

(1977) 08 OHC CK 0012
In the Orissa High Court
Case No : O.J.C. No. 40 of 1977

Nirmal Chandra Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-08-1977

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 309
Orissa Industries Service Rules, 1971 — Rule 21, 4(3)

Citation : (1978) 45 CLT 18

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : R.C. Patnaik and P.K. Misra, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

K.B. Panda, J.—The Petitioner, who is a Lecturer in the Orissa School of Mining Engineering, Keonjhar, has filed this writ application under Articles 226 and 227 of the Constitution of India claiming seniority over opposite parties 3 to 9 and praying for quashing of the Gradation List (Annexure-6) as also the order of the Under-Secretary to Government in the Industries Department, Orissa (Annexure-B) rejecting his representation.

2. The admitted facts are thus: The Petitioner entered into Government service as Head Master, Technical School, Chowdwar on 23rd December, 1965 and joined his duties on 1-1-1966 taking over charge with effect from 7-1-1966 (Annexure-1). Subsequently he was transferred and posted as Lecturer (Mathematics and Science) in the Orissa School of Mining Engineering, Keonjhar under Annexure-3. In the meanwhile, by a resolution of the Industries Department of Orissa on 2-10-1967 formed a combined cadre of Class II employees of the department belonging to the teaching side and officers belonging to the executive side, which is not disputed. On 23-4-1971, the Governor of Orissa framed rules under Article 309 of the Constitution of India for

regulating recruitment to the posts and conditions of service of persons appointed to the Orissa Industries Service called the Orissa Industries Service Rules, 1971. Rule 21 of the said Rules provides as follows:

(i) Seniority shall ordinarily be determined according to the position assigned by the Orissa Public Service Commission.

(ii) When, however, officers are recruited by promotion and by direct recruitment during the same calendar year, the promoted officers shall be considered senior to the Officers directly recruited irrespective of their dates of appointment:

The Petitioner admittedly was taken to be a recruit of the year 1965. Subsequent to his recruitment, there were other advertisements of the Orissa Public Service Commission (hereinafter called the Commission) and opposite parties 3 to 9 were selected and appointed to the posts in Class II service as reflected in Annexure-4. There is no dispute that opposite parties 3 to 9 were appointed with the concurrence of the Commission (opposite party No. 2), but subsequent to the appointment of the Petitioner. Consequently the Petitioner was shown as senior to opposite parties 3 to 9 till 1975 in the Civil Lists published up to that year (Annexure-5). But in the gradation list prepared in the year 1976 (Annexure-6) opposite parties 3 to 9 were shown as senior to the Petitioner occasioning this writ application on the rejection of the Petitioner's representation.

3. In the counter affidavit filed by the State of Orissa (opposite party No. 1) the seniority of opposite parties 3 to 9 is justified on the following averments:

....the Petitioner was appointed to Class II on 7-1-1966 as the Headmaster, Technical High School Choudwar against the vacancy arising during the year of 1965. The opp. parties Nos. 3 to 9, namely, Shri R.K. Jena, M. Hoda, B.C. Ray, S.K. Patnaik, B.C. Pradhan, Jagannath Das and Baleswar Prasad Singh were also appointed to Class II as Assistant Directors/ Lecturers on the recommendation of the Orissa Public Service Commission against vacancies arising during the year 1965 and advertisements issued in the same year. These opposite party Nos. 3 to 9 joined their respective posts on different dates in 1966. Thus, the opposite party Nos. 3 to 9 are also to be treated as the direct recruits of 1965. Thus the Petitioner and the opposite party Nos. 3 to 9 are to be treated as the direct recruits of 1965 irrespective of their dates of joining in their respective posts. Hence the Petitioner and opposite party Nos. 3 to 9 come within the purview of Clause (1) of Rule 21 of the Orissa Industries Service Rules, 1971. As aforesaid the combined cadre of Orissa Industries Service was formed with effect from 2-10-1967 and the cadre rule came into force from 23-4-1971. Thus, prior to the enforcement of the cadre rule, the recruitment was made as per vacancies at different times in year and the recruitment was not made in accordance with Rule 4(3) of the cadre rules.

