
(2023) 02 OHC CK 0181
In the Orissa High Court
Case No : Writ Petition (C) No.10786 Of 2022

Naresh Chandra Mohanty

APPELLANT

Vs

Mahanadi Coal Field Ltd., Sambalpur And Another

RESPONDENT

Date of Decision : 24-02-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (2023) 02 OHC CK 0181

Hon'ble Judges : A.K. Mohapatra, J

Bench : Single Bench

Advocate : S.D. Das, H.Mohanty, M.M. Swain, K. Sattar, M. Faraddish

Final Decision : Disposed Of

Judgement

A.K. Mohapatra, J.

1. The petitioner argued the matter himself with a lot of anxiety, agony and passion. He has been fighting the legal battle since 1996. In between, he had also approached this Court on several occasions and the Hon'ble Supreme Court on a couple of occasions. However, this Court, at the outset, would like to observe that no amount of agony, anxiety or passion can take the place of law. Therefore, the case of the petitioner is to be scrutinized and assessed within the frame work of law. Although the petitioner in course of his argument pleaded on sympathy considering the long term legal battle, which he has been fighting since 1996, however, this Court is bound by the legal and Constitutional parameters to be observed mandatorily by this Court while adjudicating the case of the petitioner. Therefore, the sympathy and suffering of the petitioner as to take a back seat when the same is to be assessed vis-à-vis the procedure established by law.

2. The present writ petition has been filed by the petitioner by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer for a direction to the Opposite Party No.2 to appoint him in

the post of Electrician CAT-III(T), which is lying vacant as per Annexure-9 with seniority as per select list which was in MCL from 1996 and in the alternative, the petitioner has prayed for appointment of adequate compensation for the damage caused to him as a result of arbitrary and whimsical act of the Opposite Parties.

3. The factual back ground of the petitioner's case, in a narrow compass, is that in the year 1996, the Mahanadi Coal Field Ltd. (in short hereinafter referred to as 'MCL') had sent a requisition to the Employment Exchange for sponsoring the names of the candidates having requisite qualification for filling up for the post Mazdoor Category-I, ITI trained candidates (advertisement No.1428 in the 1994). The Employment Exchange duly sponsored names of 664 candidates and such candidates submitted their Bio-datas and other details before the MCL. After due scrutiny, 316 candidates were allowed to appear in the written test held on 29.10.1995. Out of which 283 candidates including the present petitioner were called for trade test. On the basis of final result of the test, the final merit list of 240 ITI candidates were prepared, however, the same was not declared. Out of the aforesaid 240 candidates only 24 candidates were given appointment in different trades. Thereafter, 84 posts were sanctioned by the Opposite Parties and accordingly 51 candidates were given appointment in different trades. It is alleged that the said 51 candidates were given appointment by adopting pick and chose method.

4. It is further alleged in the writ petition that the MCL authorities gave an explanation that the above noted 51 candidates had their apprenticeship training in the MCL and they were also in the merit list. As such, they were given appointment on preferential basis. Out of the aforesaid 51 candidates, 9 candidates were appointed as Electrician, out of which 2 belongs to OBC, 7 UR category. The petitioner has further alleged that out of the 9 Electricians, who were appointed 3 Electricians was below from the petitioner on merit list in the trade of Electrician. Since the petitioner and many others, who were there in the merit list, were not given appointment, they had approached the MCL authorities by filing a memorandum. Due to inaction of the authorities, the petitioner and others were compelled to approach this Court by filing a writ petition, which was registered as OJC No.11253 of 1997. Vide order dated 02.05.2008, this Court disposed of the writ petition by directing the MCL to fill up 51 posts subsequently sanctioned, strictly in the order the candidates have been placed in the select list and consequently the candidates, who lose their job would be adjusted in the suitable posts in the existing future vacancies without asking them to face any recruitment test.

5. For non-compliance of the order dated 02.05.2008, a Contempt Petition bearing No.2903 of 2011 was filed before this Court, which was disposed and the same was barred by limitation. While the matter stood thus, one Jiten Kumar Sahoo and others filed a Civil Appeal No.1043 of 2011 before the Hon'ble Supreme Court of India. In the said Civil Appeal filed by the above named Jiten Kumar Sahoo and others, the petitioner was not arrayed as an opposite party.

The Hon'ble Supreme Court after hearing the learned counsel for the parties, allowed the Civil Appeal and accordingly, the judgment dated 02.05.2008 passed by this Court was set aside.

