
(2015) 06 OHC CK 0019

In the Orissa High Court

Case No : Writ Petition (C) No. 25634 of 2012

Sarojkanta Mohapatra and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-06-2015

Acts Referred:

Citation : (2015) 3 LLN 254 : (2015) 2 OLR 367

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Advocate : B.N. Bhuyan, Addl. Government Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

Biswanath Rath, J.—The fact as revealed from the pleadings of the parties is that the petitioners are all Local Self Government diploma holders and eligible to be considered for employment in Local Fund Service Cadre (for short "L.F.S. cadre") post under the local bodies. Before approaching this Court, the petitioner No. 1 had earlier approached this Court in O.J.C. No. 5379 of 2000 seeking direction against the opposite parties therein to sponsor his name and consider his candidature as Junior Assistant for L.F.S. Cadre post relaxing the age limits. On their appearance, the opposite parties filed their counter disclosing the fact that all the eligible candidates including the petitioner have already been sponsored by the employment exchange and on their participation, list of eligible persons has already been notified under the select list. Considering the rival submissions of the parties, this Court disposed of the O.J.C. No. 5379 of 2000 by order dated 5.12.2007 directing the State Government in Urban and Housing Development Department to take steps in terms of the affidavit and complete the entire exercise within a period of three months from the date of communication of the order. The petitioners further submitted that the select list as referred to hereinabove contained altogether 181 candidates including the name of the present petitioners (Annexure-1). Since the direction of this Court in the

aforesaid writ petition was not worked out within the reasonable time, the petitioners were compelled to file CONTC No. 696 of 2008 and this Court after hearing the parties in the dispute and without expressing any opinion as to whether it is open for the Urban Development Department to take any such reservation or not thereby reducing the number of posts for direct recruitment disposed of the contempt petition with a direction to the Secretary, Housing and Urban Development Department and Secretary, Finance Department to take a decision and implement the same within a period of two months from the date of communication of the order. Finding no development in the matter thereafter, the petitioner No. 1 again filed CONTC No. 1070 of 2011 for non-compliance of the order of this Court in O.J.C. No. 5379 of 2000 and CONTC No. 696 of 2008. This contempt petition was also disposed of by order dated 25.7.2012 directing the opposite parties to fill up the vacant 40 post under unreserved category out of the select list and beyond that there being no vacancy, the question of implementation of order does not arise. However, since there were 40 unreserved vacancies at that moment, the High Court disposed of the contempt petition confining to the appointment of 40 posts and further held that there is no question of further stretching of the merit list. The petitioners alleged that in the meantime about 64 vacancies are available in the department and even though the select list clearly indicated that the list remained valid till the list remains exhausted and yet there is no steps taken by the opposite parties for giving appointment to the petitioners and the other selected persons find place in the select list under Annexure-1. By filing this writ petition, the petitioners sought for a direction against the opposite parties to take all possible steps for giving appointment to the petitioners by exhausting the select list under Annexure-1 and making offer of appointment to the petitioners in the post of Junior Assistant (L.F.S. Cadre) or alternatively to extend the benefit of employment against the vacancies arose/existing by 25.7.2012.

2. Per contra, the opposite party Nos. 1 and 2 on their appearance filed a counter affidavit indicating therein that the statements made by the petitioners in relation to the order passed by this Court in CONTC Nos. 696 of 2008 and 1070 of 2011 are not correct. Necessary appointment orders in favour of the candidates of the merit list holders of 2001 was issued keeping in view the available vacancies in the post of Junior Assistant against unreserved/reserved category under direct recruitment quota and submitted that as the name of the petitioners appeared in the bottom of the merit list, there is no scope for issuance of appointment order in their favour and as such they have not committed any illegality in the matter of appointment. After receipt of the direction from this Court, a meeting was taken up by the Chief Secretary, Orissa and as per the decision, the matter was referred to Law Department for their view and subsequently to Finance Department for concurrence. A joint meeting was held with Finance Department wherein it was decided to fill up 56 (25 unreserved + 31 reserved category) number of vacancies out of L.S.G.D. merit list holders of 2001 following the principle of reservation and after that the select

list would stand cancelled and since there were only 2 reserved category candidates in the merit list, orders for appointment were issued in favour of 27 candidates from the merit list includes (25 unreserved + 2 reserved). The opposite parties next contended that their action is strictly in terms of the direction of this Court in the contempt petitions referred to hereinabove and in compliance of the direction of this Court; particularly in the matter of direction relating to no scope for further stretching of the merit list. It is in these premises the opposite parties 1 and 2 contended that in view of the order passed by this Court in the contempt proceeding, there was no chance for the opposite parties to keep the select list of 2001 alive and therefore, there is no illegality in the matter of appointment.

