
(1997) 01 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 9162 of 1995

O.R.E.D.A. Officers Association

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 24-01-1997

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (1997) 1 OLR 333

Hon'ble Judges : P.K. Mishra, J;D.M. Patnaik, J

Bench : Division Bench

Advocate : Manoj Mishra, for the Appellant; N. Prusty, Additional Government Advocate for O. P. No. 1 and M. Mohapatra, for O. P. No. 2, for the Respondent

Judgement

1.The petitioner, Secretary of the Orissa Renewal Development Agency (for short "Agency") Employees Association on behalf of its members, invokes extraordinary jurisdiction of this Court under Art. 226 of the Constitution of India challenging the inaction of opp. party No. 2 in not filling up different posts under the Agency by way of promotion and for regularisation of the services of the Assistant Engineers and for other appropriate reliefs.

2. The petitioner's case is, opp. party No. 2-Agency (a registered Society under the Societies Registration Act) was created by the Government of Orissa for the purpose of exploration, promotion and popularisation of non-conventional sources of energy in the State of Orissa. The members of the Governing Body of the Society are all Government officials nominated by the Government and the entire fund for the organisation is provided by the Government and thus the Agency being an instrumentality of the State and performs public duty is therefore amenable to the writ jurisdiction.

The members of the petitioner's Association are all qualified Engineers in different disciplines and were selected for appointment after being found suitable. The petitioner-Association claims that all the Junior Engineers and Assistant Engineers working under the Agency because of their long period of

service have become eligible for promotion to higher posts of Assistant Engineers and Executive Engineers respectively. But the opp. party No. 2 is filling up the posts on deputation from the Government without considering the promotion of the members of petitioner-Association. It is their further case that the Governing Body in its 17th meeting resolved that the promotion to the post of the Assistant Engineer should be at the ratio of 33% and accordingly a set of draft rules for recruitment and promotion were framed. But till now such rules have not been put to work and it is claimed by the petitioner-Association that in view of the arbitrary action of opp. party No. 2 in getting staff on deputation, the members of the petitioner-Association are deprived of their legitimate right for promotion.

3. Opp. party No, 2. through its General Manager (Administration) has filed counter wherein challenge has been made to the maintainability of the writ petition on the ground of absence of locus standi. A ground has also been taken that the Agency being a registered Society is an autonomous body and independent of the control of the Government and the same is not amenable to the writ jurisdiction.

So far as the eligibility for promotion of officers of the Association is concerned, It is pleaded, that as a matter of fact none of the Engineers as shown under Annexure-2 have acquired more than 10 years experience so as to be considered for promotion to the post of Executive Engineer and therefore the claim of the petitioner-Association for promotion of their members to the posts of Assistant Engineer and Executive Engineer is rather premature it is further desired that the Governing Body in its 17th meeting did not consider creation of promotional avenues for Junior Engineers and Supervisors, but it proposed that promotion of Junior Engineers to the maximum extent of 33 % of the total vacancies and further the Junior Engineers should have the qualification of Diploma in Engineering. It is given out that rules relating to recruitment and conditions of service are yet to be finalised by the Agency.

4. The State of Orissa through Senior Scientist In the Department of Science and Technology has filed a counter almost in the same line as that of opp. party No. 2. It is stated that the petitioner-Association which consists of Junior Engineers cannot be substituted in place of Experts or Specialists brought to the Agency on deputation, since experience earned by the members of the petitioner-Association in the technical wing is insufficient to give any technical advice. The State quoted example that Engineers in the Department of Government are promoted only after rendering service of about 20 years, whereafter they are promoted to the rank of Executive Engineer and therefore since most of the members of the petitioner-Association joined their service in the OREDA in between 1985 and 1988, it is apparent that they have put in hardly 10 years of service and therefore with such little experience they have not made themselves eligible for consideration for promotion to the post of Executive Engineer. It is further their case that however in exceptional cases considering merit and suitability of some of the Junior Engineers having less experience have been

promoted to the next higher post by the OREDA.

