
(2008) 01 OHC CK 0013
In the Orissa High Court

Rabindra Kumar Satpathy

APPELLANT

Vs

OREDA

RESPONDENT

Date of Decision : 22-01-2008

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2008) 2 OLR 604

Hon'ble Judges : B.P. Das, J;A.K. Samantaray, J

Bench : Division Bench

Judgement

1. Heard Dr. A.K. Rath, learned Counsel for the petitioners and Mr B.K. Dash, learned Counsel for the O.Ps. The petitioners being fifty-five in number who are working as Technicians under the Orissa Renewable Energy Development Agency (in short, "OREDA") have filed this writ application with a prayer to direct the O.Ps. to create adequate promotional avenues for them

2. The case of the petitioners is that the petitioners joined the services under the establishment of OREDA as Technicians during the period between 1984 and 1986. Petitioner Nos. 1, 27, 35, 37 and 51 came from the Agricultural Department of the State Government on deputation and were later on permanently absorbed as Technicians on 1.5.1984. Since the date of their joining, the petitioners have been working as such and as there was no promotional avenue available for them, they filed the present writ application for the relief indicated above.

3. A counter affidavit has been filed on behalf of the O.Ps., wherein the engagement of the petitioners has not been disputed, but a stand has been taken that OREDA is not amenable to the writ jurisdiction of the Court as it is not a State within the meaning of Article 12 of the Constitution of India.

4. In this regard, looking at paragraph-3 of the writ application we find that though the Organization was registered under the Registration of Societies Act, it is totally manned and managed by the Officials of the State Government,

namely, Additional Development Commissioner of the State, Secretary and Additional Secretary of the Department of Science, Technology and Environment, Secretary, Irrigation and Power Department, now known as Water Resources Department, Secretary, Finance Department and Additional Director, Agriculture (Engg.) are members of the Governing Body OREDA-O.P.1. O.P.1 for its funds totally depends upon the grants of the State Government and Central Government. As per the Memorandum of Association, the Governing Body of O.P.1 is bound to carry out any direction of the State Government. Further its functioning is subject to monitoring by the Department of Science, Technology and Environment/

5. In view of the aforesaid facts, there is no doubt that the State has a deep and pervasive control over O.P.1 and therefore, it is a "State" under Article 12 of the Constitution of India. So the objection raised by the O.Ps. to the maintainability of the writ application does not hold good.

6. In the counter affidavit, it is also stated that the petitioners have never approached the authority by way of any representation and the Service Rules impugned in this writ application have been prepared after due consultation with the Board of Directors in the Governing Body of OREDA and no allegation has been received against the said Service Rules from any quarter. The Service Rules have been duly approved by the Board of Directors. However, the dispute with regard to Service Rules could be sorted out in OREDA itself and if there is any grievance of the staff of OREDA the same can be sorted out in the meeting of the Board of Directors.

7. On a bare perusal of the prayer of the petitioners in this writ an, we find that their prayer is to provide them adequate n avenues.

8. In his regard, Mr. B.K. Dash, learned Counsel for the O.Ps., r attention to paragraph-6 of the counter affidavit, wherein it is averred:

6. ...OREDA Service Rules contemplates that a functionary who, though suitable for higher post, continues in a post for more than fifteen years or stagnates at the maximum stage of his pay scale for not less than one year due to lack of vacancy in the higher post, may be considered for advancement of grade and fixation of his pay in the next higher pay scale prevalent in OREDA Service Rules.

In paragraph-8 of the counter affidavit, it is stated that in absence of adequate creation of funds in OREDA, it is otherwise not viable to provide minimum incentives to the employees beyond their eligibility. It is stated that the provision for incentives and disincentives has been made under Clause-7 of the OREDA Rules whereby the employees of enterprising quality are normally awarded with extra financial benefits. It is further stated that in order to cope with the promotional prospect of the employees, OREDA has incorporated the aforesaid Clause wherein it is stated that OREDA shall appreciate the good work of functionaries by providing incentives and take to task those functionaries whose performance is not up to mark by imposing disincentives in such manner as may

be decided by the Chief Executive/Chairman from time to time.

9. Mr. Dash also submits that the petitioners at this stage cannot be promoted as they are working in terms of the Service Rules and policy decision of the Board of Directors. Further, promotion being not a matter of right, the petitioners are not entitled to get the same.

10. counter affidavit is also filed on behalf of O.P.2-Chief Executive of OREDA and in paragraph-6 it is as stated:

6. That be that as it may, the Agency has taken up steps for introducing Voluntary Retirement Scheme (V.R.S.) on account of acute financial crunch and since the payment for the staffs sole depend upon the creation of funds by the Agency, at present the Agency is not in a position to meet the advancement of scales. However, the advancement of scales is also in active consideration of the Agency, and as per eligibility the same could be extended.

O.P.2 in the counter affidavit has also taken a stand that the promotional avenue is not available to the petitioners.

11. In this regard we may refer to a decision of the apex Court in Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another, , wherein it is observed:

that the person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well... Every management must provide realistic opportunities for promising employees to move upward. The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors.... There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions?

12. Dealing with a/similar point in Dr. Ms. O.Z. Hussain Vs. Union of India and others, the apex Court in paragraph-7 observed that this Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service.

13. This Court also in Pramod Kurna Singh v. Industrial Promotion and Investment Corporation of Orissa Ltd. and Ors. 1995 (II) OLR 529, relying upon the decision in Dr. Ms. O.Z. Hussain (supra), directed the IPICOL to consider the grievance of the petitioner and other persons similarly situated and explore the possibility of avoiding stagnation in the present post for long.

14. Relying upon the aforesaid decisions of the apex Court as well as this Court, we direct the O.Ps. to consider the grievance of the petitioners and explore the possibility of avoiding stagnation in the present post and pass necessary orders within a period of three months from the date of communication of this order. It goes without saying that the petitioners are entitled to the incentive benefit during the period of stagnation as applicable under Clause-7 of the Service Rules of OREDA. The writ application is disposed of accordingly. Issue urgent certified copy.