
(2009) 09 OHC CK 0047
In the Orissa High Court
Case No : Writ Petition (C) No. 4686 of 2003

Jagadananda Pal

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-09-2009

Acts Referred:

Citation : (2009) 2 ILR (Ori) 746

Hon'ble Judges : L. Mohapatra, J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The Petitioner, who was the Applicant before the Orissa Administrative Tribunal, Bhubaneswar in O.A. No. 94-B of 1998 assails the order of the Tribunal dated 21.3.2003 dismissing the said Original application.

2. The case of the Petitioner is that he was appointed as a Computer in the office of the R.T.O., Chhatrapur in the scale of pay of Rs. 320-550/- with usual D.A., A.D.A. apart from other allowances as admissible from time to time by order dated 28.4.1982. He was confirmed in the said post in the same scale of pay with effect from 30th April, 1982 as per order dated 28.12.1992. The opposite party No. 2 in terms of Rule 14 of the ORSP Rules, 1989 re-designated the post of Computer as Statistical Assistant in some Departments and revised the scale of pay from Rs. 1200-2040/- to Rs. 1400-2300/- with effect from 21.5.1992 vide resolution dated 21.5.1992. The grievance of the Petitioner is that his post was not included for re-designation as Statistical Assistant even though he was qualified and was performing the duty similar to his counter parts in other departments where the post of Computer had been re-designated as Statistical Assistant. He made a representation to opposite party No. 3 on 5.12.1995 for revision of scale of pay. The representation of the Petitioner was forwarded to opposite party No. 1, but no order having been passed thereon, the Petitioner approached the Tribunal in O.A. No. 104(B) of 1997. The said Original Application was disposed of on 4.8.1997 directing the opposite party No. 1 to dispose of the

representation on the basis of recommendation made by opposite party No. 3. The representation was rejected and the Petitioner was intimated on 16.7.1998 about rejection of his representation. While rejecting the representation, opposite party No. 1 held that the Petitioner had been given higher scale of pay erroneously which was meant for the post of Computer in the office of the Transport Commissioner and, therefore, the question of re-designation of his post as Statistical Assistant or revision of scale of pay as claimed by him cannot be allowed. Opposite party No. 1 further directed for reduction of the scale of pay without any recovery of the amount already paid in excess due to the wrong fixation of pay. Challenging the order of opposite party No. 1, the Petitioner approached the Tribunal in the present Original Application. The Tribunal in the impugned judgment dismissed the Original Application for which the Petitioner has approached this Court challenging the same.

3. Shri A.K. Mishra, the learned senior counsel appearing for the Petitioner assails the impugned judgment on the ground that in the requisition sent by the Transport Commissioner, Orissa to the Employment Exchange for sponsoring the names it was clearly mentioned that the scale of pay shall be Rs. 320-550/- and the minimum qualification was Graduate with Economics/Statistics or Mathematics. Since the Petitioner satisfied all the requirements of the educational qualification, his name was sponsored by the Employment Exchange and he was appointed by the Transport Commissioner, Orissa on 28.4.1982 as Computer in the office of the Regional Transport Officer, Chhatrapur in the scale of Rs. 320-550/-. By order dated 28.12.1992 the Transport Commissioner confirmed the Petitioner in the post of Computer in the scale of Rs. 320-550/- with effect from 30th April, 1982. According to Shri Mishra, the learned senior counsel appearing for the Petitioner, the Petitioner having been confirmed in the post of Computer in the scale of Rs. 320-550/- with effect from 30th April, 1982 and he having worked in the office for more than a decade, the scale of pay could not have been reduced by opposite party No. 1 on the ground that the said scale of pay was erroneously granted to the Petitioner. The impugned order is also challenged on the ground that the requisition sent by the Transport Commissioner clearly specifies the educational qualification to be Graduate with Economics / Statistics or Mathematics whereas for the purpose of appointment to the post of Computer in the office of the Regional Transport Officer the desired qualification is Intermediate. The post of Computer to be filled up by the Transport Commissioner requires higher qualification and, therefore, the scale of pay attached to the post of Computer filled up by the Transport Commissioner cannot be equated with the post of Computer filled up by the R.T.O. in different Regional Transport Offices. The other ground taken by the learned Counsel is that a similarly placed employee namely, Smt. Snehalata Sethy had approached the Tribunal in O.A. No. 1443 of 1991 and her Original Application was allowed by the Tribunal directing that she would continue in the same scale of pay as was indicated in the appointment order and would also be entitled for all the benefits arising out of the said scale. The Department having not challenged the order of

the Tribunal passed in the said case and having implemented the same, now cannot discriminate the Petitioner by holding that the Petitioner had been given higher scale of pay erroneously.

