
(2010) 11 OHC CK 0056
In the Orissa High Court
Case No : Writ Petition (C) No. 17013 of 2006

Sri Sridhar Mishra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Citation : (2011) 111 CLT 370 : (2011) 130 FLR 26 : (2011) 1 OLR 127

Hon'ble Judges : L. Mohapatra, J;C.R. Dash, J

Bench : Division Bench

Judgement

L. Mohapatra, J.—This writ application has been filed assailing the order of the Orissa Administrative Tribunal, Bhubaneswar passed in a batch of three Original Applications. The Petitioner was the applicant in O.A. No. 2233 of 1998 and the other two Original Applications were filed by 21 similarly placed employees.

2. The facts leading to filing of the Original Applications before the Tribunal are that the Petitioner and other applicants were initially appointed as Gardeners in the Directorate of Horticulture under Agriculture Department prior to 1979. Subsequently they were promoted to the post of Grafters. The next promotional post is Field Technician and, thereafter, Horticulture Overseer. Earlier 50% posts of Grafter were being filled up by way of direct recruitment and 50% by way of promotion from amongst the Gardeners but from a later stage, all the posts of Grafter are being filled up by way of promotion. The Petitioner and others were waiting for their promotion to the post of Field Technician created in the year 1992 in the Directorate of Horticulture. As per the Government instruction dated 4.9.1998, the said vacancies of Field Technician are being filled up only by way of promotion from amongst the Grafters having requisite qualification.

3. The Government in the Agriculture Department undertook various schemes requiring expansion both in the Agriculture and Horticulture sides with the assistance of World Bank Loan. Prior to such expansion, the field staff in the Agriculture Department consisted of Field-man Demonstrator, Agriculture Sub-Overseer and Agriculture Overseer and in the Horticulture Directorate, the Field

Staff consisted of Attendant, Gardener, Grafter and Field Technician. After the schemes were implemented on receipt of World Bank loan, the staff in the Horticulture Directorate remained the same whereas in the Agriculture Department, the Field-man Demonstrator posts were abolished in phases and posts of V.A.Ws were created in large numbers and all the posts of Field-man Demonstrator merged in the posts of V.A.Ws. Similarly the posts of Agriculture Sub-Overseer were abolished and they were upgraded as Agriculture Overseer posts. The Director of Horticulture in letter dated 29.4.1997 intimated the Government in Agriculture Department in the matter of surrendering 300 posts of V.A.Ws. of the Agriculture Directorate and for creation of equal number of posts under the Directorate of Horticulture.

4. Coming to know about creation of 300 posts of Field Technicians and others in the Directorate of Horticulture, about 198 V.A.Ws working in the Agriculture Directorate represented to get into the Horticulture Directorate as Field Technicians. These V.A.Ws. had been recruited against the non-existing posts of Horticulture Assistants in the Directorate of Horticulture. In absence of such posts, they had been initially appointed as Probationary Gardeners in the year 1979 and they had not come through the selection process for recruitment of Gardeners. They having matriculation qualification represented for being absorbed in a better post and, accordingly, they were absorbed as V.A.Ws in the Directorate of Agriculture. The suggestion given by the Directorate of Horticulture was acceded to and all the posts of V.A.Ws. in Directorate of Agriculture were abolished and 300 new posts were created in the Directorate of Horticulture. Out of these 300 posts newly created, 211 posts-were meant for Field Technician, 41 were meant for Grafters and 45 were meant for Gardeners. In Annexure-10 to the writ application, all the 198 V.A.Ws. working in the Directorate of Agriculture were absorbed as Field Technician in the Directorate of Horticulture whereas the Petitioner and similarly placed other employees, who had approached the Tribunal, continued as Grafters. The effect was that those 198 V.A.Ws., who had been appointed as Probationary Gardeners much after the Petitioner and similarly placed employees, became senior to the Petitioner and they occupied almost all the promotional posts of Field Technician meant for Grafters. Having no scope for further promotion to the posts of Field Technician and being aggrieved by the fact that 198 persons appointed much after them have been given the benefit of seniority above them, the Petitioner found no other way except approaching the Orissa Administrative Tribunal. The Tribunal in the impugned judgment came to find that the decision for abolition of V.A.Ws. posts in the Agriculture Department, creation of 211 posts of Field Technician in the Directorate of Horticulture and absorbing the V.A.Ws working in the Agriculture against the post of Field Technician created in the Directorate of Horticulture being a policy decision of the Government, the Courts have no jurisdiction to interfere with the same and, accordingly, dismissed the Original Applications.