6. The petitioner had earlier also approached the Hon'ble Supreme Court by filing Special Leave to Appeal (C) No.10091 of 2013 challenging the order passed by this Court in Contempt Petition and with a prayer for condonation of delay in preferring the Contempt Application before this Court. However, the aforesaid Special Leave Appeal (Civil) was dismissed by the Hon'ble Supreme Court. Thereafter, the petitioner preferred a review petition bearing Review Petition (C) No.1257 of 2013 seeking review of order passed by the Hon'ble Supreme Court in Special Leave to Appeal (C) No.10091 of 2013. The review petition preferred by the petitioner was also dismissed. Thereafter, the petitioner filed a curative petition bearing Curative Petition (C) No.335 of 2014 and the same was also dismissed by the Hon'ble Supreme Court.

7. It is submitted by the petitioner in person that the petitioner had approached the MCL authorities by filing a representation with a prayer to consider the case of the petitioner. In the said representation, the petitioner had taken a specific ground that since the petitioner was not a party before the Hon'ble Supreme Court in SLP(C) No.14784 of 2008 & SLP(C) No.18031 of 2009, which were allowed vide order dated 27.01.2011 by setting aside the order passed by this Court on 02.05.2008. The petitioner further submitted that since he was not a party before the Hon'ble Supreme Court in the SLP, wherein the order dated 02.05.2008 passed by this Court in the said writ petition was set aside, the petitioner was bound by the order passed by the Hon'ble Supreme Court order dated 27.01.2011 while setting aside the order dated 02.05.2008. However, the such representation was not considered by the MCL. The petitioner further contended that the SLP No.10091 of 2013, which was preferred by him before the Hon'ble Supreme Court was dismissed on 18.03.2013 with an observation that similar matters were disposed of in SLP(C) No.14784 of 2008 and SLP(C) No.18031 of 2009.

8. The petitioner further contended that after disposal of the writ petition by this Court and disposal of the matter carried to the Hon'ble Supreme Court, the MCL authorities again noticed for employment dated 11.08.2014 in the application indicating for the post of electrician in which the petitioner was automatically clarified to be considered as he has qualified in the year 1996, the case of the petitioner was not considered by the MCL authorities for appointment as Electrician pursuant to order dated 11.08.2013 under Annexure-9. Although the petitioner approached the MCL authorities to consider his case, however, the same was not considered by the Opposite Parties. Thereafter another recruitment notice was issued by the MCL for 2016-2017 wherein applicants for recruitment of ITI Electricians were invited to fill up the post of Electricians. Pursuant to the said advertisement, the petitioner again submitted his application on 19.09.2016 stating therein that although the petitioner is eligible to be appointment,

however, because of the inaction and illegal action of the Opposite Parties, the petitioner has become over aged 45 years. The said representation of the petitioner was rejected by the MCL vide letter dated 14.10.2016 referring to the order passed by the Hon'ble Supreme Court. The petitioner in reply, contended that since he was not a party before the Hon'ble Supreme Court in the case. The petitioner who was appearing in person before this Court argued very passionately by submitting that he has passed out the Electrician trade from an ITI institution and he has been working as Electrician for all these years. However, due to illegalities committed by the MCL, the petitioner could not get an appointment although he was duly selected in the year 1996. He further contended that although post of Electricians were lying vacant in the MCL, the case of the petitioner was never considered by the authorities that the petitioner though the petitioner approached the MCL on several occasions by filing representations.

9. To Impress upon this Court, the petitioner submitted that he belongs to BPL category and he is surviving a lot of financial hardships. He further contended that his son is suffering from 100% mental disorder. In such background, the petitioner again came up for recruitment of Electrician by the MCL in the year 2017-2018 wherein the applications were to be submitted by 03.03.2017. The petitioner finding no other alternative earlier approached this Court by filing W.P. (C) No.20837 of 2016 for a direction to the Opposite Parties to consider his case of the petitioner for the post of Electrician against in available vacancy as advertised by the MCL. This Court vide order dated 20.12.2016 disposed of the writ petition by directing the MCL to consider the case of the petitioner in the event he fulfills the eligibility criteria. Thereafter, the petitioner approached the MCL authorities by filing a representation vide his letter dated 31.12.2016. The MCL vide its letter dated 03.02.2017, rejected the prayer of the petitioner alleging that the petitioner has misled this Court by a false recruitment notice without verifying the genuineness of notice from the website. They had also stated in the letter that no notice for recruitment in the 2016-2017 was published by MCL. In reply to the aforesaid stand of the MCL, the petitioner submitted that he had down loaded the vacancies in the official website of the MCL and as such, he contended that he is unable to find out any reason of the MCL has disowned the vacancy position which has been down loaded from the official of the website. Moreover, the petitioner also referred to the information receipt under the Right to Information Act provided by MCL and submitted that PIO of MCL vide letter dated 19.04.2017 informed the petitioner that there are resultant vacancies which could not be filled up as the validity of the select list expired on 23.12.2015. Furthermore, the petitioner also contended that he has also received information under the Right to Information Act whereby he has been informed from the 5 posts of Electricians belonging to the general category are lying vacant and the same could not be filled up due to expiry of the select panel on 23.12.2015 and the copy of the said letter has been marked as Annexure-9 to the writ petition. Accordingly, it was submitted that since the

vacancies were available in MCL in view of Annexure-9, this Court vide order dated 12.12.2017 in W.P.(C) No.16163 of 2017 directed the petitioner to approach the authorities for that post and the MCL authorities were directed to consider the case of the petitioner. A copy of the order dated 12.12.2017 has also been annexed as Annexure-10 to the writ petition. On perusal of the order dated 12.12.2017, it appears that the writ petition filed by the petitioner was withdrawn with liberty to approach the Opposite Parties authorities for redressal of his grievance.

