

(1994) 05 OHC CK 0010

In the Orissa High Court

Case No : Original Jurisdiction Case No. 6616 of 1993

Narayan Chandra Das

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 13-05-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Government of Orissa Business Rules — Rule 14

Citation : (1994) 78 CLT 772 : (1994) 2 OLR 343

Hon'ble Judges : G.B. Pattnaik, J;D.M. Pattnaik, J

Bench : Division Bench

Advocate : Ashok, G. Rath, K. Parija and S.P. Sarangi, for the Appellant; B.M. Pattnaik, P.K. Choudhury and S. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

G.B. Pattnaik, J.—The petitioner who had been appointed as Managing Director of Orissa Mining Corporation (hereinafter referred to as the "Corporation") challenges the order of the State Government cancelling his appointment as the Managing Director of the Corporation under Annexure 3 as well as the order posting him as General Manager of the Corporation, inter alia, on the ground that the orders are arbitrary and outcome of malice and positive act of vindictiveness on the part of the Chief Minister of Orissa, The petitioner prays for a direction to be posted as the Chief Executive of the Corporation and protection of his pay and should be paid arrear leave salary.

2. The short facts are that the petitioner was promoted to the post of General Manager of the Corporation in the scale of pay of Rs. 1600/- to Rs. 2150/- in the year 1978. In 1983 the petitioner was made the Executive Director of the Corporation on an additional emolument of Rs. 300/- per month. He was inducted as Director in the Board of Directors of the Corporation on 12-10-1984 and on 29-1-1985, he was promoted to the post of Chief Executive of the Corporation in the scale of pay of Rs 2500/- to 3000/- which was revised to Rs.

4500/-to Rs. 5000/-. He was appointed as Managing Director of the Corporation on 31-1-1986 and the scale of pay of the Managing Director was fixed at Rs. 5500/-to Rs. 6000/-. It is alleged in the writ application that after the election in the State in the year 1990; Janata Dal came to power and Shri Biju Patnaik assumed office as the Chief Minister of Orissa on 5-3-1990. The said Chief Minister held a review meeting of some of the Corporations in the public sector including the Orissa Mining Corporation. The petitioner further alleges that without having any information or records about, the petitioner's Corporation or without even asking for any explanation from the petitioner, he was asked by the Chief Minister in the said review meeting to put in his resignation. The petitioner has averred that on assumption of office as Chief Minister on 5-3-1990, he had never any occasion either to inspect the functioning of the Orissa Mining Corporation nor had he called for to scrutinise the records of the Corporation to ascertain and to know the functioning of the Corporation. It is further averred that during the petitioner's tenure as Managing Director, Orissa Mining Corporation had made substantial growth in turn-over and profits and while the turn-over was to the tune of Rs. 2508.36 lakhs in 1984-85 by 1989-90, the turn-over had been raised to Rs. 7971.00 lakhs with an increase of 208 per cent. Similarly the profits of the Corporation which was Rs. 136.67 lakhs in 1984-85, by 1989-90 it became Rs. 2988 lakhs. But on account of the direction of the Chief Minister in the so called review meeting as stated earlier, the petitioner put in his resignation on 14-3-1990 in deference to the wishess of the Chief Minister. Even though he wanted to have an interview with the Chief Minister, he was not granted such interview and on 16-3-1990, the appointment of the petitioner as Managing Director was cancelled which according to the petitioner is an arbitrary exercise of power without application of mind and outcome of prejudice and bias against the petitioner. After cancelling the appointment of the petitioner as Managing Director, he was denoted by two grades and was posted as General Manager of the Corporation by order dated 30-3-1990. The petitioner made several representations stating therein that he is entitled to be posted as Chief Executive of the Corporation with protection of his pay last drawn, but the representation of the petitioner was disposed of by the Chief Minister in a most high handed and arbitrary manner by only one word "rubbish" which exhibits the bias of the Chief Minister against the petitioner. On the representation of the petitioner when the Secretary to the Government in the Steel and Mines Department put up a note that the petitioner should be posted as Executive Director with protection of his pay at Rs. 6000/- and recommended that the representation of the petitioner deserves due consideration, the same was disposed of by the Chief Minister on 27-5-1991 with the order that either the petitioner joins as General Manager or goes out and this indicates the continuance and persistence of bias on the part of the Chief Minister towards the petitioner. It is further averred that the petitioner was deliberately transferred to a far off place like Jeypore only to harass him by an order dated 12-7-1991 even though no post of General Manager existed at Jeypore and vindictiveness on the part Of the Chief Minister is writ large from the tact that on 27-7-1991 a

