

(2023) 04 OHC CK 0190
In the Orissa High Court
Case No : Writ Petition (C) No.17288 Of 2013

Mahesh Chandra Mohanty

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 19-04-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Orissa Civil Services (Rehabilitation Assistance) Rules, 1990 — Rule 5

Citation : (2023) 04 OHC CK 0190

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : Achyutananda Routray, S.N.Pattnaik

Final Decision : Allowed

Judgement

Sashikanta Mishra, J.

1. The Petitioner in the present Writ Petition seeks the following relief;

"In the circumstances, it is therefore, prayed that your Lordship's would graciously be pleased to issue Rule NISI calling upon the Opp. Parties specially the Opp. Parties No.1 and 2 to show cause as to why the writ application shall not be allowed and in case the Opp. Parties fall to show cause or show insufficient cause then to allow the Writ Application.

And to direct the Opp. Parties No.1 and 2 to approve the appointment of the Petitioner since the date of his initial appointment i.e. 12.6.1992 and to give all service benefits to the Petitioner from 12.6.1992 onwards under Director Payment Scheme."

2. The Petitioner's case is that his father Jadunath Mohanty, while working as Daftary in A.B. College, Basudevpur died on 15th April, 1988. He being a graduate at that time applied to the Governing Body of

the College for appointment under the Rehabilitation Assistance Scheme, which

was forwarded by the Principal to the Director, Higher Education, Orissa for consideration. By letter dated 6th July, 1988, the Deputy Director returned the application to the Principal with direction to place the matter before the Governing Body for its consideration. The Governing Body in its resolution dated 2nd January, 1989 appointed the Petitioner in the post of Store-keeper in the Department of Zoology and such fact was communicated to the Director, Higher Education vide letter dated 6th June, 1992. Pursuant to the order of appointment, the Petitioner joined as Store-keeper on 12th June, 1992. Since then he has been working as such. By letter dated 10th September, 1992 the Principal submitted proposal to the Director for approval of the appointment of the Petitioner and to include him under direct payment scheme. Reminders were submitted on 16th January, 1993 and 15th September, 1994. The Deputy Director requested the Principal to submit certain documents for consideration pursuant to which, the Principal submitted the required documents vide letter dtd.31.3.1995. The matter was kept pending for a long time thereafter. The Petitioner therefore, approached this Court in OJC No.1996/1997. By order dated 15th February, 2011, this Court disposed of the Writ Petition directing the Director to consider the proposal submitted by the Principal way back in the year 1993 as expeditiously as possible preferably, within a period of two months from the date of communication of the order. Since the order was not complied with, the Petitioner filed a Contempt Petition bearing CONTC No.1073/2011. In the mean time, the Secretary to Government in Higher Education Department vide letter dated 27th December, 2012, informed the Director that the State Government has approved six candidates for appointment under Rehabilitation Assistance Scheme including the Petitioner in different non-Government Aided Colleges. Pursuant to such letter the Director asked the Principal vide letter dated 14th January, 2013 to appoint the Petitioner as a Junior Clerk after observing the required formalities. Accordingly, the Governing Body passed resolution on 16th January, 2013 to appoint the Petitioner as Junior Clerk and he was appointed as such on the same date. But by letter dated 14th February, 2013, the Principal assigned the job of Store-Keeper of the Department of Physics, Chemistry, Botany and Zoology to the Petitioner. It is stated that the Petitioner was appointed against a sanctioned post and the proposal for approval of his appointment was kept pending with the Director for years together. It is further stated that giving fresh appointment to the Petitioner, 21 years after he was appointed on Rehabilitation Assistance Scheme is entirely unjustified. Hence, the Writ Petition.

3. The case of the State (Opposite Party Nos.1 and 2) is that the appointment of the Petitioner on 12th June, 1992 by the Governing Body was in violation of the Rules and moreover it was not competent to appoint any one without prior approval of the Government. It is further stated that appointment under the Rehabilitation Scheme is not a matter of right and in any case the benefit of such Scheme was extended to the families of teaching and non-teaching staff of the Non-Government Aided Colleges of the State by the Government in Higher

Education Department Office Memorandum dated 10th August, 2011. The Petitioner's claim was therefore, considered under such Office Memorandum and he was appointed being sponsored by the Director in his letter dated 14th January, 2013. The petitioner cannot claim any benefit under the Rehabilitation Assistance Scheme long after the death of his father.