5. Mr. Manoj Mishra advanced extensive argument with reference to various documents annexed to the writ petition. Mr. M. Mohapatra, learned counsel for opp. party No. 2 and Mr. Prusty, learned counsel for the State countered the argument of Mr. Mishra submitting that in view of the lack of proper experienced officers of the petitioner Association in the technical discipline, it would be hazardous to promote them to higher posts in the cadre of Executive Engineer, General Manager (Technical), etc. inasmuch as the very nature of the work undertaken by the OREDA is to ensure proper scientific research and development for generating non conventional energy for which expert advice is necessary. Therefore, with a view to safeguard the standard and efficiency in the working of the OREDA, opp. party No. 2 should not be prohibited to bring efficient and desirable officers on deputation and also recruit suitable candidate by direct recruitment. With regard to the absence of promotional avenue claimed by the petitioner-Association, learned counsel for the opposite parties submitted that since the rules relating to recruitment and promotion to various posts under the OREDA are not finalised, the petitioner-Association cannot claim promotion particularly when they have not gained sufficient experience for such promotion.

The rival contentions need examination.

6. So far as the maintainability of the writ petition against the opposite parties is concerned, the State in its counter at para-4 admitted the creation of the Agency by the Government Resolution dated 29/30th March, 1984 in the Department of Science, Technology and Environment in the Gazette notification as under Annexure-1, Clause (4) of the Resolution shows that the members of the Governing Body of the Agency then constituted were all high administrative functionaries of the State and Clause (6) mentions that the Department of Science, Technology and Environment would be the Administrative Department in respect of the Agency. Therefore, there can hardly be any doubt that the Agency is an instrumentality of the State as defined under Art. 12 of the Constitution of India and, therefore, is amenable to the writ jurisdiction.

7. The petitioner under Annexure-2 has furnished names of 21 technical staff, such as, Junior Engineers, Assistant Engineers and Supervisors serving under opp. party No. 2 who claim the promotional benefits. In the counter vide sub-para (III) of para.3, opp. party No. 2 stated that most of the members as shown in Annexure-2 were appointed during 1985-87. In sub-para (IV) of para-3 of the said counter, opp. party No. 2 averred that the Agency is seriously contemplating to finalise rules of recruitment and conditions of service and further stated that pending framing of appropriate service rules, the management of OREDA has given promotion to some of the deserving persons.

Annexure-4 in the writ petition is a copy of the proceeding of the 17th meeting of the Governing Body held on 6-9-1991 and in item No. 24 it was resolved that before considering the promotional avenue for the posts of Junior Engineers/

Supervision working under OREDA specific set of rules for engineering personal working under to be framed. This resolution was pursuant to the proposal under Annexure -3 Wherein suggestion was made that the promotion of the Junior Engineers in the OREDA to the next higher post of Asst. Engineers should be in the proportion of 33% of the total vacancies.

8. Crux of the point for decision is while opp. party No. 2- Agency has on its role person as Junior Engineers and Assistant Engineers They are not given promotion in spite of the fact that they have been serving for a quit some time past, i.e. about 10 years in their respective posts. Admittedly though decision has been taken in the Governing Body meeting of the Agency as far back on 6-1-1991 for framing rules and this has been again reiterated in the more than five years have elapsed, no rules have been framed and the counter-affidavit also does not assure as the shortest possible time within which the agency would frame such rules. The inaction on the part of the Agency should not be encouraged to the detriment of the prospected of promotional benefit of the employees of the Agency when they have already rendered considered period of service. In absence of rules , this Court also cannot direct to give promotion to any of the employees to higher posts, because various factual aspects relating to the promotion such as service career, suitability, experience, etc have to be taken into consideration by the authority before considering for promotion. Therefore , it will be rules relating to recruitment and promotion of employees under the Agency so justiliably claimed by them

9. In the result, we allow this writ petition and direct both the opposite parties, the State and the OREDA to see that rules relating to recruitment and promotion of the employees are framed within a period of six months from the date receipt of our order.

We make it clear that untill the rules are framed if necessary so arises, opp. party No. 2 will be free to fill up the promotion posts form, among the Junior Engineers And Assistant Engineers, as the case may be, but limiting the same to maximum 33% as per the draft proposal. Further the order would not prevent the opposite parties to bring on deputation to fill up the posts of General Manager {Technical}, Superintending Engineer and Executive Engineer/Project Director for the smooth functioning of the Agency.

10. With the aforesaid observation and direction the writ petition is disposed of.

P.K. Misra, J.

11. I agree.