disciplinary proceeding was initiated to harass and malign the petitioner on a frivolous charge alleging that the petitioner has neglected his duties by not complying with the statutory requirements under the Income Tax Act so far as filing of the returns of the Corporation are concerned. The petitioner assailed the initiation of the disciplinary proceeding in O. J C. No. 5576/91 and this Court by order dated 6-12-1991 was pleased to stay the disciplinary proceeding and in the meantime the disciplinary proceeding has been dropped by the Chairman of the Corporation by an order dated 26-3-1994. On 15-5- 1993. the petitioner made yet another representation requesting the Corporation to protect his last salary drawn and post him as the Chief Executive at Bhubaneswar in view of his ailing eye to facilitate the treatment, but that was rejected by order dated 26-3-1993 and the petitioner was intimated that his pay has been fixed in the scale of Rs. 3350/- to Rs. 4500/- and his prayer for being posted at Bhubaneswar was not granted. It was further averred that the Corporation on the petitioner's representation sought for advice of the Finance Department with regard to the fixation of the petitioner's pay and the Finance Department opined that the petitioner's pay would be notionally fixed which he would have drawn had he continued as the Chief Executive of the Corporation. Having lost all hopes in getting any redress from the Corporation as well as the State Government and having been convinced about the bias, vindictiveness and mala fide of the Chief Minister, he tiled the writ application on 20-9-1993 for the reliefs as already stated.

3. Even though the Chief Minister of Orissa has not been made a party either in his official capacity or by name, but an affidavit has been filed by him on behalf of the State of Orissa, since the averments in certain paragraphs of the writ application relate to conduct of the Chief Minister. So far as the incident that happened in the review meeting dated 13-3-90, the Chief Minister stated in his counter affidavit that he expressed his serious dissatisfaction over the functioning and management of the Orissa Mining Corporation to the then Managing Director and he further expressed that he may have to consider the question of replacing the Managing Director and in response, the petitioner stated that he would resign from the Managing Directorship and to this the Chief Minister observed that it was open for him to take such action as he thinks best and on the next day, i. e. on 14-3-1990 the petitioner resigned from the Directorship as well as the Managing Directorship of the Corporation. When the Setter of resignation of the petitioner, after being dealt with by the office was placed before the Chief Minister, he passed orders for cancelling the appointment in accordance with Article 40 of the Articles of Association and thereafter a notification was issued on 16-3-1 90 The affidavit of the Chief Minister further states that when the petitioner's representation addressed to him directly was placed before him, he put his remarks as "rubbish" on the representation as he was not impressed by the contents of the representation. So far as the subsequent representation of the petitioner dated 26-4-1991 is concerned, the Chief Minister asserts that though the Secretary to the Government in the Steel

and Mines Department had recommended to allow the petitioner to join the post of Chief Executive, but on consideration of the entire materials, the Chief Minister passed the order that either the petitioner should join as General Manager or goes out According to the Chief Minister his order dated 16-3-1990 cancelling the appointment of the petitioner as Managing Director was in public interest and was neither arbitrary nor high-handed and his comment "rubbish" on petitioner's representation dated 6-1-1991 was warranted.

