
(1986) 07 OHC CK 0028

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2773 of 1985

Pratap Chandra Rout and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-07-1986

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15
Constitution of India, 1950 — Article 136, 226, 227, 323A

Citation : (1986) 62 CLT 244 : (1986) 2 OLR 242

Hon'ble Judges : H.L. Agrawal, C.J; L. Rath, J

Bench : Division Bench

Advocate : G.A.R. Dora, for the Appellant; R.K. Patra, Additional Government Advocate for Opp. parties 1 and 2, for the Respondent

Judgement

H.L. Agrawal, C.J.—In this writ application the question that falls for our determination is as to whether the provisions of the Administrative Tribunals Act, 1985 (hereinafter called "the Act") would not apply to a case where the dispute and complaint is with respect to the recruitment, or, for that matter, appointment in the service itself of a person.

2. The facts :

In pursuance of an advertisement, the petitioners had applied for recruitment as Sub-inspectors of Police through the Employment Exchange. About 990 candidates had appeared at the written test, and a viva voce test was held in February, 1984. Initially, only 354 candidates were called for the viva voce test, but subsequently 240 more candidates were called and the Central Selection Board published a select list of 215 candidates including the petitioners in February, 1984. Against the 134 existing vacancies, 110 candidates were selected for appointment and sent for training. However, some difficulty arose with respect to the appointment of the remaining candidates in the select list and they were not appointed.

The grievance of the petitioners is that had the said vacancies also been filled up, petitioners Nos. 1, 3 and 4 would have got the appointment, It is further contended that although the life of the panel was for one year, names of fresh candidates were called for from the Employment Exchange in the month of October, 1984 to fill up the other vacancies, and appointments were made from amongst the new recruits against the old existing vacancies. In that view of the matter, the petitioners have made a prayer for issuance of an appropriate rule directing opposite parties 1 and 2 to appoint them and to quash the appointments of opposite parties 3 to 9.

3. This writ application was filed on 15th November, 1985 and on 30th November, 1985 notice on admission and hearing was issued when it was ordered that any appointment made in the post of Sub-Inspector of police shall be subject to the result of this writ application.

In the meantime on 14th July, 1986 an Administrative Tribunal under the provisions of the Act was established in the State vide Notification of 4th July, 1986 of the Government of India. When the case was taken up on 17. 7. 1986, an objection was taken by the learned Additional Government Advocate that in view of the provisions of the Act, the case has now to go to the Tribunal.

Learned counsel for the petitioners on the other hand disputed the stand of the Additional Government Advocate and submitted that since the question in issue cropped up before the appointment was made, the provisions of the Act will have no application to this case.

Counsel for the parties were fully heard and we are, therefore, disposing of this application at this stage itself.

4. For answering this question let us first see to the preamble of the Act which says :

"...An Act to provide (or the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services) and for matters connected therewith or incidental thereto."

The preamble is in line with the scheme of Art. 323A inserted by the 42nd Amendment of the Constitution of India whereunder the Parliament was empowered by Law to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any Corporation owned or controlled by the Government.

Section 15 of the Act is also relevant. It speaks of the jurisdiction, powers and authority of the State Administrative Tribunals and empowers the Administrative Tribunal for a State "to exercise on and from the appointed day all the

jurisdiction, powers and authority exercisable immediately before that day by all Courts (except the Suprerrie Court) under Art, 136 of the Constitution in relation to:

(a) recruitment and matters concerning recruitment to any Civil Service of the State or to any civil post under the State:

(b) xx xx xx

(c) xx xx xx

Learned counsel for the petitioners contended that the provisions of the Act would have application only after a person is appointed in the service and not before that as according to him, the expressions "recruitment and conditions of service of persons appointed to public services" in Art. 323A of the Constitution should be read as a whole and if done so it would take to the question to adjudicate the conditions of service and unless a person happens to be already in the service, there cannot be any adjudication of the conditions of his service. In other words, his contention is that by use of the word "and", the legislature made the entire matter as one whole and the expression "recruitment" cannot be read separately.

I am afraid, the construction put by the learned counsel for the petitioners is entirely erroneous and misconceived. If such a construction is put, which is in the context and any rule of construction is not feasible, it will frustrate one of the purposes for which the Tribunal has been established and give rise to division of jurisdiction in regard to matters pertaining to "service". The entire exercise for establishment of Administrative Tribunals by amending the Constitution was to take away the cases relating to "service" from the jurisdiction of the High Courts and put them within the fold of a separate forum where they could be adjudicated more speedily, The Court must therefore put a construction which is harmonious and furthers the aim and object of the legislation instead of impeding the same. The legislative intendment to my view is to transfer to the Administrative Tribunal all cases concerned with the disputes relating to the stage of recruitment, i. e.; prior to the actual appointment. There has been so great laxity in the use of the terms "and" and "or" that Courts have generally said that the words are inter-changeable and that one may be substituted for the other, if to do so is to make it consistent with the legislative intent.. In view of construction of the preamble and the scheme of the Act as indicated above, if the contention of the learned counsel for the petitioners is accepted, then obviously a part of the object of the Act is bound to be defeated. The word "recruitment" cannot suggest that it must be understood in relation to a completed appointment and not to a stage where the appointment is still under consideration and is being processed ultimately leading to the appointment in service. It is only after the culmination of the process of recruitment that an appointment takes place. "Recruitment" and "appointment" therefore must mean two separate stages, quite distinct from each other. Therefore, in the words

"recruitment and conditions of service of persons appointed", the word "appointed" would relate only to "conditions of service" and not to the word "Recruitment" which is a stage prior to getting into service. I also find support for the view from a decision of the Punjab & Haryana High Court in Gurudev Singh v. State of Punjab, 1968 Service Law Reporter 538 According to the Chambers dictionary, the word "recruit" means.

" a new supply (of men, money, health etc.); to obtain fresh supplies; to enlist new soldiers or to reinforce or to replenish or to restore or to reinvigorate or to enlist or raise."

So "recruitment" is only for the purpose of making up the deficiency which occurs in the cadre. "Appointment" means an actual act of posting a person to a particular office. Both the terms, cannot be said to be synonymous. I am, therefore, unable to accept the submission that the expression "recruitment" here should signify actual "appointment."

5. Besides the above hurdle, the petitioners have also challenged the appointment of opposite parties 3 to 9. By no stretch of imagination, this relief can now be adjudicated upon by this Court as the power has since been vested in the State Administrative Tribunal exclusively.

6. The application must be transferred to the State Administrative Tribunal. Order accordingly.