10. After disposal of the W.P.(C) No.16163 of 2017, the petitioner again approached the MCL by filing a representation dated 07.03.2018. However, the MCL authorities did not consider his case and his representation was rejected. Again the petitioner approached this Court by filing W.P.(C) No.18607 of 2018, however, this Court was not inclined to entertain his application and the same was dismissed by a coordinate Bench of this Court vide order dated 04.01.2019. Thereafter, the petitioner approached the Hon'ble Supreme Court by filing Special Leave to Appeal (C) No(s).9203 of 2019 assailing the order dated 04.01.2019 under Annexure-15. The Hon'ble Supreme Court dismissed the Special Leave Appeal preferred by the petitioner vide order dated 16.04.2019.

11. It is further contended by the petitioner that he had also approached the NHRC by filing a case bearing NHRC Case No.2172. However, the MCL authorities against wrote a letter to the petitioner on 25.10.2019 informing him that his earlier representations have been rejected after due examination in view of the order passed by this Court as well as the Hon'ble Apex Court. Therefore, the MCL authorities again rejected his representations and his prayer for appointment as Electrician against any vacant post of Electrician in MCL and further, the petitioner was informed that no correspondence in this matter shall not be entertain in future. The petitioner, at this juncture, also contended that while he was engaged in the legal battle to get a job of Electrician in MCL, his only son died on 26.11.2019 due to lack of proper medical attention coupled with poverty.

12. On merits of the matter, the petitioner argued that the MCL authorities did not produced the original select list deliberately before this Court. He further submitted that the petitioner was selected and he had secured 64.41 marks and was placed at Sl. No.14 in the select list. The petitioner further alleged that some of the candidates whose names were appeared at Sl. Nos.15, 16 and 20 were given appointment ignoring the case of the petitioner. It was specifically alleged that one Naresh Chandra Dhar at Sl. No.15 had secured 64.10 marks, Kamaskhya Prasad Singh at Sl. No.16 had secured 63.83 and Saroj Kumar Pattanaik at Sl.No.20 had secured 62.83 marks have been given appointment ignoring the candidature of the petitioner, who was at Sl. No.14 and had secured 64.41 marks in the select list in the year 1996. Thus, it was argued by the petitioner that although he has secured more marks than the above named three candidates, he was not given appointment by the MCL authorities, which is directly attributable and the same is illegal, arbitrary and mala fide conduct. He

further alleged that such fact could not be brought to the notice of the Hon'ble Supreme Court as the petitioner was not arrayed as a party to the Civil Appeal filed before the Hon'ble Supreme Court. He further contended that although vacancies are available, the authorities despite order passed by this Court to consider the case of the petitioner are so adamant that they have ignored the order passed by this Court and repeatedly rejected the representation of the petitioner. As such, it was alleged by the petitioner that the authorities have acted in a manner which infringes the fundamental rights of the petitioner as guaranteed to him under Articles 14 and 16 of the Constitution of India as the petitioner has been denied in equal opportunity in the matter of public employment. Being harassed by the MCL-Opposite Parties, the petitioner has again approached this Court by filing the present writ petition with a prayer as indicated hereinabove.

13. The Opposite Parties are represented by Mr. S.D. Das, learned senior counsel and his associates. Mr. Das, learned senior counsel for the Opposite Parties submitted that the Opposite Parties has filed a detailed counter affidavit denying upon the said counter affidavit. It was submitted by Mr. Das, learned senior counsel that the present writ petition is sequel successive writ petition filed by the petitioner even after dismissal of the SLP filed by the petitioner before the Hon'ble Supreme Court of India. He further contended that the order passed by this Court in favour of the petitioner on 02.05.2008 in OJC No.11253 of 1997 has already been set aside by the Hon'ble Supreme Court in SLP(C) No.14784 of 2008 vide order dated 27.01.2011. Therefore, the order passed by the Hon'ble Supreme Court on 27.01.2011 is the final order and as a result of which the entire dispute has been set at rest. Therefore, it was contended that there exists no cause of action to file the present writ petition. Mr. Das further contended that filing of successive writ application would not improve the facts of the petitioner's case and the same would not confer jurisdiction on this Court and to entertain the writ petition for which the cause of action had arisen in the year 1996 and that the said dispute has been set at rest by the order of the Hon'ble Supreme Court. Accordingly, it was prayed that the writ petition should be dismissed and be thrown out at the threshold without wasting the valuable judicial time.