3. Following filing of the counter by the opposite party Nos. 1 and 2, the petitioners filed their rejoinder inter alia alleging therein that the petitioners have been selected by a duly constituted Selecting Committee constituted by the Government and their names find place in the panel of selected candidates as prepared in 2001 and available at Annexure-1. The petitioners also contended that in view of the specific clause contained in the select list particularly to the effect that the "panel of L.S.G.D. holders shall remain valid till it is exhausted, there is no question of ignoring the candidates in the select list". Besides, the petitioners also contended that they have applied under the provisions of Right to Information Act on the vacancy position of Junior Assistant as on 31.12.2012 in different ULBS and came to know that there are 252 vacancies up to 31.12.2012 and there arises further 130 vacancies due to promotion, retirement etc. by 31.3.2013 and since the petitioners got selected through the process of selection, there is no impediment in absorbing the petitioners in the said vacancies. The petitioners alleged that on one hand the opposite parties are ignoring the selected candidates in the matter of appointment in spite of hundreds of vacancies there and on the other hand they are going on appointing the persons against the subsequent vacancies by pick and choose from the select list and in a clear ignorance of the seniority in the select list.

4. In filing the additional affidavit, the petitioners have also brought to the notice of this Court therein giving glaring example in the subsequent appointment in ignorance of the High Court's order passed in O.J.C. No. 5379 of 2000 in the process in first batch appointed as many as 14 persons (Annexure-7) and in the second batch appointed another 5 persons (Annexure-8) as against the subsequent vacancies in the post of Junior Assistant. The petitioners alleged that the opposite parties are blowing hot and cold together and not working out their own promises held in the selection process in the year 2001. The opposite parties 1 and 2 subsequently filed a counter to the additional rejoinder affidavit indicating therein that the select list was of the year 2001 in the selection process by the Selection Board for the post of Junior Assistant in different Urban Local Bodies of the State pursuant to the direction of this Court dated 30.6.2000 in O.J.C. Nos. 14221 of 1996, 4091 of 1997 and 458 of 1997 prepared a merit list consisting of 181 LSDG candidates including the name of petitioners. Even

though the opposite parties succeeded in their attempt in the Supreme Court in SLP No. 7938-7942 of 2003 in reversing the direction in O.J.C. Nos. 14221 of 1996, 4091 of 1997 and 458 of 1997 yet went on for the selection process and went on working out the select list of 2001 in view of the direction dated 5.12.2007 in O.J.C. No. 5379 of 2000 and subsequent orders in the contempt petitions referred to hereinabove. The appointments have been given in strict terms of the direction contained in order dated 25.7.2012 passed in CONTC No. 1070 of 2011. The opposite parties further contended that since the list was prepared ten years back, at this stage going to exhausts the list adjusting future vacancies will seriously prejudice the State being not in the interest of service.

5. Heard learned counsel for the parties. As it appears, following the direction of this Court dated 30.6.2000 in O.J.C. Nos. 14221 of 1996, 4091 of 1997 and 458 of 1997, the State in the Housing and Urban Development Department prepared a merit list consisting of 181 L.S.D.G candidates, which includes the name of the petitioners. The said merit list as appearing at Annexure-1, page 20 of the writ petition stipulates a clear condition to the effect that "Further the panel of L.S.G.D holders shall remain valid till it is exhausted. Since the order in the above batch of writs was not worked out and the petitioner No. 1 got compelled to file O.J.C. No. 5379 of 2000, which matter was disposed of on contest by order dated 5.12.2007, which is quoted herein below:

"Heard learned counsel for the petitioner as well as learned Addl. Government Advocate appearing for the State.

The petitioner filed this writ petition in the year 2000 with a prayer to direct the Director of Employment Exchange, Orissa, Bhubaneswar (O.P. No. 3) to sponsor his name by relaxing the maximum age limit to make him eligible for the post of Junior Assistant in the Local Fund Service Cadre, as was is a Local Self Government Diploma holder.

