

(1990) 01 OHC CK 0001

In the Orissa High Court

Case No : Original Jurisdiction Case No. 3538 of 1987

Shri A.C. Swain

APPELLANT

Vs

Orissa State Warehousing Corporation and Others

RESPONDENT

Date of Decision : 12-01-1990

Acts Referred:

Citation : (1990) 69 CLT 655

Hon'ble Judges : G.B. Patnaik, J;A.K. Padhi, J

Bench : Division Bench

Advocate : J. Patnaik and S.N. Satpathy, for the Appellant; S.S. Basu, G.S. Das and P.K. Khuntia for O. Ps. 1 to 3 and B.K. Patnaik and R.C. Rout for O. P. No. 4, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Padhi, J.—Claiming seniority over opp. party No. 4 the Petitioner has filed this writ application, praying for a writ of mandamus to be issued to opp. parties with a direction that he should be treated as to have been promoted from 15-8-1972, the date on which opp. party No. 4 was promoted.

2. The averments in the writ application are that the Petitioner joined as Weighman/Warehouse Assistant on 11-3-1971. On 15-1-1972 he was promoted to Lower Division Clerk. Opp. party No. 4 joined as Lower Division Clerk on 16-2-1972 and opp. party No. 4 was promoted to Junior Accountant/Junior Superintendent on 15-8-1972. On 27-8-1972 the Petitioner made a representation to promote him to the post of Junior Accountant or similar grade from 15-8-1972 and to restore his seniority above opp. party No. 4. On 21-2-1973, the Petitioner had issued a reminder regarding the restoration of his seniority. On 30-5-1974 the Petitioner was dismissed. Challenging the, order of dismissal, the Petitioner filed O. J. C. No. 762 of 1974. On 12-8-1980 the writ application was allowed and the order of dismissal of the Petitioner was quashed and direction was issued to reinstate the Petitioner with consequential benefits after treating him to be in continued service all through,. The judgment passed

by the High Court, was confirmed by the Supreme Court on. 3-3-1987. On 28-4-1987 the Petitioner was reinstated and joined his duty. On 18-5-1987 after joining, the Petitioner made a representation reagitating his prayer to declare him senior to opp. party No. 4 and also the consequential promotions and benefits. As the restoration of the seniority was denied by the authorities the Petitioner has approached this Court to restore his seniority above opp. party No. 4 and to promote him to the post of Superintendent and for consequential promotions and benefits.

3. The opp. parties have filed their counter affidavit and have specifically averred that opp. party No. 4 had applied for the post of Junior Accountant for which vacancy existed. Initially the opp. party No. 4 was given the appointment of L. D. Clerk with assurance that if his work is satisfactory, then he shall be appointed as Junior Accountant. Since the work of the opp. party No. 4 was satisfactory, he was again directly appointed as a Junior Accountant. The opp. party No. 4 was never promoted to the rank of Junior Accountant but his appointment as Junior Accountant on 15-8-1972 was a direct appointment. Since there was no question of promotion of opp. party No. 4 the question of considering the case of the Petitioner and other L. D. Assistants did not arise.

4. The only point which has been made out in the writ application is that the Petitioner being senior to opp. party No. 4, the opp. party No. 4 could not have been promoted on 15-8-1972 without considering the case of the Petitioner. While giving appointment to opp. party No. 4 on 10-2-1972 in response to his application for the post of Junior Accountant, it was specifically stated -

Your case for the post of Junior Accountant will be considered after two months if your work is satisfactory. Annexure-C is the appointment letter of opp. party No. 4 which reads thus:

Sri Anadi Charan Mohanty who was appointed as an accounts clerk vide this office letter No. 2665 dated 10-2-1972 is appointed in the post of junior Accountant in the scale of Rs. 125-5-130-160-10-190/- with effect from 15-8-72.

indicates that the appointment to the post junior Accountant was a direct appointment. The personal file of opp. party No. 4 was also produced before us on our direction and it indicates that he was directly appointed as junior Accountant on 15-8-1972. as he had applied to that post and by observing his work the authorities were satisfied that he was entitled to be appointed as a junior Accountant.

5. The learned advocate for the Petitioner submits that since in the personal file of the Petitioner the authorities have opined that opp. party No. 4 was promoted and in view of the admission made in the representation made by opp. party No. 4 vide Annexure-10 (Annexure 10 was filed as Annexure-7/a by opp. party No. 4 in another writ petition i. e. O. J. C. No. 34 of 1986) to the effect that:

Sri A. B. Singh and myself were promoted to the post of Junior Superintendent

on the same day i. e. 15-8.1972.

the authorities did not appoint opp. party No. 4 directly to the post of junior Accountant but in fact promoted him.

In our opinion for finding out whether opp. party No. 4 was directly appointed to the post of junior Accountant or was promoted, the personal file of opp. party No. 4 will be relevant and not the personal file of the Petitioner. Any representation by opp. party No. 4 before the authorities cannot also decide the fact as to whether opp. party No. 4 was directly appointed or was promoted. According to us what are relevant for consideration, are the actual appointment letter issued to opp. party No. 4 and the personal file of opp. party No. 4, to show as to whether it was a direct appointment or a promotion.

7. The learned advocate for the Petitioner relies on the decisions reported in *The General Manager, Southern Railway Vs. Rangachari*, and *Raghunath Gopal Manjire and Another Vs. The Competent Authority and Others*, .

In *The General Manager, Southern Railway Vs. Rangachari*, their Lordships have laid down the mandate that Article 16(1) and (2) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. Any revision as to the qualifications for the employment or the appointment to office, reasonably fixed and applicable to all citizens would be consistent with the doctrine of the equality of opportunity; but in regard to employment, like other terms and conditions associated with and incidental to it, the promotion to selection post is also included in the matters relating to employment, and even in regard to such a promotion to a selection post all that Article 16(1) guarantees is equality of opportunity to all citizens who enter service.

In *Raghunath Gopal Manjire and Another Vs. The Competent Authority and Others*, while considering the question of promotion in between direct recruits to the post of Mamlatdars and promoted Mamlatdars their Lordships have observed as follows:

.... According to him, the directly recruited Mamlatdars and the promotee Mamlatdars formed two different classes. The High Court rejected that contention and in our opinion rightly. Both the directly recruited Mamlatdars as well as the promotee Mamlatdars are designated as Mamlatdars. They have the same pay scale. They discharge same functions. The posts held by them are interchangeable. There is nothing to show that the two groups are kept apart...

8. These two decisions have no application to the case at hand as we are of the opinion that opp. party No. 4 was directly appointed on 15-8-1972 to the post of junior Accountant and was not promoted. Since this was not a case of promotion, the question of Petitioner being considered for the same post did not arise.

In the result, the writ application has no merit and is dismissed, but in the circumstances of the case, there shall be no order as to costs.

G.B. Patnaik, J.

I agree.

Writ application dismissed.