14. Learned senior counsel appearing for the Opposite Parties further contended that the petitioner has already attain 51 years of age, therefore, no relief could be granted for his employment dehors the rules. Moreover, it was also contended that so far the advertisement in the year 2014 is concerned, the petitioner could have applied for the post subject to fulfilling the eligibility criteria, in such eventuality, the authorities would have considered his case. However, since the petitioner had not applied for the advertisement in the year 2014, he has not been rightly considered by the Opposite Parties for appointment as Electrician. Furthermore, repeated representations filed by the petitioner before the authorities, have been attended to reply suitably by the MCL authorities. He further contended that no notification/recruitment notice was issued by the Opposite Parties in the year 2016-2017, which is contrary to the submissions

made by the petitioner. It was also argued before this Court that the benefit which had accrued in favour of the petitioner vide order dated 02.05.2008 of this Court got distinguished by the order dated 27.01.2011 passed by the Hon'ble Supreme Court whereunder order dated 02.07.2018 has been set aside. Therefore, the petitioner is not entitled to claim any benefits of the order dated 02.05.2008.

15. Further in reply to the averments made in Paragraph-19 of the writ petition that is with regard to vacancy position informed to the petitioner by the PIO of the MCL under Right to Information Act, it was submitted by learned senior counsel appearing of the Opposite Parties that against the advertisement vacancy in the year 2014, 147 candidates were offered employment, out of which 136 candidates have joined and resultantly, 11 vacancies could not filled up as the validity of the select list expired on 23.12.2016. He further contended that the contents of the earlier writ petition as well as representations are identical to the contents of the present writ petition and the last representation submitted by the petitioner, therefore, the present writ petition being a successive writ petition is not maintainable in law and the same is also devoid of merit as earlier writ petition filed by the petitioner was disposed by this Court. Finally, it was submitted by learned senior counsel appearing for the Opposite Parties MCL that the MCL being a leading PSU of the Government of India is being repeatedly harassed by the petitioner by filing successive writ petition thereby a lot of public time being wasted in considering the representation of the petitioner and he further contended that after order dated 02.05.2008 was set aside by the Hon'ble Supreme Court of India, the petitioner is not entitled to claim any merit pursuant to order dated 02.05.2008. Accordingly, he prayed that the petitioner be restrained from filing any frivolous writ petition of this Court.

16. Having heard the petitioner in person and Mr. S.D. Das, learned senior counsel for the Opposite Parties, on conspectus of the documents filed along with pleadings by the respective parties, and upon careful consideration of the background facts of the present case, this Court is of the considered view that no doubt a benefit had accrued in favour of the petitioner by order dated 02.05.2008 passed by this Court out of a writ petition filed at the instance of the petitioner, however, the same was set aside by the Hon'ble Supreme Court of India, therefore, whatever benefit had accrued in favour of the petitioner got extinguished by order of the Hon'ble Supreme Court. Thereafter, the petitioner had approached this Court on several occasions with a prayer to reconsider the entire issue. All those writ petitions have been disposed of or dismissed by this Court. In such view of the matter, this Court is of the considered view that so far the merits of the matter is concerned, the same has attained finality by order of the Hon'ble Supreme Court dated 27.01.2011 passed in SLP(C) No.14784 of 2008 whereunder the Hon'ble Supreme Court has set aside the judgment of this Court dated 02.05.2008. Therefore, there is no scope on the part of this Court to reopen the issue and re-examine the facts of the present case that too after lapse of several years. Accordingly, filing of a fresh writ petition is not

permissible and as such a writ of mandamus could not be issued by this Court in the facts and circumstances of the present case. Hence, no effective relief can be granted to the petitioner in the present application.

17. However, considering the background facts of the case and keeping in view the long drawn legal battle and the personal loss sustained by the petitioner, this Court deems it proper to dispose of the writ petition by directing the petitioner to approach Opposite Parties along with copy of the judgment, in such eventuality, it is open for the Opposite Parties to consider the case of the petitioner for appointment on contractual basis as an Electrician in MCL subject to the eligibility and the suitability of the petitioner. Further in the event, it is found that the petitioner is age barred then Opposite Parties shall also consider the case of the petitioner and give him engagement on contractual basis subject to availability of the post and requirement of the service of Electrician in MCL. It is further made clear that this direction shall not confer any automatic right on the petitioner and he cannot claim any post as a matter of right and it is only considering the background facts of the present case, this Court is of the considered view that the case of the petitioner needs to be considered sympathetically by the Opposite Parties.

18. With the aforesaid observation, the writ petition stands disposed of. However, there shall be no order as to cost.

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