4. The State of Orissa, opp. party No. 1 has filed an affidavit being sworn to by the Additional Secretary to the Government in the Steel and Mines Department stating therein that the substantive post of the petitioner in the Corporation was the post of General Manager and after cancellation of the petitioner's appointment as Managing Director in accordance with Article 40 of the Articles of Association, the only post to which the petitioner could have been posted is the post of General Manager. So far as the review meeting dated 13-3-1990 is concerned, the affidavit of the opposite party No. 1 states that there are no records in the department of Steel and Mines with regard to the proceeding of the said review meeting and on enquiry it was learnt that no records of the proceedings of the review meeting were drawn up. The said affidavit further states that so far as opinion of the Secretary to the Government of Orissa, opinion of the Advocate General, the same are merely advisory in nature and it is the prerogative of the Chief Minister to take administrative decision. It is further stated in the said affidavit that the posting of the petitioner in the post of Chief Executive or any other post is under the jurisdiction of the Corporation and there is no scope in the Articles of Association or otherwise for the State Government to interfere with the orders of posting of its officers passed by the Corporation. Paragraph-10 of the affidavit filed by the Additional Secretary to the Government in the Department of Steel and Mines on behalf of opp. party No. 1 is extracted hereinbelow in extenso :

"10. State Government submits posting of the petitioner in the post of Chief Executive or any other post is under the jurisdiction of the Corporation. There is no scope under the Articles of Association or otherwise for State Government to interfere with orders of posting of its officers passed by the Corporation."

5. The Corporation, opp. party No. 2 has filed a detailed counter affidavit being sworn to by the Secretary of the Corporation. It has been averred in the said counter affidavit that the post of Chief Executive or Executive Director are not cadre posts in the Corporation and the post lasted for the periods during which the petitioner held the post and the last cadre post which the petitioner substantively held is the post of General Manager and therefore, there is no illegality in the posting of the petitioner as General Manager. It was also averred that the petitioner has been on leave since 15-3-1990 and on his joining duties, salary due to him as per rules would be paid and question of regularisation of leave would be considered by the Corporation after the petitioner joins his duty. . It has further been stated that by office order dated 31-1-1985, the petitioner

was declared as the Chief Executive for a period of one year but even before expiry of the said year, the petitioner was declared as the Managing Director by order dated 3-1-1986. So far as initiation of disciplinary proceeding is concerned, the Corporation in its affidavit indicated that in view of gross negligence in duty in non compliance of the statutory requirements with regard to the submission of Income Tax returns for which the Corporation was saddled with a liability of Rs. 5 crores the petitioner was called upon to explain as to why suitable disciplinary action shall not be taken. After receipt of the explanation on being satisfied regular enquiring officer was appointed ; the Chairman of the Corporation by order dated 26-3-1994 dropped the said enquiry and the enquiry came to an end.

6. A scrutiny of the averments made in the writ application as stated earlier as well as the averments made by the Corporation and the State Government in their respective counter affidavits and also the affidavit of the Chief Minister himself on behalf of the State would indicate that there is not much of dispute on facts and the question for consideration is whether on such facts malice and bias on the part of the Chief Minister towards the petitioner can be inferred and the order of cancellation of the petitioner's appointment as the Managing Director can at all be sustained. The further question that arises for consideration is whether the posting of the petitioner as the General Manager and not as Chief Executive is also an act of bias and malice or the stand of the Corporation that there existed no post of Chief Executive and therefore the petitioner was posted as the General Manager can be sustained. The next question which would also crop up for consideration is what relief can be granted by this Court particularly when the petitioner was superannuated from service with effect from 30th April, 1994.

