

(2010) 06 OHC CK 0015
In the Orissa High Court
Case No : OJC No. 4835 of 1999

Soumyaranjan Parida

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-06-2010

Acts Referred:

Major Ports Trust Rules, 1963 — Rule 14

Citation : (2010) 110 CLT 560

Hon'ble Judges : B.N. Mahapatra, J;A.S. Naidu, J

Bench : Division Bench

Judgement

A.S. Naidu. J.

1. The controversy in this Writ Petition is with regard selection & appointment to the post of Junior Engineer. (Mechanical) in the establishment of Paradip Port Trust (hereinafter referred to as "PPT"). In the year 1998 a request was made by the PPT to the Employment Officer, Special Employment Exchange, Paradeep Port to sponsor names for filling up the vacancies for the post of Junior Engineer (Mechanical) & requested to recommend the names of 10 eligible candidates who have passed H.S.C. in first class & possessed Diploma level or any higher level qualification in Mechanical/Automobile Engineering. The Petitioner, it is submitted, had passed H.S.C. in first division & thereafter completed three years Diploma Course in Mechanical (Automobile) in the year 1992. He was working as a Supervisor in Bharat Automobile Works, Paradip. He had also completed one year apprenticeship training in PPT. The name of the Petitioner was sponsored by the Employment Officer, Special Employment Exchange, Paradip Port along with thirteen others to PPT. The Petitioner thereafter called upon to attend the interview on 04.8.1998. According to the Petitioner, he answered 90% of the questions put to him but then by Order Dated 06.8.1998 the PPT authorities selected & appointed Opp. Party No. 7 as Junior Engineer (Mechanical) ignoring his just claim. The said selection is assailed in this Writ Petition.

2. The Petitioner, it appears being aggrieved by the selection process had

approached this Court earlier in OJC No. 15479 of 1998. The said Writ Petition was disposed of directing the PPT authorities to consider the case of the Petitioner in accordance with the stipulations made in letter dated 27.4.1988 issued by the Government of Orissa, Industry Department. It is alleged that, without considering the purport of the order the application filed by the Petitioner was rejected by the PPT authorities mainly on three grounds i.e. i) the vacancy of Junior Engineer (Mechanical) was filled up by the candidate who had secured more marks than the Petitioner; ii) the guidelines issued by the Government of Orissa, Industry Department is meant for Public Sector Undertakings of the State Government & are not binding upon Paradip Port Trust & iii) the Paradip Port Trust was following the principles enunciated by the Hon'ble Supreme Court in the decision Uttar Pradesh State Road Transport Corporation and another Vs. Uttar Pradesh Parivahan Nigam Shishukhs Berozgar Sangh and others,). Further it is stated that the Selection Committee constituted under the Rules, conducted the interview & in the said interview, Opp. Party No. 7 secured higher marks than the Petitioner & as such, she was selected & appointed in the year 1998.

3. According to the Petitioner the method of selection was based on extraneous considerations. In fact the assessment of career of different candidates was not properly made & marks assigned were defective. That apart, it is stated that Opp. Party No. 7 had produced certain false certificates which were considered during assessment of eligibility of the candidates & as such the entire selection process was tainted with non consideration of genuine documents, at the same time consideration of document which was created for the purpose of selection. Further the Petitioner having secured first division in H.S.C & having completed Diploma Course with good marks without any back papers, & completed apprenticeship with PPT he should have been adjudged more suitable than Opp. Party No. 7

4. After receiving Rule a counter affidavit has been filed by Opp. Party Nos. 2 & 4 taking the stand that the Petitioner has no cause of action to file this Writ Petition, & the selection was made by a duly constituted Staff Selection Committee consisting of Chief Engineer, Secretary, Addl. C.E & M.E & Mechanical Superintendent. The criteria of awarding marks were evolved by the Staff Selection Committee & 90 % marks was given for the career & 10 % marks was assigned for oral interview. Opp. Party No. 7, it is averred, secured the highest position & the Petitioner was placed at Sl. No. 3 & above the Petitioner there was another candidate namely Kailash Ch. Sahu. The Selection Committee after due selection sent the result to the concerned department & Opp. Party No. 7 was issued with the appointment order & she had joined in the post & continuing since 1998. The allegations made in each of the paragraph of the Writ Petition are specifically & elaborately denied by the PPT in their counter affidavit.