4. Heard Mr. A.N.Routray, learned counsel for the Petitioner, and Mr. S.N. Pattnaik, learned Addl. Government Advocate for the State.

5. Mr. Routray forcefully argues that the claim of the Petitioner is not for appointment under the Rehabilitation Assistance Scheme inasmuch as he has already been granted such benefit w.e.f. 12th June, 1992. His grievance is, the authorities could not have given him a fresh appointment in the year 2013 after he had already rendered 21 years of service as Store-keeper being appointed under the Rehabilitation Assistance Scheme. As regards the plea that the benefit of Rehabilitation Assistance was extended to the families of the teaching and non-teaching staff of non-Government Aided Colleges by the Higher Education Department Office Memorandum dated 10th August, 2011, Mr. Routray has referred to the resolution of the Government in G.A. Department dated 14th October, 1998 as per which such benefit was extended to the aforementioned staff w.e.f. 24th September, 1990. Mr. Routray therefore, contends that the authorities could not have given the Petitioner fresh appointment but ought to have approved his appointment w.e.f. 12.6.1992.

6. Mr. S.N.Pattnaik, on the other hand, has argued that the so called initial appointment of the Petitioner has no sanctity of law inasmuch as it was never approved by the competent authority i.e. the Director Higher Education Department. The application of the Petitioner was initially forwarded by the Principal of the Director by letter dated 14th May, 1988, but the same was returned by the Deputy Director with instructions to place the same before the Governing Body of the College for consideration and to furnish its opinion to the Directorate for further action. Again, by letter dated 4th July, 1989, the Deputy Director intimated that if the Governing Body of the College appoints the Petitioner against an approved post then a proposal may be sent to the Directorate with copy of the Governing Body Resolution for approval. Therefore, the Governing Body ought to have submitted a proposal for approval but it went ahead to directly appoint the Petitioner, which is contrary to law. Be that as it may, the Government, taking a sympathetic view accorded approval for appointment of the Petitioner under the Rehabilitation Assistance Scheme by order dated 27th December, 2012.

7. The facts of the case as laid in the pleadings are not disputed. As it appears, the Petitioner's father died in harness on 15th April, 1988. He submitted application for consideration of his case under Rehabilitation Assistance Scheme on 13th May, 1988. Such application was forwarded to the Director for consideration, but was returned by the Office of the Director with request to place the same before the Governing Body for consideration with further

instructions to furnish the opinion of the Governing Body. The Governing Body in its resolution dated 2nd January, 1989 resolved to appoint the Petitioner subject to approval of the Director. The above fact was communicated to the Director by letter dated 25th April, 1989. The Office of the Director intimated that if the appointment of the Petitioner is against an approved post, then proposal may be sent to the Directorate with copy of the Governing Body Resolution. Accordingly, the Governing Body in its Resolution dated 12th December, 1992 approved the appointment of the Petitioner as Store-keeper. It has been brought to the notice of this Court that in the meantime, the incumbent of the post of Store-keeper had expired, which created a vacancy, against which the Petitioner was appointed. From the documents enclosed to the connected Writ Petition filed by the Petitioner, i.e. O.J.C.No.1996/1997, it appear that after appointment of the Petitioner by order dated 10th June, 1992 the Principal requested the Director for approval thereof by his letters dated 10.9.1992, 29.10.1992, 16.1.1993, 11.2.1993, 26.3.1994 and 31.3.1995. No action was taken by the Directorate for which the Petitioner had approached this Court in OJC No.1996/1997. In the said Writ Petition also the Government did not file any counter. The Writ Petition was ultimately disposed of by order dated 15.2.2011 directing the Director to consider the proposal for approval of appointment of the Petitioner pending with him since 1993. Even then, the matter was kept pending for more than two and half years and ultimately, by order dated 14th January, 2013, the Directed instructed the Principal to issue appointment order in favour of the Petitioner as Junior Clerk.

Two things are apparent from the narration-Firstly, no reason whatsoever has been cited by the State for keeping the proposal for approval of the appointment of the Petitioner pending for more than two decades. Secondly, this Court having directed the Director to consider approval of the appointment already made, it was not open to the authorities to direct his fresh appointment. It has been argued by learned State counsel that this implies that the proposal for approval was turned down. This argument does not have any substance for the reason that if such was the intention of the State then what prompted it to confer the benefit of Rehabilitation Assistance on the Petitioner and that too, 21 years after the death of his father, If, according to the State the earlier appointment was not in order, the same could have been brought to the notice of the Management of Institution promptly without keeping it pending for so long. That apart, the very objective of the Rehabilitation Assistance Scheme is to provide immediate succor to the family of a deceased Government Servant from distress. It is therefore, quite fallacious and absurd to term the appointment of the Petitioner made in 2013 as one under Rehabilitation Assistance Scheme arising out of death of his father way back in the year 1988.