7. So far as the legality of the Government order dated 16th of March, 1990 cancelling the petitioners appointment as the Managing Director of the Corporation under Annexure-3 is concerned, Mr. Rath for the petitioner argues with vehemence that it is the Chief Minister of the State who had some pre-conceived notion and bias towards the petitioner as a result of which even without any materials on record before him in the review meeting dated 13-3-1990 he expressed his dissatisfaction over the functioning of the Corporation and created circumstances under which the petitioner had no other option than to resign and further notwithstanding the resignation offered by the petitioner instead of accepting the same, the order of appointment was cancelled and, therefore, the said order is nothing but an outcome of bias on the part of the Chief Minister and consequently, order of cancellation should be interfered with by this Court and should be cancelled. In this connection, Mr. Rath cited before us the decision of the Supreme Court in Jarnail Singh's case AIR 1986 SC 1626 and contended that when an employee assails the order of termination to be invalid even though couched in innocuous terms, it is incumbent on the Court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. According to him in such case, the Court will lift the veil and will see whether the order was made on the ground of

misconduct/inefficiency or not. He also placed before us the decision of the Supreme Court in *S. Pratap Singh Vs. The State of Punjab*, wherein Their Lordships of the Supreme Court had observed that every power vested in a public body or authority has to be used honestly, bona fide and reasonably. But if it is found that the power has been used for achieving alien purpose like wrecking Minister's vengeance on the officer, it would be a mala fide and colourable exercise of that power and would therefore be struck down by the Courts. According to "Mr. Rath, in the facts and circumstances of the present case, had faith or bias would be deduced as a reasonable inference from the proved facts, namely, without any materials on records before the Chief Minister in the Review Meeting that was taken on 13th March, 1990 immediately after assumption of office, he called upon the petitioner to resign. Mr. Rath, the learned counsel also relied upon the decision of the Supreme Court in *Debesh Chandra Das Vs. Union of India (UOI)*, where Their Lordships of the Supreme Court had struck down an order of reversion while the petitioner's tenure under the Government of India had not been completed on the basis of that such reversion is nothing but a stigma. It was no doubt by exigency of service. the learned counsel for the petitioner also placed before us the case of *State of U.P. and Others Vs. Sughar Singh*, and contended that in view of the penal consequences arising out of the order of cancellation of the petitioner's appointment as the Managing Director without any rhyme or reason, the said order must be held to be bad in law. Mr. Rath lastly placed before us the decision of the Supreme Court in the case of *Jagdish Prasad Shastri v. State of U.P. and Ors.* AIR 1971 SC 1223 and contended that the impugned order of cancellation of petitioner's appointment has been made for a collateral purpose and in making such order the Chief Minister has been actuated by malice and the order involves penal consequences and, therefore, the same must be struck down by the Court. There is no dispute with the proposition that if an order is found to be an outcome of malice or prejudice, the Court would unhesitatingly strike down the same. But it is settled position that one who seeks to invalidate or nullify an order, it is he who must establish the charge of bad faith and abuse or misuse by Government of its powers. In *Pratap Singh's* case referred to supra *S. Pratap Singh Vs. The State of Punjab*, , Their Lordships of the Supreme Court had no doubt observed :

"...While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the appellant has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person in the position of a minister apparently acting in the legitimate exercise in the sense of pursuing an illegitimate aim".

The learned Judges also had observed ;

"We must, however, demur to the suggestion that mala fide in the sense of improper motive should be established only by direct evidence that is that it

must be discernible from the order impugned or must be shown from the notings in the file which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts."

Let us now examine the facts alleged and proved in the case in hand. The petitioner while was continuing as the Managing Director of the Orissa Mining Corporation, there was a change in the Government and "Janata Dal" came to power. Mr. Biju Patnaik, the present Chief Minister assumed office on 5-3-1990 and he called a review meeting of all the public sector Corporations on 13-3-1990. There were no materials before him with regard to the functioning of any of the Corporations particularly the Mining Corporation as is apparent from the counter affidavits filed both by the Corporation as well as the State Government. But yet the Chief Minister expressed his dissatisfaction over the functioning of the Orissa Mining Corporation and according to the petitioner, he called the petitioner to put in his resignation whereas according to the affidavit of the Chief Minister himself that he had told the petitioner that he may have to consider the question of replacing the Managing Director and on the next day, the petitioner put in his resignation. There is admittedly no record as to the exact words told by the Chief Minister to the petitioner but that as the Chief Minister expressed his dissatisfaction about the functioning of the Orissa Mining Corporation cannot be denied. We are indeed surprised to find how the Chief Minister of State was setting a review meeting of the different public sector Corporations without any data or records before him and expressed dissatisfaction about the functioning of a Corporation without any basis for the same. The assertion of the petitioner that the Orissa Mining Corporation made a substantial growth in terms of its turn-over as well as profits between 1934-85 to 1989-90 has not been denied.