5. On behalf of the Petitioner a rejoinder affidavit was filed countenancing the averments made in the counter affidavit. In paragraph-3 of the rejoinder affidavit it is averred as follows :

It is humbly submitted that the selection board was constituted with four members out of which the Chief Engineer, is a technical person, whose qualification is B.E in Civil Engineering. Secondly, the Secretary is a member, a non technical person. Thirdly, Additional Chief Engineer & M.E., a technical person whose qualification is BE in Electrical Engineering & Mechanical Superintendent, a technical person, whose qualification is BE in Mechanical Engineering. Only except the Opp. Party No. 5 the other members of the S.S.C are technical persons & they have awarded good marks to the deponent. The deponent humbly begs to submit that the Opp. Parties 2 & 4 have stated in their counter that 90 % marks was awarded towards career marks & 10 % marks was awarded towards oral test. It is respectfully submitted in this regard that the Management has given false information with regard to the awarding of marks in respect of career as well as oral test. It is submitted that the Opp. Party No. 7, Bijoy Laxmi Mohapatra has been awarded 35 marks towards diploma qualification & 35 marks towards H.S.C examination & 7 marks towards oral test. One K.C. Sahoo has been awarded 35 marks in Diploma & 35 marks in H.S.C & 4.75 marks in oral test whereas the deponent has been awarded 35 marks in diploma & only 30 marks in H.S.C. & 6.25 marks in oral test & thus the deponent had got 7.25 marks in total. It is respectfully submitted that the Opp. Parties have made a deviation by awarding only 30 marks to the Petitioner for his H.S.C examination. In a bare perusal of the marks awarded to the deponent as has been illustrated above, it will go to show that all the 3 candidates have got 1st division & are entitled to get 35 marks each. But intentionally & deliberately the S.S.C has awarded 30 marks to the deponent just to deprive him. It is respectfully submitted that the Opp. Parties have stated in their counter that 90 marks have been awarded in respect of career & 10 marks in respect of oral test but if the original records of selection is called for it will seen that the Opp. Parties have fixed up 50 marks towards Diploma, 35 marks towards H.S.C examination & 15 marks towards oral test. Thus the selection board has awarded 85 marks towards career & 15 marks towards oral test. Therefore, the averments made by the Opp. Parties in this regard are out & out false & misrepresentation of facts. It is further humbly submitted that the Opp. Party No. 7 has passed the diploma examination as a Supplementary candidate by consuming 3 1/2 years to complete the course instead of completing the same in the stipulated time of 3 years. Since she has failed in the final examination & has clear all the back papers in the supplementary examination. 1996 so her qualification cannot be treated at par with the candidates who have passed the respective examination in one chance in Annual examination. It is humbly submitted that the State Council of Technical Education, Orissa has fixed up a principle that any candidate who passes in supplementary examination with whatever percentage of marks i.e. even 100%, he/she will not be eligible to get Hon''s admission & if a candidate secures less percentage of marks than that of a supplementary candidate he/she will be allowed to take (Hons) Admission. Therefore, in the instant case at hand, the Opp. Party No. 7 being a Supplementary candidate she should not be treated at par with the deponent & other candidates. Under these

circumstances how & under what circumstances, her career was treated better than that of the deponent by the S.S.C. Further the Hand Book of (Important Circulars & orders), 1st Edition, Agenda Item No. 5(2) dated 09.2.1979 Subject - Paradip Port Trust Rule for selection of candidate by direct recruitment. In paragraph 14(c) it has envisaged that the standard for marking the educational qualification in respect of the candidate i.e. who are passing the same class or division at the last qualifying examination are interviewed the committee may assess their merit under educational qualification on the basis of marks secured at the last qualifying examination. It is submitted that the last qualifying examination is Diploma examination. So the S.S.C should have assessed the marks of diploma examination but not the H.S.C examination. In the instant case as per the Circulars mentioned (supra) the last qualifying examination is diploma examination, so the S.S.C should have awarded marks to the candidates for their diploma examinations only not for H.S.C examination. But however, only to show favour to the Opp. Party No? the assessment in respect of H.S.C examination has been done differently, it is mentioned here in this connection that for different higher qualifying examinations i.e. Medical. P.G admission, P.H.D distinction etc. the supplementary candidates are not taken into consideration. Even the supplementary candidates are not taken into consideration for selection to scholarship. Under these facts the Opp. Parties 2 to 5 may be asked to produce the final mark sheet of the S.S.C for such selection with individual mark sheets of each member, so that manipulation & mala fide action of the Opp. Parties at the selection will come to the lime light.

