

(2001) 02 OHC CK 0027
In the Orissa High Court
Case No : O.J.C. No. 14360 of 1999

Iswar Chandra Mohanta

APPELLANT

Vs

Managing Director, Orissa Forest Development Corporation
Limited, Bhubaneswar

RESPONDENT

Date of Decision : 06-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Civil Services (Rehabilitation Assistance) Rules, 1990 — Rule 8

Citation : (2001) 92 CLT 324 : (2001) 1 OLR 291

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : M/s Dayanidhi Lenka and N.K. Jena, for the Appellant; M/s R. Mohapatra and P. Jena, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The petitioner in this writ application has challenged the order dated 11-2-99 passed by the Managing Director, Orissa, Forest Development Corporation Limited (hereinafter referred to as "the Corporation") intimating the petitioner that his case for appointment under the rehabilitation assistance scheme can be considered only after lifting of the ban imposed by the Government.

2. Case of the petitioner is that his father was working as Watchman under regular establishment in the office of the Divisional Manager, Badampahar under Karanjia (commercial) Division, Orissa Forest Development Corporation. While in service father of the petitioner expired on 23-12-93 after 13 years of service. After demise of his father the petitioner submitted, an application before the Divisional Manager for appointment under the Rehabilitation Assistance Scheme. Said application was submitted in prescribed form as specified in Rule 8 of the Orissa Civil Service (Rehabilitation Assistance) Rules (hereinafter referred to as ("1990 Rules").). Application of the petitioner was forwarded to the Collector and

District Magistrate, Mayurbhanj for enquiry and after enquiry it was reported that the family of the petitioner is in distress and that the annual income of the family from all sources is Rs. 6000/- per annum. After receipt of the enquiry report the Divisional Manager of the Corporation 8-9-94 forwarded the application and other documents furnished by the petitioner to the General Manager of the Corporation for consideration. A copy of the letter was also forwarded to the Managing Director of the Corporation. However, the matter remained pending before the authorities for years together despite several personal approaches and representations submitted by the petitioner. Finding no other way, the petitioner approached this court in O. J. C. No. 14440/96. In the aforesaid writ application counter was filed on behalf of the Corporation stating that due to dearth of work and surplus man power further appointment in the corporation even under the rehabilitation assistance scheme has been stopped and accordingly it was not possible to appoint the petitioner. It was also stated in the counter that the Government in the department of Forest and Environment vide notification No. 6370 dated 8-4-1994 had imposed ban on recruitment of any staff including staff under rehabilitation assistance scheme in order to enforce economic measures in Public Sector Undertakings. It was also contended that there was neither any vacancy in the Class-III and Class-IV cadres of the Corporation nor any post can be created or sanctioned due to financial hardship of the Corporation. Further contention was raised at the time of hearing that there are several other applicants under the rehabilitation assistance scheme waiting for appointment. This court while disposing of the writ application on 22-6-98 directed that the list prepared by the management in relation to the applications seeking appointment under the rehabilitation assistance scheme cannot be kept for indefinite period to the utmost prejudice of the petitioner who is seeking compassionate appointment -for survival. The management should make endeavour to exhaust the list as far as practicable and the case of the petitioner should be considered within a period not beyond six months from the date of communication of that order. After disposal of the writ application the impugned order under Annexure-8 was passed stating that after lifting of the ban order only case of the petitioner can be considered for appointment. The aforesaid order under Annexure-8 is under challenge in this writ application.

3. Counter has been filed by the opposite parties. In para-8 of the counter it is stated that persons similarly placed as that of the petitioner are 92 in number and are awaiting for appointment under the rehabilitation assistance scheme subject to availability of vacancies after fixation of staffing yardstick on reorganised set-up of the Corporation and the position of the petitioner in the list is 19. It is also stated in the counter that appointment under the rehabilitation assistance scheme against any base level post depending on the qualification of the legal heir of the deceased employee is subject to availability of vacancy and not over and above the sanctioned strength, and such appointment is not authomatic. Shri R. K. Mohapatra, learned counsel appearing for the Corporation again reiterated that in view of the ban order imposed by the State Government,

it is not possible to appointment any one under the rehabilitation assistance scheme. Only after lifting of the ban order case of the petitioner and similarly placed other applicants can be considered.

4. Annexure-1/A filed along with the counter is the ban order imposed by the Government of Orissa on 8-4-1994. It is stated in the said order that under rehabilitation scheme a number of persons have been appointed in the O.F.D.C. Ltd.. Rehabilitation scheme presupposes that there is a vacancy. It does not mean that even though there is no vacancy, a family member of the deceased employee is to be appointed. Since the O.F.D.C. has huge surplus staff, no appointment should be made under rehabilitation scheme henceforth. Counter filed by the Corporation in O.J.C. No. 14440/96 has been annexed to this writ application as Annexure-6. In para-8 of the said counter, it is mentioned that the State Government in the Department of Forest and Environment has instructed the Managing Director of the Corporation not to recruit any staff including under rehabilitation scheme to enforce economy measures in public sector undertakings. Defiance of the above instruction is likely to be viewed seriously and the officers including the Managing Director whoever makes any appointment may be proceeded departmentally. In spite of the said objection having been raised in the counter filed by the Corporation this Court while disposing of the aforesaid writ application directed the Corporation to make an endeavour to exhaust the list of applicants who were awaiting for appointment under the rehabilitation assistance scheme including the petitioner and further directed to consider the case of the petitioner within six months from the date of that order. In other words, this court on the basis of the ban order also directed the Corporation to exhaust the list of applicants awaiting for appointment under the rehabilitation assistance scheme within a specified period. It was the duty of the Corporation to comply with the directions of this Court. Even in the impugned order under Annexure-8 it is stated that the Management of the O.F.D.C. have move the State Government in the Forest and Environment Department to revoke/lift the ban order on appointment under the rehabilitation assistance scheme. Case of the petitioner along with others is considered more sympathetically and the petitioner will be engaged in the event ban order is lifted by the Government and there is job opportunity in the Corporation.

5. In view of the stand taken by the Corporation in "Annexure-8 that, there is job opportunity in the Corporation and the petitioner will be engaged after the ban order is lifted it is admitted that the vacancies are available in the Corporation to be filled up. In view of the earlier direction of this Court in O.J.C. No. 14440/96 there should not be any impediment on the part of the Corporation in considering the case of the petitioner for appointment under the rehabilitation assistance scheme.

6. I therefore, allow the writ application and direct the opposite parties to consider the case of the petitioner for appointment under the rehabilitation assistance scheme and take a final decision within a period of three months from

the date of communication of this order. The opposite parties, are directed to consider the case of the petitioner in the light of the statement made by the Corporation in the letter under Annexure-8 and the petitioner will be engaged even the ban order is not lifted in view of earlier decision of this Court in O.J.C. No. 14440/96.

Requisites for communication of this order be filed within three days.

7. Application allowed.