Mr. B. M. Patnaik, the learned Counsel appearing for the Chief Minister as well as the State Government contended in course of his arguments that since Mr. Biju Patnaik was the leader of opposition in the previous Government he might be aware of the functionings of the Corporation for which he expressed his dissatisfaction in the review meeting. Even though he had not called for any materials or records, we would have certainly given credence to this submission had the Chief Minister made that assertion in the affidavit filed by him. It is to be noticed that even though the Chief Minister has not been made a party, yet he has volunteered to file an affidavit in this case and did accept the assertion of the petitioner about expressing his serious dissatisfaction over the functioning and management of the Orissa Mining Corporation and according to the Chief Minister, he also expressed that he may have to consider the question of replacing the Managing Director. No reasonable man without any materials or data could have expressed such opinion about the functioning of a public sector undertaking and since a high constitutional functionary like the Chief Minister is expressing an opinion about the functioning of a public sector undertaking, he should have been much more careful than an ordinary man. Not only the

affidavit filed by him does not indicate the materials for the dissatisfaction of the Chief Minister but also there is no iota of materials on record to establish the grounds for such dissatisfaction. Obviously therefore, the aforesaid dissatisfaction expressed by the Chief Minister must be held to have been based not on any iota of materials and did exhibit an attitude of bias. But that it is not the end of the matter since the petitioner himself tendered his resignation. If the Government or the Chief Minister would have terminated the petitioner's service on their own, the matter would have stood otherwise. But the petitioner having himself tendered his resignation and that resignation having been accepted by way of replacement which is the only form of replacing a Managing Director, it would be difficult for us to hold that the order of cancellation of the petitioner's appointment is actuated by malice or bias. When the resignation letter was given by the petitioner on 14th March, 1990, the same was dealt with in the office and the Secretary to the Government in the Mining and Geology Department pointed out the provisions of Art. 48 of the Memorandum and Articles of Association of the Corporation and suggested that the Chief Minister may consider accepting the resignation of the petitioner. The Chief Secretary to the Government noted in the file that the same may be accepted and ultimately the Chief Minister passed the order as follows ;

"His appointment as M.D. and Director of O.M.C. Ltd. is cancelled under Art. 40 of the Memorandum and articles of Association".

Art. 40 of the Memorandum Articles of Association provides that the Governor may cancel the appointment of any Director, Chairman, or Managing Director and make fresh appointments. It therefore accepts the submission Mr. B. M. Patnaik, the learned counsel for the opposite parties that the only form in which a resignation could be accepted is the form as provided in Art. 40 (4) of the memorandum and articles of association by cancelling the appointment and in fact, the Chief Minister passed the said order.

Mr. Rath in course of his argument had submitted that the fact that the petitioner tendered his resignation and yet without accepting the same, the Government passed the order of cancellation of appointment itself would exhibit bias on the part of the Government but the said contention is of no force in view of the provisions contained in Art. 40 of the memorandum and articles of association. In this view of the matter, on the facts and circumstances even though we are of the considered opinion, that the dissatisfaction expressed by the Chief Minister with regard to the functioning of the Orissa Mining Corporation in the review meeting dated 13-3-1990 was not on any tangible materials and can be characterised as an outcome of bias on the part of the Chief Minister towards the concerned officer, yet the order of replacement under Annexure-3 is on the basis of acceptance of the petitioner's resignation and therefore, the said order cannot be said to be vitiated on account of bias or bad faith. The first submission of Mr. Rath challenging the legality of the order of cancellation of the petitioner's appointment as Managing Director, therefore, cannot be sustained.

