

(1998) 02 OHC CK 0018
In the Orissa High Court
Case No : O.J.C. No. 6803 of 1994

Madhab Chandra Pradhan

APPELLANT

Vs

Orissa Construction Corporation Ltd. and Others

RESPONDENT

Date of Decision : 24-02-1998

Acts Referred:

Constitution of India, 1950 — Article 16, 39

Citation : (1999) 3 LLJ 1453

Hon'ble Judges : P.K. Mishra, J;D.M. Patnaik, J

Bench : Division Bench

Advocate : Manoj Mishra and U.C. Patnaik, for the Appellant; L. Pansari, for the Respondent

Final Decision : Allowed

Judgement

D.M. Patnaik, J.—The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 for his permanent absorption in the post of Assistant Stores Keeper under the Orissa Construction Corporation (for short, the "Corporation), opposite party No. 1.

2. Petitioner's case is, he was enrolled as the Nominal Muster Roll (for short "N.M.R.") employee by opposite party No. 1 and joined the post on March 2, 1979. Since then he performed the work of the Assistant Stores Keeper in the Rengali Dam Project for about five years, thereafter at the NALCO Aluminium Project at Damajori from 1983 to 1987, then at Rayagada Railway Project and lastly on being transferred to Ash Pond Clearing Project, O.C.C.L., Rourkela where he has been working in that capacity since 1994.

It is his case that although he has been performing his duties sincerely and to the utmost satisfaction of the authorities, neither his services has been regularised nor he is paid the salary of the Assistant Stores Keeper. It is his further case that services of persons even junior to him in the employment have been regularised with regular scale of pay. The petitioner thus challenges the

discriminatory action of the authorities.

3. The opposite parties 1 and 2 filed a counter. They admitted the petitioner's employment as an N.M.R., but stated that on completion of a particular project his services were terminated intermittently and thus he did not serve for a continuous period of fifteen years. The allegation that juniors of the petitioner have been regularly absorbed is specifically denied in the counter by stating that this has not been done in absence of any vacancy, though they would be regularly absorbed when such vacancy arises. But it is admitted that they have been paid the salary admissible to the post of Assistant Stores Keeper. So far as the claim of the petitioner for equal pay for equal work is concerned, it is stated that there is no other post similar to the post held by the petitioner in the same project in which the petitioner is working.

4. Mr. Manoj Mishra, Learned counsel for the petitioner, referring to the contents of the writ petition, the counter and the various documents annexed strenuously urged that several persons similarly situated as that of the petitioner had approached this Court and got relief for regularisation with equal pay for equal work. The Corporation went against those judgments to the Apex Court and the Apex Court upheld the decisions of this Court, though with certain modifications, but it is strange on the part of the Corporation not to regularise the services of the petitioner who has already completed 15 years of service as an N.M.R.

Mr. Pansari, learned counsel for the Corporation, did not dispute the position that by virtue of the judgments of this Court and that of the Apex Court some of the employees who have completed five years of continuous service as N.M R./work-charged employees etc. have been permanently absorbed and others are also to be absorbed in due course, but according to him, this can be done only when vacancies arise against regular posts or if new posts are created. But taking into account the financial doldrum of the Corporation it is not possible to regularise services of such persons on creating new posts.

Rival contentions need examination.

5. It is admitted vide Annexure 7 the minutes of the 153rd meeting of the Board dated June 4, 1993 that decisions were taken for payment of regular pay and allowances to various types of employees as well as the opposite parties 3 to 7 though no decision has been taken for their permanent absorption. But the name of the petitioner does not find place in that list though his name finds place in the list of 16 such employees for whom the Managing Director recommended for payment of salary admissible to regular work charged employees. No justifiable reason has been given for not giving the petitioner the regular pay of Assistant Stores Keeper when in fact the Corporation under Annexure 4 has drawn the list of 25 such N.M.R. employees and the name of the petitioner finds place at serial 5 indicating his total period of service as 11 years, 11 months and 27 days. The explanation that there is no counterpart to the post held by the petitioner in the same project is wholly unacceptable being extremely unreasonable. If persons

like opposite parties 3 and 7 being similarly situated as that of the petitioner have been extended the benefit of regular pay, it would amount to extreme arbitrariness and discrimination not to pay the regular scale of pay to the petitioner, though his regular absorption in the cadre may be taken up along with others when vacancies arise in future.

6. So far as the claim of seniority of the petitioner is concerned, we find from the list under Annexure 4 that keeping in view the total period of service from the date of initial appointment the petitioner stands senior in the list than the opposite parties 3 to 7 who have rendered less number of years of service than the petitioner. We trust that when the matter of regular absorption of the employees will come up for consideration, the length of service shall be counted by opposite parties 1 and 2 keeping in view the date of initial joining in N.M.R. and the intermittent break in service should not stand on their way for counting the length of service for the purpose of seniority in the post of N.M.R.

7. In the result, the writ petition is allowed. The opposite parties 1 and 2, are directed to pay the petitioner the regular scale of pay of the Assistant Stores Keeper with all other financial benefits attached to the post henceforth. The matter of his regular absorption shall be taken up when the same is taken up along with other persons as per the observation made by us above. No cost.

P.K. Mishra, J.

8. I agree