In the counter affidavit filed by the O.P. No. 1 and 2 i.e. Secretary to Government in Housing and Urban Development and Director, Municipal Administration, it is stated that in the meantime the name of the petitioner has been sponsored, the interview of L.S.G.D. holders including the present petitioner for the post of Junior Assistant under the L.F.S. Cadre has already been conducted to enable the Housing and Urban Development Department to prepare a merit list and after finalization of the same, suitable steps will be taken for appointment of selected candidates including the petitioner against the available vacant posts of Junior Assistant against direct recruitment quota taking into ratio 50:50 as per the provision of the O.L.F.S. Rules, 1975.

Considering the averments made in the counter affidavit filed by the O.Ps.1 and 2, we direct the State Government in Urban and Housing Development Department to take steps in terms of the affidavit and complete the entire exercise within a period of three months from the date of communication of this order.

The writ petition is accordingly disposed of."

6. The subject matter of the above case was hotly contested by all the participating parties and considering from all the angles and further recording the submission of the State counsel that the name of the selected persons including that of the petitioner has been sponsored, the interview of L.S.D.G. holders including the present petitioners for the post of Junior Assistant has not only been conducted but a merit list has also been prepared including the name of the petitioners and suitable steps are being taken for appointment of the selected candidates including the petitioners against the available vacant post of Junior Assistant 50:50 basis. This Court disposed of the writ petition with direction to the State Government in Urban and Housing Development Department to take steps in terms of the affidavit and complete the entire exercise within a period of three months from the date of communication of the order. Since the aforesaid direction was not worked out within the time framed by this Court, the petitioner therein filed CONTC No. 696 of 2008, which matter was disposed of on 3.3.2011 with the following order:

"The contemnor Commissioner-cum-Secretary to Government of Orissa, Housing and Urban Development Department as well as the Commissioner-cum-Secretary to Government of Orissa, Finance Department, Bhubaneswar, have filed separate affidavits. As it appears in both the affidavits filed by two Secretaries that out of the total number of posts available, 50% are to be filled up by way of direct recruitment and the Secretary, Housing and Urban Development Department has indicated in the affidavit that out of the total number of posts filled up by way of direct recruitment, some are to be reserve for the purpose of appointment on compassionate ground and also for the purpose of regularization. The Finance Department, as it appears in the affidavit filed, has not agreed to said proposal as yet and the matter is kept pending at that stage.

Learned Advocate General appearing for both the Secretaries, submits that if the proposal is submitted by the U.D. Department again indicating the number of vacancies available for direct recruitment, number of posts to be kept reserved for appointment on compassionate grounds and for regularization, the Finance Department can take a decision.

Without expressing any opinion as to whether it is open for the U.D. Department to take any such reservation or not hereby reducing the number of posts for direct recruitment, we dispose of both the Contempt Petitions with a direction to the Secretary, H and U.D. Department and Secretary, Finance Department, to take a decision and implement the same within a period of two months from the date of communication of order.

Both the Contempt Petitions are disposed of accordingly."

From perusal of the above order it appears that again recording the submission of the learned Advocate General this contempt petition was disposed of along with another contempt petition directing the opposite party Nos. 1 and 2 therein

to take steps in strict terms of the affidavit and complete the entire exercise within a period of two months from the date of communication of the order. It further appears that the fact of list of selected candidates containing the name of the petitioners remained unchallenged rather the State Government made an assurance to the Court that the merit list is being taken up for appointment of selected candidates including the petitioners. It is also made clear here that neither the order in O.J.C. No. 5739 of 2000 nor the order passed in the CONTC No. 696 of 2008 has ever challenged. Since this order was also not complied with, the petitioners filed another contempt petition bearing CONTC No. 1070 of 2011 for non-compliance of the order dated 3.3.2011 passed in CONTC No. 696 of 2008, which matter got disposed of on 25.7.2012 with the following order:

"Heard.

Perused the affidavit filed by opposite party No. 1, Sri Saurabh Garg, the Commissioner-cum-Secretary to Government of Orissa, Housing and Urban Development Department. In paragraph-11 of the said affidavit it has been stated that the total vacancy position as on 31.12.2011 is 203. The vacancy mentioned in the affidavit shows that the posts vacant under unreserved category are only 40 out of 101, which is the direct recruitment quota.

Considering the affidavit and the submission made, the opposite parties are directed to fill up the vacant 40 posts under unreserved category out of the select list and beyond that there being no vacancy, the question of implementation of order does not arise. If the petitioner is in accordance with the merit position in the select list comes within the unreserved category of 40 posts, he shall be given appointment. The question of further stretching of the merit list does not arise. The appointment shall be done within a period of three months from the date of receipt of copy of this order.