8. The next question that arises for our consideration is whether the posting of the petitioner as the General Manager and not as the Chief Executive can at all be sustained or not. As has been stated earlier while the petitioner was continuing as the General Manager of the Corporation since 1978, he was made the Executive Director in the year 1983 and was inducted to the Board of the Corporation as the Director on 12-10-1984. On 29-1-1986 he was promoted as the Chief Executive of the Corporation and the scale of pay of the Chief Executive had been initially fixed at Rs. 2500/- to Rs. 3000/- which was subsequently revised to Rs. 4500/- to Rs. 5000/- and shortly thereafter he was promoted to the post of Managing Director. This undoubtedly exhibits the efficiency of the petitioner in managing the affairs of the Corporation. After the petitioner's appointment as Managing Director was cancelled by the Government order dated 16th of March, 1990 annexed Annexure-3 the question of giving him another posting under the Corporation arose. The file produced before us indicates that the Chairman of the Board was of the opinion that the placement of the petitioner would be decided after the Board of Directors approve the order of cancellation of petitioner's appointment as Managing Director. At that point of time the Officers of Association of the Corporation had submitted a representation to the Chief Minister against the vindictive attitude of the Chief Minister towards the petitioner and in that representation they had submitted how the Corporation had made an unprecedented growth and profit during the petitioner's tenure as the Managing Director. But that representation, however, did not have any impact on the Chief Minister. When the petitioner had made a representation to give him a posting in his former post which he last held, that is the Chief Executive and not as the General Manager, the Deputy Secretary to the Government while dealing with the matter had clearly stated that the Post of Chief Executive had not been abolished and normally in a case of reversion from a higher post the employee is to hold the post last held and is also entitled to protection of his pay. He has also appreciated the performance of the petitioner as Managing Director and indicated how the Corporation increased its profits from Rs. 15 crores to Rs. 79 crores from 1984-85 to 1989-90 and suggested for posting of the petitioner as the Chief Executive. But the Secretary to the Government indicates in his note that the post of Chief Executive had been specially created for Sri Das and ceased to exist when Sri Das moved to the post of Managing Director and only a post of General Manager is available against which Sri Das would be adjusted. But he would be given his pay protection. He further states that the post of Sri Das as "Chief Executive" will negate the purpose by creating the post of Chairman-cum-Managing Director in Orissa Mining Corporation. He however, suggested that Sri Das be given the title of Executive Director and posted to the Regional office of Orissa Mining Corporation at Jeypore. The Chief Minister, however, on that passed an order to the effect "either he joins as G.M. or goes out" and in view of this order of the Chief Minister, Sri Das was posted as the General Manager. Prior to this the petitioner had made a representation to the Chief Minister which was disposed of by the Chief Minister with a remark "Rubbish". Even after that a disciplinary proceeding