8. Be that at it may.

9. Much argument has been made as regards the applicability of the Rehabilitation Assistance Scheme embodied in the Orissa Civil Services

(Rehabilitation Assistance) Rules, 1990 to the non-Government Aided Educational Institutions. The fact that the Petitioner's father died in harness on 15th April, 1988 whereupon he submitted application for appointment under Rehabilitation Assistance Scheme is not disputed. As has already been narrated in the preceding paragraphs, his application was kept pending in view of the correspondence between the Principal of the College and the Office of the Director. In the meantime, the post of Store-Keeper, which is an approved post, having fallen vacant because of death of the incumbent, the Petitioner was appointed by order dated 12th June, 1992. Thus, as on the date of the appointment of the Petitioner, the 1990 Rules had come into force. Further, as per Resolution dated 14th October, 1998 of the Government in G.A. Department, the 1990 Rules were made applicable to the families of the teaching and non-teaching staff of Aided Educational Institutions w.e.f. 24th September, 1990. It has also been argued that the appointment of the Petitioner was not as per the Rules. In this context, Rule 5 of the 1990 Rules would be profitable, which reads as follows:-

"Rule-5.Appointment to be made in deserving cases.

In deserving cases, a member of the family of a Government Servant who is permanently incapacitated or who dies while in service may be appointed to any Class-III or Class-IV post by the appointing authority of that Government Servant provided he or she possess the required minimum educational qualification prescribed for the post without following the procedure prescribed for recruitment to the post either by statutory rules framed under the proviso to Article-309 of the Constitution of India or otherwise irrespective of the fact that recruitment is made by notification of vacancies to the employment exchange or thorough recruitment examination under relevant cadre rules."

10. Since appointment under the Rehabilitation Assistance Scheme is meant to be an exception to the normal mode of recruitment, the above quoted Rule specifically confers power on the authority to make such appointment without following the prescribed procedure for recruitment. It is not disputed that the Petitioner was duly qualified and was appointed against an approved post. The only thing wanting was, approval of such appointment by the Director post facto. In this also, no blame can be attributed to the Management of the College inasmuch as, several letters and reminders, as referred to hereinbefore were issued, but no action was taken thereon. After keeping the matter in limbo for long as 21 years, the State took a U-turn to question the sanctity of the appointment made by the Governing Body and instead directed issuance of a fresh appointment order purporting to be under the Rehabilitation Assistance Scheme.

11. Mr. Pattnaik, learned State counsel, has also relied upon an Office Memorandum dated 10th August, 2011 of the Department of Higher Education to contend that the non-Government Aided Colleges are governed by the same and therefore, the 1990 Rules would be applicable only from the date of such Office

Memorandum. This argument can be considered only to be rejected because there is nothing in the said Office Memorandum to show that the same would be applicable retrospectively, that is to say for appointments already made under the Rehabilitation Assistance Scheme. In any case, this Court finds that the G.A. Department Resolution dated 14th October, 1998 is very clear as regards applicability of the 1990 Rules to such Institutions w.e.f. 24th September, 1990.

12. From a conspectus of the analysis of the facts, law and the contentions raised, this Court is of the considered view that the Petitioner could not have been freshly appointed w.e.f. 16th December, 2013 completely ignoring thereby his services rendered from 12th June, 1992 onwards. The authorities by their conduct in keeping the proposal pending for as long as 20 years, despite repeated reminders, must be deemed to have approved the appointment of the Petitioner. More so as no objection thereto was ever raised even though such fact was well within the knowledge of the Director. The State is therefore, estopped from questioning the validity of the appointment of the Petitioner from such date.

13. For the foregoing reasons therefore, the Writ Petition is allowed. The impugned order under Annexures-3,4 and 6 are hereby set aside. The Opposite Party-authorities are directed to approve the appointment of the Petitioner w.e.f. 12th June, 1992 and to confer all admissible service benefits to him from such date as early as possible, preferably within two months.

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