
(1999) 08 OHC CK 0040

In the Orissa High Court

Case No : Original Jurisdiction Case No. 13266 of 1998

Raghunath Patra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 31-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1999) 88 CLT 658 : (1999) 2 OLR 572

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

Bench : Division Bench

Advocate : Manoj Mishra, P.K. Das, B. Mishra, S.K. Pradhan and S.K. Das, for the Appellant; Jitamitra Mohanty and A.K. Panigrahi (OP-2 to 4), for the Respondent

Judgement

P.K. Misra, J.—It is said misfortune never visits alone. It seems in the case of the petitioner various misfortunes have visited him on multiple occasions. The petitioner is a physically handicapped person both of his hands having been amputated and both of his legs being physically deformed he has to take the help of artificial limbs both for the purpose of walking and also for the purpose of doing anything with his amputated hands.

2. The Orissa State Electronics Development Corporation Limited a State Government Undertaking (hereinafter called the "OSEDG") in a commendable spirit had initially appointed the petitioner as Messenger on ad hoc basis for a period of eighty-nine days at a time since 12.4.1988. The appointment was initially on daily-wage basis and subsequently on the basis of consolidated salary and the services of the petitioner were being extended from time to time with the inevitable break of a day. It appears that subsequently, for the purpose of recruitment of Messenger/ Watchman/Helper in the OSEDG and its subsidiaries, physical test and interview were held by a Selection Committee, wherein the petitioner was placed sixth in the Merit List of 13 selected candidates, as is evident from Annexure-B/3. Thereafter the petitioner was offered appointment

as Helper under the ELCO Communication System Ltd. (hereinafter referred to as the "ELCO") which was again another undertaking of the State Government and was, in fact, a subsidiary of OSEDC. Pursuant to such letter of appointment dated 4.1.1991 as per Annexure-C/3, the petitioner joined the said post on 11.1.1991. Subsequently the petitioner made several representations to the OSEDC for transferring him from ELCO to OSEDC, as is evident from Annexures-2 and 3. In such representations it had been indicated that the petitioner being a physically handicapped person was entitled to be considered on priority basis keeping in view the various roster points. The petitioner again made representation as per Annexure-4 to take him back to OSEDC. In the said representation, it was, inter alia, indicated that even the wife of the petitioner was an orthopaedically handicapped lady as her left leg had been amputated below the knee. All these representations remained undisposed of. Subsequently, cruel hands of misfortune again befell on the petitioner in the shape of seizure u/s 29 of the State Financial Corporation Act in respect of the unit. Notice of termination of services of the petitioner had been published in newspaper in August, 1998 as evident from Annexure- H/3. In the above back-ground of unfortunate facts and events, the petitioner has prayed for a posting under the OSEDC or in the alternative for his absorption in any suitable post under opposite party No. 5.

3. Counter affidavit has been relied ah behalf of opp. party No. 3, the ELCO. Shri Jitamitra Mohanty, learned counsel, however, states that the stand of opposite parties 2 and 4 who represent OSEDC is the same.

4. It has been submitted on behalf of opp. parties 2, 3 and 4 that all the vacancies in Class-IV posts have to be filled up by candidates belonging to S.T./ S.C. category as appropriate number of such candidates had not been appointed on earlier occasions and there was no vacancy to absorb the petitioner at any point of time. It has been submitted that though the petitioner was initially appointed on humanitarian ground, the subsequent termination due to closure of ELCO was inevitable. It has been further submitted that the reservation for the physically handicapped was not available to be considered as the roster point for a physically handicapped person like the petitioner was only 69 and 4th. roster point was, in fact, for blind person. The learned counsel for the petitioner, on the other hand, submitted that it is apparent from the Gazette notification as well as Government Resolution that in the absence of any blind person or deaf person, the fourth point of reservation in the roster was to be made available to a physically handicapped person like the petitioner. It is not disputed by the counsel appearing for opp. parties 2, 3 and 4 that presently one Class-IV post is lying vacant, but petitioner may not be entitled to the same in law.

5. The counsel for the petitioner had submitted that the earlier representation of the petitioner for transfer to OSEDC could have been considered. It is further submitted that in the year 1991 when the fourth reservation point in the roster was available, there was no justification for appointing nine persons belonging to S.C./S.T. ignoring the claim of the petitioner. At the present juncture we are not

inclined to consider these submissions and counter submissions made by counsel for petitioner and counsel for opp. parties 2 to 4. This is not a fit case to find fault at this stage. It is apparent that even opp. parties 2 and 4 have earlier acted with humanitarian approach. The situation faced by the petitioner is evidently an unfortunate one and instead of making a legal approach, a humanitarian approach is called for. The petitioner appears to be without job since more than a year for circumstances evidently beyond his control. Instead of going into the question as to whether there was any justification on the part of opp. parties 2 and 4 in not regularly absorbing the petitioner against any of the roster points, we think interest of justice would be served by directing opp. parties 2 and 4 to absorb the petitioner against the vacant post and by further directing that such absorption will be considered as a fresh appointment. The petitioner shall be permitted to join at a place to be fixed by opp. parties 2 and 4 within a period of one month from today. Needless to mention that while posting the petitioner, the authorities would evidently consider the physical deficiencies of the petitioner and give appropriate posting/work accordingly. Since this order is being passed on humanitarian consideration of peculiar facts and circumstances including the fact that a post is now available, it is obvious that this decision cannot be considered as a precedent. Subject to the aforesaid direction, the writ application is disposed of.

6. We place on record our appreciation of the fair manner in which the case has been placed by learned counsels for both sides, particularly, the learned counsel for the opp. parties 2 to 4. A copy of this judgment be handed over to counsel for opp. parties 2 to 4 for information and necessary action.

D.M. Patnaik, J.

7. I agree.