
(2008) 10 OHC CK 0075
In the Orissa High Court

Sri Aswini Kumar Ray

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 27-10-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 13

Citation : (2008) CLT 921 Supp : (2009) CriLJ 1528

Hon'ble Judges : B.S. Chauhan, C.J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This writ petition has been filed, seeking a direction to the opposite parties to appoint the petitioner as a Special Judicial Magistrate.

2. The facts and circumstances giving rise to the case are that the petitioner was appointed as Junior Clerk in the District Court, Keonjhar. He was promoted as a Senior Clerk. Subsequently by the order of the learned District and Sessions Judge, Keonjhar dated 12-10-2004, the petitioner stood promoted to the post of Head Clerk. In the year 2000 in exercise of the power conferred by the proviso of Section 13 of the Code of Criminal Procedure, 1973, this Court framed rules, namely, Appointment of Special Judicial Magistrate (Orissa) Rules, 2000 (hereinafter called the "Rules, 2000") and the same were enforced. Posts of Special Judicial Magistrate were advertised and in pursuance thereto, petitioner also applied. His candidature was considered and his name was included in the panel. However, he had not been offered the appointment. Hence this petition for seeking a direction for appointment as a Special Judicial Magistrate.

3. Mr. Mohapatra, learned Counsel appearing for the petitioner submits that in spite of the fact that the petitioner had been found eligible and his name has been included in the panel, he has been deprived of his legitimate claim of appointment as Special Judicial Magistrate. Therefore, such action of the opposite parties is arbitrary and unreasonable. Therefore, the petition deserves to be

allowed.

4. On the contrary, learned Addl. Govt. Advocate, Mr. Khuntia drawn our attention to the order dated 30-9-2008 passed by this Court wherein after examining the record, the Division Bench of this Court has recorded the finding that "District Judge, Keonjhar has submitted a report that the petitioner was found guilty of the charge of gross negligence in duty in D.P. No. 1/89 by the Disciplinary Authority,-cum-District Judge, Keonjhar on 5-3-1992 and the finding of the Disciplinary Authority was confirmed by the Appeal "Committee of this Court as communicated vide, letter dated 31-10-2005. The petitioner was inflicted with punishment of withholding two increments with cumulative effect". In view thereof, it has been submitted by Sri Khuntia that as the petitioner cannot be held to be suitable for the post, he has rightly been denied the appointment. Petition is liable to be dismissed.

5. We have heard the learned Counsel for (he parties and perused the record.

6. Learned Counsel for the petitioner has not disputed the factum of imposition of punishment by the Disciplinary Authority as recorded by this Court in its order dated 30-9-2008 and he admits the same. The question does arise as to whether in spite of such a punishment, the petitioner can claim the appointment as a matter of right.

7. A Constitution Bench of the Hon''ble Supreme Court in Shankarsan Dash Vs. Union of India, , held that appearance of the name of a candidate in the select list does not give him a right of appointment. Mere inclusion of candidate's name in the select list does not confer any right to be selected, even if some of the vacancies remains unfilled. The candidate concern cannot claim that he has been given a hostile discrimination. Similar view has subsequently been taken by the Supreme Court in Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others, . Union of India Vs. S.S. Uppal and another, ; Hanuman Prasad and Others Vs. Union of India (UOI) and Another, ; Union of India and others Vs. K.V. Vijesh, ; Bihar Public Service Commission and another Vs. State of Bihar and others, ; Syndicate Bank and others Vs. Shankar Paul and others, ; Vice-Chancellor, University of Allahabad and Others Vs. Dr Anand Prakash Mishra and Others, ; Simanchal Panda Vs. State of Orissa and Others, , Karnataka State Road Transport Corporation and Another Vs. S.G. Kotturappa and Another, , Punjab State Electricity Board and Others Vs. Malkiat Singh, , State of U.P. and Others Vs. Rajkumar Sharma and Others, , Union of India (UOI) and Others Vs. Kali Dass Batish and Another, ; and Divisional Forests Officers and Others Vs. M. Ramalinga Reddy, .

8. Therefore, in view of the above, as mere empanelment does not create any legal right in his favour, the writ petition seeking direction for appointment is not maintainable.

9. The appointment of Special Judicial Magistrate is to be made strictly in view of the rules 2000 and relevant rule made under Rule 4(b) of the Rules provides that

Senior Ministerial Officer of the High Court or District Court who is experienced and conversant with the rules and procedures of law and holds Bachelor Degree in Law is eligible for being considered for appointment as Special Judicial Magistrate.

Rule 5 further reads as under:

(1) A panel of suitable persons for appointment as Special Judicial Magistrate would be prepared on the basis of selection to be made by a Committee constituted by the Chief Justice, which shall consist of a sitting Judge and two Registrars of the High Court to be nominated by the Chief Justice.

(2) The panel of suitable persons as prepared and approved by the High Court shall be forwarded to the State Government.

10. The ordinary and general signification of "suitable" is "likely to suit", "capable of suiting", or "adopted". This is by no means equivalent to "adequate". That which is adequate must be suitable, but that which is suitable may not be adequate.

11. According to the definitions in Webster's and the Dictionaries, "suitable" means fitting, capable of suiting, or appropriate. The test of the suitability of an article for a certain purpose is, not whether it is commonly used therefore, but whether it possesses actual, practical, commercial fitness for that purpose.

12. In *Shri Parvez Qadir Vs. Union of India (UOI)*, ; the Apex Court considered the meaning of word "suitable" and observed that it did not require a definition because any man of experience would know who is suitable. However, each case has to be viewed in the context in which the word "suitability" or "suitable" is used, the object of the enactment and the purpose sought to be achieved. The word "suitability" itself is correlated with the object of recruitment, viz. that a person has to be considered suitable for appointment to a service which itself furnishes the norm that he is considered suitable having regard to his past service. The criteria laid down in the rules provides sufficient indication as to the norms applicable for adjudging suitability. The rules applicable therein provided for determination of suitability on the basis of his performance in the service. Therefore, it was held that his service record i.e. ACR's would reveal his performance in the departmental service. While deciding the said case, the Court placed reliance on its earlier judgments in *S.P. Jinadathappa v. R.P. Sharma* AIR 1961 SC 1523; *Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others*, ; and *Shri Janki Prasad Parimoo and Others Vs. State of Jammu and Kashmir and Others*, .

13. In *Valsala Kumari Devi M. Vs. Director, Higher Secondary Education and Others*, , the Apex Court held as under:

The expression "suitability" means that a person to be appointed shall be legally eligible and "eligible" should be taken to mean "fit to be chosen".

14. Therefore, eligibility includes "suitability". A person is "suitable" means "fit" for the said particular post in all respects. Whether a person is suitable for a particular post would depend upon the nature of the post and essential qualities of the person seeking appointment on that post.

15. In the instant case as the petitioner has already been punished and his two annual increments have been withheld with cumulative effect, he becomes disentitled even to be promoted for a higher post, if any, in the hierarchy of ministerial services in the District Court itself. In such a fact situation, where a person is found guilty of dereliction of duty, whether can claim appointment to the post of Special Judicial Magistrate.

16. We have to answer it in the negative. The petition lacks merit and is accordingly dismissed.

B.N. Mahapatra, J.

17. I agree.