4. The learned Counsel for the State submitted that though the requisition was sent by the Transport Commissioner and the order of appointment was also issued by the Transport Commissioner, the Petitioner had been appointed in the office of the R.T.O., Chhatrapur in the district of Ganjam against a sanctioned post which carries lesser scale of pay. According to the learned Counsel for the State, the post in which the Petitioner was working is a sanctioned post having a particular scale of pay and, therefore, the Petitioner could not have been paid a higher scale of pay while working in the said post. The opposite party No. 1 therefore rightly held that the Petitioner had been granted higher scale of pay erroneously which was required to be reduced.

5. Undisputedly one post of Computer was created in the office of the Transport Commissioner-cum-Chairman, State Transport Authority, Orissa carrying the scale of pay of Rs. 125-190/- on 6th of February, 1970. On 9th September, 1970, five posts of Computer, one each for the offices of the Regional Transport Officers at Cuttack, Sambalpur, Ganjam, Koraput and Keonjhar were created in the scale of pay of Rs. 110-155/-. In the requisition sent by the Transport Commissioner it was mentioned that the post shall carry scale of pay of Rs. 320-550/- and the educational qualification required for the post was Graduate with Economics/ Statistics or Mathematics. Undisputedly, the name of the Petitioner was sponsored by the Employment Exchange in pursuance of the said requisition and the Petitioner was appointed as a Computer in the scale of Rs. 320-550/- by order dated 28.4.1982 issued by the Transport Commissioner. He was also confirmed in the said post in the same scale of pay with effect from 30th April, 1982 by order of the Transport Commissioner on 28.12.1992. The five posts created for the five districts were to be filled up by the respective R.T.O. and the minimum qualification was prescribed as Intermediate in Arts and Science with Mathematics as one of the subjects. As it appears the Transport Commissioner made a requisition himself and also made the appointment from amongst the candidates sponsored by the Employment Exchange in pursuance of such requisition and those appointments were made by the Transport Commissioner in the scale of Rs. 320-550/-, but they were directed to work in the office of the Regional Transport Officers in the aforesaid five districts. There is also no dispute that the Petitioner and similarly placed others were continuing in the post of Computer in different offices of the Regional Transport Officers in the above five districts with the scale of pay of Rs. 320-550/- for more than a decade. One of such appointee namely, Snehalata Sethy had approached the Tribunal in O.A. No. 1443 of 1991 and the Tribunal disposed of the Original Application directing that she would continue in the same scale of pay and she shall also be entitled to all benefits arising out of the said scale of pay. There is some force in the contention of the learned Counsel appearing for the State that the five posts sanctioned for the offices of the Regional Transport Officers in the five districts carried the scale

of pay of Rs. 110-155/- but as per the order of appointment, against one such post in the district of Ganjam at Chhatrapur the Petitioner was posted with higher scale of pay. On reading of Annexure-2 and the requisition made in Annexure-3, we find that for the purpose of appointment to the post of Computer in the offices of the Regional Transport Officers, educational qualification prescribed was Intermediate in Arts and Science with Mathematics as one of the subjects whereas in the requisition made by the Transport Commissioner, the minimum educational qualification was prescribed as Graduate with Economics/Statistics or Mathematics. Therefore, the Petitioner, who was appointed by the Transport Commissioner, was qualified to hold the post of Computer in the office of the Transport Commissioner, but was posted in the office of the Regional Transport Officer, Chhatrapur. In this connection, the learned Counsel for the Petitioner relied on a decision of this Court in the case of *Miss. Suprava Nanda v. State of Orissa* and Ors. in O.J.C. No. 589 of 1977 disposed of on 21.9.82. In the said case, the Petitioner therein was appointed as a Librarian in the College of Accountancy and Management Studies at Cuttack and the required qualification was Diploma in Library Science. While creating the post, it was stated that the post of Librarian with Diploma in Library Science would carry the scale of pay of Rs. 185-300/- and accordingly, the Principal of the said College requested the Employment Officer of the Employment Exchange at Cuttack for furnishing a list of qualified candidates for the purpose of appointment. The Petitioner therein was selected as Librarian in the approved scale and was given appointment on 1.1.1974. While she was working as Librarian in the said College, the Additional Director of Industries by order dated 11th October, 1976 transferred her as Librarian in the Industries Directorate and the Petitioner made a representation against such transfer. Her representation having been rejected, a memorial was submitted to the Government by the Petitioner. While the matter stood thus, on 21st December, 1976 the Government in the Industries Department intimated the Additional Director of Industries that the Petitioner's initial pay should be fixed at Rs. 110-155/- and in pursuance of the said order, the scale of pay of the Petitioner was reduced. Writ application was filed challenging such reduction in pay. This Court held that no fault could be found with the Petitioner therein in responding to the invitation for appointment and no fault can also be found with the Principal for appointing the Petitioner in the sanctioned scale. When the appointment was bona fide and the Petitioner therein had continued already for three years in the said scale, there was no justification to introduce the degree qualification and modify the sanctioned scale to the prejudice of the Petitioner and accordingly the writ application was allowed. This principle applies to the present case also in view of the fact that the requisition made by the Transport Commissioner indicates the minimum qualification and the scale of pay attached to the post and the name of the Petitioner having been sponsored by the Employment Exchange, he was selected and appointed as such in the said scale of pay. Reliance was also placed by the learned Counsel for the Petitioner on a decision of the Apex court in the case of *Divisional Superintendent, Eastern Railway, Dinapur and Others Vs. Shri L.N. Keshri and Others*, . The judgment

being a small judgment, the entire judgment is quoted below:

