

(2009) 01 OHC CK 0029
In the Orissa High Court

Sandhyarani Sahoo

APPELLANT

Vs

District Judge and Another

RESPONDENT

Date of Decision : 13-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9

Citation : (2009) 107 CLT 160 : (2009) 1 OLR 617 Supp : (2009) 5 SLR 135

Hon'ble Judges : B.S. Chauhan, C.J.; I. Mahanty, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This Writ Petition has been filed for seeking a Dr. B.S. Chauhan, C.J. V direction to the Opposite Parties for appointing her as a Stenographer III the judgeship of Balasore against the quota reserved for women.

2. The facts and circumstances giving rise to this case are that on 4th March, 1997 an advertisement was made for filling up five existing vacancies of Junior Stenographers and One vacancy which was likely to occur in near future. Petitioner applied and appeared in the test. However, her name found place at serial Nos. 10 in the merit list. The appointment was made strictly on the basis of merit. Petitioner's grievance is that since she belongs to the general category (women), she should have been offered the appointment in reserved category. Hence this petition.

3. Mr. Mohapatra, Learned Counsel for the Petitioner has submitted that the reservation for women candidates also applies in the instant case as roster point is available to the candidates belonging to general category (women). Thus, the petition deserves to be allowed.

4. However, Mr. Swain, Learned Additional Government Advocate has submitted that not a single successful candidate had been impleaded and subsequent to the selection of 1997 further selection to the post of Junior Stenographer could have been held and therefore, at this stage no relief can be granted to the Petitioner

and for non-impleading of necessary parties the writ petition is not maintainable. Petitioner is now 39 years of age. She cannot be offered appointment. Hence, the petition is liable to be dismissed.

5. We have heard rival submissions of Learned Counsel for parties and perused the record.

6. Admittedly, the selection was made in 1997. At that time the Petitioner was eligible to apply for the post and appeared in the test. However, her name could not find place in the top of the list of successful candidates. Though claims and counter claims have been made regarding the roster point etc., but the fact remains that all the posts had been filled up and subsequent to 1997 further selection has been made and the posts have been filled up.

7. It is the settled legal proposition that the Court cannot direct to fill up the vacancy over and above the number of vacancies advertised. (vide *State of Bihar and others Vs. The Secretariat Assistant Successful Examinees Union* 1986 and others, ; *Union of India and Ors. v. Ishwar Singh Khatri and Ors.* 1992 Supp. (3) SCC 84; *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, ; *Ashok Kumar and Others Vs. Chairman, Banking Service Recruitment Board and Others*, ; *Gujarat State Dy. Executive Engineers" Association Vs. State of Gujarat and Others*, ; *Prem Singh and Others Vs. Haryana State Electricity Board and Others*, ; *Surinder Singh and Ors. v. State of Punjab and Ors.* AIR 1998 SC 18; *Virender S. Hooda and Others Vs. State of Haryana and Another*, ; *Kamlesh Kumar Sharma Vs. Yogesh Kumar Gupta and others*, ; *Sri Kant Tripathi and Others Vs. State of U.P. and Others*, ; *State of Punjab Vs. Raghbir Chand Sharma and Another*, ; *State of Jammu & Kashmir and Others Vs. Sanjeev Kumar and Others*, ; *State of U.P. and Others Vs. Rajkumar Sharma and Others*, ; and *Ram Avtar Patwari and Others Vs. State of Haryana and Others*,). Similar view has been reiterated by the Hon"ble Supreme Court in *Mukul Saikia and Ors. v. State of Assam and Ors.* AIR 2008 SCW 7971.

8. The principles enshrined in the proviso to order 1 Rule 9 of the Code of Civil Procedure, which provides that non- impediment of necessary party is always fatal, applies herein. Not a single person duly selected by the Opposite Parties has been impleaded as Respondent herein, though at least the last selected candidate in general category is a necessary party. Thus, in order to adjust the Petitioner, at least the last selected candidate in general category has to be removed, if illegally appointed. He is admittedly not a party before us. No order adversely affecting him can be passed behind his back as it would be violative of the principles of natural justice. It is settled legal proposition that no order to the detriment of a person can be passed without hearing him. (Vide *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, ; *Ishwar Singh v. Kuldeep Singh; Bhagwanti and Ors. v. Subordinate Services Selection Board, Haryana and Anr.*, 1995 Supp (2) SCC 663,; *Central Bank of India Vs. S. Satyam and others*, ; *J. Jose Dhanapaul Vs. S. Thomas and Others*, ; *Arun Tewari and Ors. v. Zila Mansavi Shikshak Sangh and Ors.* AIR 1998 SC 331; *Azhar Hasan and Others Vs.*

Distt. Judge, Saharanpur and Others, ; Ram Swarup and Others Vs. S.N. Maira and Others, ; Shri L. Chandrakishore Singh Vs. State of Manipur and Others, ; Mohd. Riazul Usman Gani and Others Vs. District and Sessions Judge, Nagpur and Others, ; Nirmala Anand v. Advent Corporation (P) Ltd. and Ors. AIR 2002 SC 2090; M.P. Rajya Sahkari Bank Maryadi Vs. Indian Coffee Workers" Co-operative Society Ltd. and Others, ; Ramrao and Others Vs. All India Backward Class Bank Employees Welfare Association and Others, ; and Indu Shekhar Singh and Others Vs. State of U.P. and Others,).

In K.H. Siraj Vs. High Court of Kerala and Others, , the Apex Court held as under:

The Writ Petitions have also to fall on the ground of absence of necessary parties in the party array. Though the Appellant-Petitioners contend that they are only challenging the list to a limited extent, acceptance of their contention will result in a total rearrangement of the select list. The candidates will be displaced from their present ranks, besides some of them may also be out of the select list of 70. It was, therefore, imperative that all the candidates in the select list should have been impleaded as parties to the writ petitions as otherwise they will be affected without being heard.

Similar view has been reiterated by the Supreme Court in Uttar Pradesh Gram Panchayat Adhikari Sangh and Others Vs. Daya Ram Saroj and Others, .

9. It is not a case where validity of law is under challenge as such a course is not warranted in that situation. (Vide Makhanlal Waza and Others Vs. State of Jammu and Kashmir and Others, ; The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others, ; a. A. Janardhana Vs. Union of India (UOI) and Others, ; and Govt. of A.P. and Another Vs. G. Jaya Prasad Rao and Others,).

10. In view of the above, law can be summarized that in case the validity of the law is under challenge, impediment of necessary parties may not be warranted. All the persons against whom a detrimental order is passed have to be impleaded, otherwise they would not be bound by such adverse order.

11. In the instant case, as necessary parties have not been impleaded, no relief can be granted to the Petitioner at this belated stage. Petitioner is already 39 years of age.

12. The Writ Petition is accordingly dismissed.

I. Mahanty, J.

I agree