
(1991) 11 OHC CK 0043
In the Orissa High Court
Case No : O.J.C. No. 1765 of 1991

Mohini Kumar Naik

APPELLANT

Vs

Orissa State Electricity Board and Others

RESPONDENT

Date of Decision : 18-11-1991

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1992) 1 OLR 173

Hon'ble Judges : B.L. Hansaria, C.J.;B.N. Dash, J

Bench : Division Bench

Advocate : M. Misra, P.K. Das, U.Ch. Patnaik and D. Sarangi, for the Appellant;
G. Rath, B.K. Nayak, B.R. Sarangi and G.C. Acharya, for the Respondent

Final Decision : Allowed

Judgement

B.L. Hansaria, C.J.—The petitioner is the widow of one Brajananda Naik, who was in the employment of Orissa State Electricity Board (shortly called "the Board") as helper. He died on 5-11-1989. The petitioner applied for appointment to the post of peon under the Rehabilitation Assistance Scheme. As no order was passed, she approached this Court by filing the present petition on 3-4-1991. By an order passed on 16-8-1991, opp. party No.2 was directed to duly and favourably consider the application of the petitioner and to pass appropriate orders within a month. In that order, reference was made to the views expressed by the Apex Court in Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, , and Smt. Phoolwati Vs. Union of India and Others, , to the effect that appointment on compassionate ground due to the death of the bread earner in the family should be provided immediately and if there be no suitable post for appointment, supernumerary post should be created to accommodate the applicant.

2. Opp. party No. 2 disposed of the application of the petitioner on 13-9-1991 by stating that her claim for appointment could not be considered under the Rehabilitation Assistance Scheme. A perusal of that order, which is at Annexure-

A, shows that three reasons have been ascribed to reject the application, namely;

(i) the Board has imposed ban on new recruitment to the posts of unskilled category, as stated in Annexure-B dated 15-2-1984;

(ii) there was no vacancy in the post of peon in the Division for which post the application had been made ; and

(iii) twelve other similar applications were awaiting consideration for appointment in the post of peon under the Rehabilitation Assistance Scheme.

3. Shri Misra appearing for the petitioner contends that the aforesaid reasons are not germane to reject the application. As to the ban order, it is contended that the same cannot whittle down the right given by the Rehabilitation Assistance Scheme inasmuch as employment under that scheme is of a special category. In this connection, reference is made to a Bench decision of this Court in OJC No. 1999 of 1986 (*Pramila Moharana v. State of Orissa*, disposed of on 23-10-1990), wherein the denial of employment to the petitioner under the Rehabilitation Assistance Scheme by the Board on the ground of ban order was not upheld. A perusal of that Judgment shows that apart from stating that employment under the Rehabilitation Scheme being of special category cannot be wittled down by the ban order which is not specific on the point, it was also observed that the petitioner's right having accrued earlier to the ban order (the death of the petitioner's husband in the case having occurred on 19-9-1979), the same has to prevail. Shri Nayak appearing for the Board contends that in the present case the right having accrued after issuance of the ban order, the ratio of the aforesaid decision would have no application. We would, however, think that the employment under the Rehabilitation Scheme being of a special category as observed by this Court in the aforesaid OJC, the ban order as at Annexure-B, which is not specific on the point, may not be allowed to stand in the way of persons in distress. To mitigate their hardship, the Rehabilitation Assistance Scheme has been framed. The Board having framed the Scheme in 1988 cannot deny the benefit of the same to the persons covered by the Scheme because of the ban order imposed in 1984. Any other view would render the Scheme lame and would hit hard those persons, amelioration of whose condition is most called for, as the ban order relates to unskilled category of posts indicating that the same applies to lower categories of employees whose dependants are more in need of rehabilitation than those of the highly placed. The first ground of rejection, therefore, does not find favour with us.

4. In so far as the second ground is concerned, which is absence of vacancy in the post of peon in the Division in question, Shri Nayak contends that the Rehabilitation Scheme itself states in paragraph 2 that the benefit under it would be admissible subject to availability of suitable vacancy. It is, therefore, urged that the second ground given for rejection of the application of the petitioner is cogent. In this con-text, Shri Misra submits that appointment under the Rehabilitation Scheme cannot be made dependent upon availability of suitable

vacancy. The learned counsel draws our attention in this connection to the aforesaid two decisions of the Apex Court wherein it was stated that if there be no suitable post for appointment, supernumerary post should be created to accommodate the applicant. As to the aforesaid decisions, Shri Nayak contends that the Rehabilitation Schemes under which employment was solicited in those cases were different inasmuch as there is nothing to show that appointment under those schemes depended upon availability of vacancy.

5. We have duly considered the aforesaid submission of Shri Nayak, and, according to us, the object of providing appointment under the Rehabilitation Scheme being to mitigate the hardship due to death of the bread earner in the family, non-availability of post should not stand in the way of the distressed persons. The view expressed by the Apex Court in the aforesaid two decisions to the effect that if there be no suitable post for appointment, supernumerary post should be created to accommodate the applicant would show that non-availability of post was not allowed to stand in the way of giving appointment on compassionate ground. The two Judgments do not indicate that they dealt with schemes under which appointments had to be given whether there be vacancy or not. The Board being a "State" within the meaning of Article 12 of the Constitution and it being obligatory on its part to advance the Directive Principles of the State Policy contained in Part IV of the Constitution, which includes Article 41 which speaks, inter alia, about the right to work and to provide assistance in cases of unemployment, we would not whittle down the assistance made available by the Rehabilitation Scheme of the Board because of non-availability of vacancy: According to us, in such cases if there be no suitable vacancy, supernumerary post has to be created. The Board has to act as a model employer and must come to the rescue of the dependants of its employees who face acute hardship following the death of the sole bread earner. The Board having in its employment thousands of workers, we do not think if creation of a few supernumerary posts would in any way affect its financial viability. The second ground of rejection has, therefore, also not prevailed with us.

6. As to the third ground, we would state that pendency of 12 other similar applications praying for appointment in the posts of peon cannot stand in the way of the petitioner if she is clothed with the right to claim her appointment under the Rehabilitation Scheme. Instead of denying her appointment on this ground, we would like the Board to favourably consider the applications of similarly situated persons.

7. In view of all the above, we allow the petition and direct opp. party No. 2 to appoint the petitioner either in the post of peon as prayed for by her or in any other suitable post by creating such post on supernumerary basis if so required. Necessary order in this regard shall be passed within a period of six weeks from the date of receipt of this Court's order by opp. party No. 2. We also direct opp. party No. 1 to allow creation of supernumerary post if such a prayer be made by opp. party No. 2. As the husband of the petitioner died two years back and as

the family is in distress, we would like all concerned to carry out this order in right earnest.

B.N. Dash, J.

8. I agree.