1. These two appeals are by certificate from judgment dated 14 December, 1967 of the High Court of Patna.
2. The only question in these appeals is whether the order dated 16 August, 1966 is valid.
3. By order dated 16 August, 1966 the Appellants fixed the pay of the Respondents at Rs. 135/- per month in the scale of Rs. 105-135.
4. The Respondents contended that their pay had been fixed in the scale of Rs. 110-180 and the scale was arbitrarily and illegally reduced.
5. The Appellants contended that because of some mistake the Respondents had been put in the grade of Rs. 110-180 and this mistake was rectified.
6. The Respondents were confirmed in the scale of Rs. 110-180. The Appellants having fixed the scale and confirmed the Respondents could not reduce the scale without giving any opportunity to the Respondents to be heard. Furthermore, the Respondents on confirmation became entitled to rights to the post and to the scale of pay fixed by the Board.
7. The High Court rightly set aside the order. The appeals therefore fail and are dismissed. The Appellants will pay costs to the Respondents.

As is evident from the aforesaid judgment once the incumbent is confirmed in a particular scale, the same could not be reduced and on confirmation the employee becomes entitled to rights to the post and also to the scale of pay fixed for the post.

7. The learned Counsel for the State submitted that if a scale is allowed erroneously, the same can be rectified at a later stage. Reliance was placed in the decision of the Apex Court in the case of *Parasnath Singh v. State of Bihar and Ors.* reported in : (2009) 2 SCC 198. In the aforesaid reported decision, the Appellant therein was wrongly given promotion and continued in the promotional post for ten years. Since he was given promotion wrongly, such promotion was canceled after ten years, which was the subject matter of challenge. The Hon'ble Supreme Court did not find any irregularity in cancellation of such promotion. This case is distinguishable on facts since the promotion was time bound promotion but the Appellant had been given promotion wrongly and when the mistake came to the notice of the authority, such promotion was cancelled. The learned Counsel for the State also relied on another decision of the Apex Court in the case *Sahib Ram v. State of Haryana and Ors.* reported in 1995 SCC 248. In the said case upgraded pay scale was given due to wrong construction of relevant order passed by the authority. The authority directed for recovery of the excess payment. The Hon'ble Supreme Court held that such upgraded scale had not been allowed due to any misrepresentation by the employee and, therefore, recovery of the payment already made was restrained. This decision has also no

application to the facts of the present case since the Secretary has also directed in the impugned order while rejecting the representation that no recovery should be made. Reliance was placed on another decision of the Supreme Court in the case of *Kastha Niwarak G.S.S. Maryadit, Indore v. President, Indore Development Authority* reported in AIR 2006 SCW 712. In the said decision, the Hon"ble Supreme Court held that the concept of equality cannot be pressed to commit another wrong. Reliance was place on this decision by the learned Counsel for the State on the ground merely because it was directed by the Tribunal in the case of *Snehalata Sethy* to continue with the scale of pay she was getting and that the said order was not challenged by the State Authority, the same cannot be a ground for claiming equality. Reliance was also placed on a decision of this Court in the case of *State of Orissa v. Siba Prasad Swain* in W.P. (C). No. 15839 of 2006 disposed of on 29.7.2009 in this regard.

8. Even accepting the contention of the learned Counsel for the State that the case of *Snehalata Sethy* cannot be taken as an example for claiming equality, the undisputed facts as stated earlier are that the Petitioner was sponsored by the Employment Exchange on the basis of a requisition made by the Transport Commissioner and the requisition specifically indicated the scale of pay as Rs. 320-550/-. The Petitioner was also appointed in the same scale by order dated 28.4.1982 and was confirmed in the said post with effect from 30th April, 1982 in the same scale of pay. There is no dispute that the Petitioner had been continuing in the said post with the scale of Rs. 320-550/- from April, 1982 till the date of rejection of his representation by opposite party No. 1 in the year 1998. With the above factual background, the decision of the Apex Court in the case of *Divisional Superintendent, Eastern Railway, Dinapur and Ors. v. L.N. Kashri and Ors.* (supra) applies on principle and since the Petitioner has been confirmed in the post, he became entitled to rights to the post and to the scale of pay fixed to the post.

9. For the reasons stated above, we allow the writ application, set aside the impugned judgment as well as the order of the opposite party No. 1 in Annexure-9 dated 16th July, 1998.