An additional affidavit is also filed enclosing certain relevant documents.

6. It appears that the facts stated in the rejoinder affidavit are not disputed by filing any affidavit. In course of hearing Mr. J. Pattnaik, Learned Senior Advocate appearing for the Petitioner strenuously placed before this Court several documents & submitted that in the case at hand neither the Selection Committee was constituted in accordance with the Rules nor the procedure adopted by the Selection Committee was just & proper. According to Mr. Pattnaik, the Petitioner possessed a better academic career. He had completed apprenticeship under the PPT & thus he is entitled to certain preference/ privileges. Added to if the Selection Committee has- committed serious errors in the process of career assessment, as a result of which though the Petitioner is more meritorious than Opp. Party No. 7, his case has been ignored.

7. The submissions made by Mr. Pattnaik are stoutly denied by Mr. Padhi, Learned Senior Advocate appearing for PPT. According to Mr. Padhi the Selection Committee was constituted in consonance with Paradip Port Employees (Recruitment. Seniority & Promotion) Regulations, 1967 as well as Paradip Port Trust Rules for Selection of Candidates by Direct Recruitment which came into force in the year 1971. Mr. Padhi, further submitted that in consonance with Rule 14 of Paradip Port Trust Rules for Selection of Candidates by Direct Recruitment, a Committee was constituted for assessment of merit of candidates interviewed.

While such assessment four important facts were kept in mind by the Committee being i) educational qualification, ii) experience (with emphasis on experience which may be useful to the Port), iii) general intelligence & iv) extra curricular activities. It is stated that the fun marks for each of the above items has to be determined by the Committee for each post. In short according to Mr. Padhi the procedure laid down in the Rules were strictly adhered to in course of selection for the post of Junior Engineer (Mechanical) & the submissions made & allegations leveled are baseless.

8. Heard Learned Counsel for the parties at length. Perused the materials available on record. This Court is conscious that while dealing with a case of selection for appointment, the role of this Court is very much limited & unless a grave error is pointed out this Court should not interfere with the selection process. That apart in the case at hand the selection was made in the year 1998 & about 12 years have passed in the meanwhile. Fact remains in the rejoinder affidavit, the Petitioner has specifically pleaded the illegalities & irregularities said to have been committed during the selection process. The PPT in its counter affidavit though stated that the Petitioner in the interview had secured 6.25 marks out of 10 marks in the oral interview, did not disclose the marks said to have been secured by Opp. Party No. 7 That apart the allegations involve several disputed questions of fact, which cannot be effectually adjudicated under Writ jurisdiction. Added to it no affidavit has been filed repudiating the factual allegation. It appeals that the Petitioner had approached this Court earlier in OJC 15479 of 1998 & after hearing the parties this Court had directed the PPT authorities to look into the grievance of the Petitioner. Thereafter the application of the Petitioner was considered & the same was disposed of vide letter dated 15.3.1999 (Annexure-8).

9. After going through Annexure-8, this Court finds that the reasons assigned therein are not explicit. It does not give the details, of course, the authorities are not bound to give the details of the marks secured in the interview but then when a dispute has arisen it need to be adjudicated & disposed of by a detailed & speaking order. Instead of adopting the said procedure the objections have been rejected point wise. Law is well settled that Justice should not only be done, but it must appear to have been done. In the case at hand the allegations made by the Petitioner in the rejoinder affidavit being very specific & the same having not been countenanced or denied by PPT this Court feels that ends of justice & equity will be better served if the Chairman - Opp. Party No. 2 is directed to call for the entire recruitment file, peruse the same vis-a-vis the objection raised by the Petitioner in his rejoinder affidavit, which are quoted in extenso (supra), & pass a reasoned order as expeditiously as possible, & directs accordingly. It is made clear that this Court has neither expressed any opinion with regard to merits of the case nor delved into the controversy as the same involves several disputed questions of fact which cannot be effectually adjudicated under Writ jurisdiction, therefore it would be open to Opp. Party No. 2 to pass a reasoned order strictly in consonance with law. To facilitate such action liberty is granted to the

Petitioner to file a full-fledged application within three weeks from today clearly enumerating all his objections & undertaking that in the event his application is allowed he is agreeable to join in the post of Junior Engineer (the post for which he had applied) & not claim any other benefit. It is needless to say that if no application is filed by the Petitioner within the time stipulated above, no action need be taken by Opp. Party No. 2

With the aforesaid observation this Writ Petition is disposed of.

B.N. Mahapatra, J.

I agree.