fell into immediate error in disposing of the application by directing the State Government to take decision in the matter and communicate the same to opposite party No. 4. In our considered opinion, the Tribunal should not have adopted that course. It ought to have awaited impleadment of necessary parties and after hearing all concerned, it could have disposed of the matter in the manner it did. This grave error

committed by the Tribunal has resulted in miscarriage of justice. Accordingly, the impugned order at Annexure-6 is vulnerable and is liable to be quashed.

5. The Government decision taken pursuant to the order of the Tribunal as communicated in its letter dated 30.7.2002 (Annexure-5) by which it has dropped the name of the petitioner and sponsored the candidature of opposite party No. 4 is equally legally unsustainable. Perusal of the aforesaid order would show that Government took the order of the Tribunal to be its "command" to sponsor the candidature of opposite party No. 4 and it accordingly by dropping the name of the petitioner sponsored the candidature of opposite party No. 4. Moreover, the Government could not have taken the decision adverse to the petitioner without giving him an opportunity of hearing. It thus suffers from the vice of non-observance of the principles of natural justice. We may also note that the Director of Textiles in Directorate letter No. 12954 dated 24.7.2002 (Annexure-7) brought to the notice of the Government that opposite party No. 4 who is having M.Sc. qualification had already undergone S.T.C. training on post cocoon technology during 1995-96 at CSR & TI, Mysore and capsul course training on rearing technology at CSR & TI at Ranchi. It was also pointed out that his services at present cannot be spared for two years training programme as he is now working as S.M.C. Reamal Block in the district of Deogarh which is a potential and upcoming Block of the State on Mulberry Sericulture and rearing programme is in progress. Government, as it appears, have not taken those aspects into consideration while taking the impugned decision. From the records of the Directorate which were produced by the learned Additional Government Advocate for our perusal, it appears that the Directorate called for the willingness of the Senior Tusser Assistants for sponsoring their names to the course in question. In response to it, 8 persons applied and the Directorate, as already indicated, on consideration sponsored the names of the petitioner and Sumanta Behera (opp. party No. 5).

For the reasons aforesaid, we hold that the cancellation of the name of the petitioner for undergoing the course in question is illegal and accordingly the impugned order of the Tribunal dated 11.7.2002 (Annexure-6) and the consequent Government order dated 30.7.2002 (Annexure-5) in sponsoring the name of the opposite party No. 4 in place of the petitioner are hereby quashed.

6. To what relief the petitioner would be entitled ?

In course of hearing, learned counsel for the petitioner brought (to our notice a Fax message at Annexure-9 received from the CSR & TI, Mysore informing the Deputy Director, Sericulture, Orissa that the candidature of the opposite party No. 4 to the course in question could not be considered and the candidature of the petitioner and opposite party No. 6 would only be considered. Counsel appearing for opposite party No. 4 alleged that the Fax message at Annexure-9 is not authentic and the same cannot be accepted because of the mention of contradictory dates therein. Later, however, after getting instruction, he did not pursue the allegation. Since the Fax message finds place in the files of the

Government and the Directorate, we are inclined to accept the document to be authentic.

7. In the result, we allow the writ petition and direct the State Government as well as the Director of Textiles to ensure forthwith the admission of the petitioner to the M.Sc. (Sericulture Technology) course for the current academic year in CSR&TI. Mysore without the seat being lost. No costs.

Pradip Mohanty, J.

8. I agree.