had been initiated against the petitioner which the petitioner assailed on the ground of lack of power of the authority initiating the proceeding and this Court had stayed the proceeding, but ultimately that proceeding was dropped. On the aforesaid facts and circumstances, we are persuaded to accept the stand of the petitioner that non-posting of the petitioner as Chief Executive and on the other hand posting him as General Manager is nothing but an act of pursuing the petitioner. Under Memorandum and Articles of Association of the Orissa Mining Corporation, it is only the appointment of Director, Chairman and the Managing Director, which has to be made by the Governor. So far as the appointment to other posts in the Corporation, the Governor has no role to play and it is the Board of the Corporation who has the power to decide the matter. We really fail to understand why and how even the question of posting the petitioner as Chief Executive or General Manager was being decided under the orders of the Chief Minister. In view of the specific provision that it is the Governor who would appoint the Managing Director and if the Governor would cancel the appointment of a Managing Director as contained in Art. 40 of the Articles of Association and the expression "Governor" having been defined as "Governor of Orissa" in Art. 1 (d) it is doubtful whether the Chief Minister can exercise that power in accordance with "Rules of business". We had called upon Mr. Patnaik appearing for the State as well as the Chief Minister to examine this question and he only pointed out to us that in accordance with Rule 14 of the Orissa Government Rules of Business made under Art. 166 of the Constitution of India, the Governor of Orissa on the advice of the Chief Minister has issued instructions from time to time and a set of instructions have been issued under the said Rule 14 in respect of the Mining and Geology Department and item No. 24 of the list indicating the cases to be disposed as Minister, Mining and Geology provides nomination to Board, Council, Committee, Trust and Corporation constituted by the State or Central Government to be made by the State Government. We have our serious doubt as to whether in exercise of the powers conferred under the Rules of business framed under Art. 166 of the Constitution, the power of Governor conferred upon him under Articles of Association of the Corporation can at all be usurped by the Chief Minister since Art. 166 of the Constitution deals with the transaction of the governmental business and has got nothing to do with the business of a Corporation which is a company registered under the Companies Act and has its own memorandum and Articles of Association. But we do not express any final opinion on the same as this question has not really been mooted by the petitioner's counsel. But in any view of the matter, there cannot be any of doubt that the State Government as well as the Chief Minister are non-functionaries so far as the appointments to the posts under the Corporation are concerned except the appointment to the posts of Managing Director, Chairman and Board of Directors. This being the position of law, the very fact that it is the order of the Chief Minister dated 27-5-1991 directing the petitioner to join as General Manager or goes out. which has prevented the petitioner from being posted as Chief Executive which post he was occupying before he was appointed as Managing Director and since we have already held that the Chief Minister has

no role to play in regard to the appointment of any other post other than the post of Managing Director and the Chairman, the said order is wholly without jurisdiction and exercise of power which the Chief Minister did not possess. Taking the entire facts and circumstances into consideration, we are of the considered opinion that even after cancellation of the petitioner's appointment as Managing Director, his posting as General Manager is nothing but a vindictive act on the part of the Government and an act based upon the orders of the Chief Minister who had no jurisdiction over the matter and, therefore, the said posting of the petitioner as General Manager cannot be sustained in law. We are also of the considered opinion that the petitioner was entitled to be posted as the Chief Executive of the Corporation from which post he had been appointed as the Managing Director. Non-posting of the petitioner as the Chief Executive of the Corporation and on the other hand, posting him as the General Manager has been grossly detrimental to the petitioner's interest, more so for an officer like the petitioner who on records has been able to establish how the Corporation flourished during his tenure as Managing Director.

9. The next question for our consideration is what relief can be granted when the petitioner has already superannuated on 30th April, 1934. From what has been stated and discussed by us, we have no hesitation to come to the conclusion that the petitioner has been humiliated by posting him as General Manager from the post of Managing Director. Suffice it to say that he has been pursued, and even though he was entitled to be posted as the Chief Executive yet he was posted a further grade below, namely, as the General Manager. The records reveal that the petitioner continued to remain on leave as no person with little sense of dignity would have served as General Manager in the facts and circumstances under which he was posted as such. It was pointed out to us in course of hearing that the petitioner joined his posting as General Manager a day before superannuation and then superannuated. The minimum relief which the petitioner is entitled in the circumstances is that he should be posted as the Chief Executive of the Corporation and his pay should be protected as was advised by the Finance Department and Advocate General and since he has already superannuated, he should be given his leave salary in the post of Chief Executive. We accordingly direct the Orissa Mining Corporation to take appropriate action in the light of our directions given herein.

10. We would be failing in our duty if we do not notice the fact that even though the public sector undertakings like the Orissa Mining Corporation is manned by Senior bureaucrats, yet they failed to bring to the notice of the Chief Minister, that for appointment of officers other than Chairman, Director and Managing Director, the Government is in no way concerned and it is the Board who has power to decide and if this could have been possibly duly noticed then the Chief Minister would not have passed any order so far as to the posting of the petitioner as General Manager or Chief Executive of the Corporation is concerned.

11. The writ application is accordingly allowed to the extent indicated above with

costs. Hearing fee is assessed at Rs. 1000/-.

D.M. Patnaik, J.

I agree.