The CONTC is accordingly disposed of."

In disposing the above contempt petition, this Court directed that if the petitioner is in accordance with the merit position in the select list comes within the unreserved category of 40 posts, he shall be given appointment. It is apt to mention here that since the Government made a statement in CONTC No. 1070 of 2011 that they are ready for filling up of the 40 vacant unreserved posts, this Court made the particular direction. This direction cannot take away the right of the petitioner flowing from the select list. Since the direction was given in a contempt case, the right in favour of the petitioner flowing from O.J.C. No. 5739 of 2000 could not have been lapsed under any circumstances. In the worse if the petitioner was not coming within the 40 unreserved posts, nothing prevented the State in giving him appointment in the future vacancies. This Court finds a peculiar submission from the State Government and surprised to know that the State did not proceed ahead with the select list under Annexure-1 in respect of the candidates beyond the 40 vacancies under the unreserved category for the observation made by this Court in the contempt petition. This Court further finds

that state has misread and miscomplied the direction of this Court in CONTC No. 1070 of 2011. The right flown in favour of the petitioners from the select list continues to be there till it gets exhausted particularly in view of the specific clause contained therein to the effect that the list shall remain valid till it is exhausted. In view of the specific clause contained therein, State is bound by its promise and the list would have been utilized in the further unreserved vacancies. During course of argument, petitioners have produced document indicating that there has been further vacancies in different Urban Local Bodies; at least 252 vacancies up to 31.12.2012 and thereafter again another 130 vacancies by 31.3.2013. This Court is not in approval of the submission of the State counsel that since the select list was prepared already a decade back, appointing persons from that list at this point of time could consequently prejudice the State. From the documents vide Annexures-7 and 8 it appears that State is continuing with the select list prepared in 2000 vide Annexure-1 and still appointing persons from out of the said select list as the documents under Annexures-7 and 8 have been issued on 13.2.2013 and 8.8.2013 respectively. The submission made by the State in the above regard found to be contrary to reality particularly as apparent from Annexures-7 and 8. Since the petitioners have been found suitable in a duly constituted selection process, nothing prevented the State in giving appointment to the petitioners in the subsequent unreserved vacancies and all above vacancies surely have not been created on a particular day. Law is well settled that State should behave as a model employer and State cannot be permitted to keep the temporary employment for decades and goes for future appointment entering into a further selection procedure. Such action of the State otherwise mars the future prospect of the selected candidates continuing temporarily awaiting their permanent absorption, which action of the State is otherwise amounts to be exploitation of its employee.

7. Law is well settled as decided by the Hon''ble Apex Court in the case of R.S. Mittal Vs. Union of India (UOI), (1995) 3 JT 417 : (1995) LabIC 1775 : (1995) 2 SCALE 433 : (1995) 2 SCC 230 Supp : (1995) 2 SLJ 177 where the Hon''ble Apex Court in clear terms held that the appointing authority cannot ignore the selection panel or decline to make appointment on its whims. In the case of A.P. Aggarwal Vs. Govt. of N.C.T. of Delhi and Another, AIR 2000 SC 205 : (1999) 9 JT 125 : (1999) 7 SCALE 136 : (2000) 1 SCC 600 : (2000) SCC(L&S) 206 : (1999) 4 SCR 443 Supp : (2000) 2 SLJ 123 : (1999) AIRSCW 4300 : (1999) 9 Supreme 251 , the Hon''ble Apex Court while holding the action of the authority in ignoring the select list as bad has gone to the extent of saying that it is not open to the Government to ignore the panel which was already approved by itself and resort to a fresh selection process.

8. Under the circumstances and the law referred to hereinabove, this Court finds force in the submission of the petitioners and observes that the action of the opposite parties is not only arbitrary but also unconstitutional and thus while allowing the writ petition directs the opposite party Nos. 1 and 2 i.e. the Commissioner-cum-Secretary to Government of Odisha, Housing and Urban

Development Department and Director, Municipal Administration-cum- Addl. Secretary to Government of Odisha, Housing and Urban Development Department respectively to appoint the petitioners in the vacant post of Junior Assistants in the L.F.S. Cadre. The appointment shall be made as expeditiously as possible, preferably within a period of one month hence.

9. In the result, the writ petition succeeds. However, there shall be no order as to cost.