Alternative gradation list of Class II Officers was referred to the Orissa Public Service Commission as per Rule 21 of the Orissa Industries Service Rules, 1971. The Orissa Public Service Commission intimated that the recruitment to the posts

in Class II not having been made in accordance with Rule 4(3) of the cadre rules, it was not possible for the commission to determine the calendar year of recruitment of the officers by direct recruitment and by promotion. The Commission, therefore; took the year of reference to the Commission as the calendar year of recruitment by each method (i.e. by direct appointment and by promotion) and fixed up the inter se seniority according to the position assigned by the Commission to the candidates recommended. Where there are two categories of posts which are filled up by direct recruitment, during one calendar year, the merit list has been drawn up on the basis of marks awarded to the candidates at the time of their respective interviews. Where several batches of recruitment have been made during the same calendar, year, the consolidated merit list for that year has been drawn up on the basis of marks awarded by the Orissa Public Service Commission. In view of the position explained in the foregoing paragraphs, the above criteria regarding fixation of inter se seniority in Class II was accepted by Government. According to the year of reference, the Petitioner and the opposite party Nos. 3 to 9 are the direct recruits of 1965, they were recruited to different categories of posts in Orissa Industries Service (Class II) in the same year and their inter se seniority has been determined on the basis of marks awarded to each of them at the time of their respective interviews having upon their individual merit and performance. Thus, the Petitioner has been placed junior to the opposite party Nos. 3 to 9 in the gradation list of Class II Officers. The inter se position of these officers as determined by the Orissa Public Service Commission has been shown in the Civil List of 1976.

4. The question for consideration is whether a person who has been earlier selected and appointed should be given preference or persons who have been recruited later in course of the same year but have fared better in the interview granted by the Commission. Obviously the department has altered the gradation list because it found that the performance of opposite parties 3 to 9 was better than the performance of the Petitioner as they appeared in one year but in different batches. This to us seems not proper. Firstly because, one who has joined earlier in service should be given due credit for his earlier appointment. Secondly because, and which is more important is that absolute uniformity in selection is impossible if candidates are interviewed in different batches with intervals, even though the body granting interview does not vary. Even if the same body sits at different times it may adopt different standards of marking. The proper test should have been to fix inter se seniority between candidates appearing in the same batch but not appearing in the same year in different batches. In this case, admittedly the Petitioner is an earlier recruit and so had been shown senior to opposite parties 3 to 9. It would be improper to ascertain their seniority on the basis of the marks received when the interview was not in one batch. As already indicated, the same standard of marking cannot be assured when interviews are made at intervals. It is common experience that when examinees appear in one batch in one year to maintain uniformity of standard in marking, invariably there is a Head Examiner who examines certain

papers and lays down a standard which other examiners follow. Unmistakably there is a purpose behind this system, namely, to ensure uniformity of marking. But in the instant case, that uniformity is impossible since interview is not made in one batch but in different batches which may be at great intervals, although within one year. Therefore, the gradation list which even though tentative which continued till 1975 was proper and not the one that altered the, position in 1976.

5. In this case, we may also point out that the Rules referred to above came in the year 1971. The appointment of the Petitioner was in 1965 and therefore this rule cannot apply to his case retrospectively. Advisedly, therefore, the learned Additional Standing Counsel did not rely on the Rules. But he took his stand on the marking given by the Commission. As we have already indicated that the interview having been made in different batches perfect uniformity is impossible the Petitioner's seniority should stand and opposite parties 3 to 9 should stand and opposite parties 3 to 9 should not be allowed to steal a march over him having joined the post later but for securing higher marks in the interview granted to them subsequently by opposite party No. 2.

6. In the result, therefore, we allow the petition, quash annexure-6 and direct that the Petitioner be shown senior to opposite parties 3 to 9. No costs.

R.N. Misra, J.

I agree.

Petition allowed.