

(1986) 05 OHC CK 0021

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1976 of 1982

Satrughna Lenka

APPELLANT

Vs

Registrar, Co-operative Societies

RESPONDENT

Date of Decision : 16-05-1986

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 — Rule 13

Orissa Service Code, 1939 — Rule 77, 78

Citation : (1986) 62 CLT 36 : (1986) 2 OLR 27

Hon'ble Judges : G.B. Pattnaik, J; B.K. Behera, J

Bench : Division Bench

Advocate : P. Palit, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Pattnaik, J.—The petitioner, who is serving as an Inspector of Co-operative Societies has approached this Court invoking the extraordinary jurisdiction of the Court for a direction to the opposite party to pass appropriate orders allowing the petitioner to cross the Efficiency Bar in the time-scale of pay with effect from February, 1976. According to the petitioner's case, his pay in the revised scale of pay was fixed with effect from 1-1-1974 in the time-scale of pay of Rs. 400-10-15-500-E.B.-20-62Q/-. On 1-2-1976, the petitioner reached the stage where he was required to cross the Efficiency Bar and though the intermediate superior recommended his case for allowing him to cross the Efficiency Bar with effect from 1-2-1976, but the competent authority did not pass any order allowing the petitioner to cross the bar. In 1978, again the petitioner's case was considered, but the competent authority passed an order on 25-1-1978 indicating that the petitioner should wait for another year for consideration of his Efficiency Bar. The order has been annexed as Annexure-3. The petitioner addressed a representation as per Annexure-5 to the Registrar of Co-operative Societies, Orissa, and the Establishment Officer of the Registrar passed the order

contained in Annexure-6 indicating that the petitioner's case for crossing the Efficiency Bar would be considered after disposal of the disciplinary proceeding. At this stage the petitioner has approached this Court for a direction, as already stated.

2. In the counter affidavit filed on behalf of the opposite party, it has been stated that the competent authority has passed an order on 10th of January, 1985, allowing the petitioner to cross the Efficiency Bar in the time-scale of pay with effect from 1-2-1979 with cumulative effect and, therefore, the petitioner's prayer in the writ petition to quash Annexure-6 does not survive for any further consideration. In the counter affidavit it has also been indicated that as the performance of the petitioner was below average during the period 1976 till 1979, the competent authority did not allow the petitioner to cross the Efficiency Bar, but only some improvement in the performance having been marked, the petitioner has been allowed to cross the Efficiency Bar with effect from 1-2-1979.

3. At the hearing of the writ petition Mr. Palit appearing for the petitioner fairly concedes that in view of the order passed by the Registrar which has been annexed as Annexure-A to the counter affidavit filed by the opposite party, there is much force in the contention of the opposite party that the rigour of Annexure-6 has been removed and in fact the petitioner has been permitted to cross the Efficiency Bar with effect from 1-2-1979. But all the same, Mr. Palit, the learned counsel for the petitioner, contends that a Government servant as of right is entitled to cross the Efficiency Bar in the time-scale of pay unless there is anything adverse in the performance of his duties. According to Mr. Palit, with holding or not allowing a Government servant to cross the Efficiency Bar is a punishment, within the meaning of Rule 13 of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 and such a punishment cannot be inflicted without following the procedure for a departmental proceeding. We do not find any substance in either of the contentions raised by Mr. Palit, the learned counsel for the petitioner. A combined reading of Rules 77 and 78 of the Orissa Service Code would indicate that a Government servant is entitled ordinarily to get his increment in the time-scale of pay as a matter of course, unless it is specifically withheld by a positive order and order to withhold the increment can be passed by the authority who is empowered to make a substantive appointment to the post if he considers that the conduct of such Government servant has not been good or that his work has not been satisfactory. But in case of an Efficiency Bar prescribed in the time-scale, the increment next above the bar shall not be given without the specific sanction of the authority. Thus, whereas normal increments are to be drawn as a matter of course unless there is a positive order of withholding the same, the increment next above the bar can be given only if a positive order to that effect is passed by the competent authority. The Orissa Service Code does not indicate - as to on what grounds the competent authority can allow or disallow a Government servant to cross the Efficiency Bar in the time scale of pay, but it is obvious that

the authority would consider the performance of the Government servant to find out whether the Government servant is entitled to cross the Efficiency Bar at that point of time or at any latter point of time. In view of the positive assertion in the counter affidavit that the performance of the petitioner during the years 1976 to 1978 was not fit enough to allow the petitioner to cross the Efficiency Bar in February, 1976, no illegality can be found in the orders passed under Annexures 2 and 3. Ultimately, however, the competent authority has in the mean time allowed the petitioner to cross the Efficiency Bar with effect from 1-2-1979.

4. Coming to the other submission of Mr. Palit, we also do not find any force in the same. No doubt, with holding of increment is a punishment within the meaning of Rule 13 of the Orissa Civil Services (Classification, Control and Appeal) Rules, but Explanation (b) to the said Rule unequivocally indicates that the stoppage of a Government servant at the Efficiency Bar in the time-scale on the ground of his unfitness to cross the bar will not amount to a penalty within the meaning of the said Rule. In view of the aforesaid explanation, we are unable to accept the contention of Mr. Palit, the learned counsel for the petitioner.

5. In the ultimate result, therefore both the submissions of the learned counsel for the petitioner fail and the writ application is accordingly dismissed, but in the circumstances, there would be no order as to costs.