5. Shri Asiwini Kumar Mishra, learned Senior Counsel appearing for the Petitioner not only assails the order of the Government in Annexure-10 but also the order

of the Tribunal on the ground that the hierarchy in Department of Horticulture starts from Gardener and the next promotional post is Grafter. The posts of Field Technician are filled up 100% by way of promotion from amongst the Grafters and the Field Technician have a scope of further promotion to the post of Horticulture Overseer. The Petitioner was appointed as Gardener through a selection process prior to 1979 whereas 198 V.A.Ws, who were appointed as Field Technicians in pursuance of Annexure-10, initially were appointed as Probationary Gardeners in the year 1979 under the Horticulture Department. They having been selected against the non-existing posts, these 198 probationary Gardeners being matriculate represented to the Government for appointment in better posts and, accordingly, their services were placed under the Agriculture Department and they were adjusted as V.A.Ws. while they were working as such in the Agriculture Department, a decision was taken to abolish the posts of V.A.Ws in the Agriculture Department and to create 300 posts of different categories in the Horticulture Directorate, out of which, 211 were earmarked as posts of Field Technician. These 198 V.A.Ws after abolition of the posts were adjusted under Annexure-10 as Field Technician with their seniority, as a result of which, not only they became senior to the Petitioner but also the promotional prospect of the Petitioner to the posts of Field Technician practically got wiped out.

Learned Counsel appearing for 198 V.A.Ws submitted that though initially they were appointed as probationary Gardeners subsequently they were absorbed as V.A.Ws in the Agriculture Department carrying the same scale of pay as that of the Field Technician. Therefore, when a decision was taken to abolish the posts of V.A.Ws in the Agriculture Department, these 198 V.A.Ws were adjusted against the newly created posts of Field Technician in the Horticulture Department and, therefore, there is no illegality in such adjustment. Learned Counsel for the State also advanced the similar arguments.

6. Admittedly, the Petitioner had been appointed as Gardener in the Horticulture Department prior to 1979 whereas these 198 V.A.Ws were initially appointed as Probationary Gardeners under the Horticulture Directorate in the year 1979. There is also no dispute that these 198 V.A.Ws were initially selected against the non-existing posts in the Horticulture Directorate and, therefore, they were given appointment as Probationary Gardeners. Later, on the basis of the representation submitted by these 198 Probationary Gardeners, their services were placed under the Agriculture Department against the posts of V.A.Ws. There is no dispute that the scale of pay as admissible to the post of V.A.Ws is that of Field Technician. In the meantime, the Petitioner has got promotion to the next higher post i.e. the post of Grafters and was waiting for further promotion to the post of Field Technician. When the posts of Field Technician were created in the Directorate of Horticulture, in normal course, the Petitioner would have got promotion to the said post. As the Government decided to abolish the posts of V.A.Ws. in the Agriculture Department, these 198 V.A.Ws were required to be adjusted some where and the scale of pay admissible to the post of V.A.Ws as

well as the Field Technician being the same, a decision was taken to absorb these 198 V.A.Ws as Field Technician against the newly created 211 posts of Field Technicians. Because of such adjustment, the Petitioner lost his chance of promotion, when the posts were created, and also became junior to these 198 V.A.Ws subsequently absorbed as Field Technician even though at the time of entry into service these 198 V.A.Ws-cum-Field Technician were junior to the Petitioner.

7. On a reading of Annexure-10, the order impugned before the Tribunal, it appears that 211 posts of Field Technician, 44 posts of Grafters and 45 posts of Gardeners were created under the Directorate of Horticulture during the year 1998-99. These posts were created by surrendering 273 posts of V.A.Ws created on 16.4.1977 and further 27 posts of V.A.Ws created on 18.8.1980 under the Directorate of Agriculture and Food Production, Orissa. Therefore, the policy decision relates to abolition of posts of V.A.Ws in the Agriculture Department and creation of 211 posts of Field Technician in the Horticulture Department. However, in the said impugned order, it was also directed that out of 211 posts of Field Technician created under the Directorate of Horticulture, 198 V.A.Ws working in the Agriculture Department shall go on transfer from the Agriculture Department to the Directorate of Horticulture and be absorbed as Field Technician. It was also directed that they shall carry their service seniority. The question that arises for consideration is even though the posts of V.A.Ws in the Agriculture Department were surrendered whether these 198 employees working as V.A.Ws in the Agriculture Department could be directly absorbed as Field Technician under the Directorate of Horticulture which had been newly created. When the practice is that posts of Field Technician shall be filled up only by way of promotion from amongst the Grafters, it was open for the State authorities to first give promotion to the Grafters having requisite qualification to the posts of Field Technician in the Directorate of Horticulture and fill up the rest posts by absorbing V.A.Ws in accordance with their seniority. Instead of doing so, the decision taken by the State authorities to absorb 198 V.A.Ws against the newly created post of Field Technician in the Directorate of Horticulture not only resulted in the Petitioner becoming junior to them, even though at the entry level he was senior to those 198 employees, but also blocking promotion prospect to the post of Field Technician. We are, therefore of the view that all those employees under the Directorate of Horticulture occupying the post of Grafters should have been considered first for promotion to the posts of field Technician and only after effecting promotion, the rest posts could be filled up by way of absorbing V.A.Ws working in the Agriculture Department in accordance with their seniority.

8. We, accordingly, set aside the impugned judgment and direct that as on 20th November, 1988, the date on which Annexure-10, was issued all those employees working as Grafters in the Directorate of Horticulture be considered for promotion to the post of Field Technician and those who had requisite qualification and were otherwise eligible for promotion should be given promotion

first. Only against the balance posts, out of 211, the V.A.Ws be absorbed in accordance with their seniority. The rest of V.A.Ws, who do not get an opportunity of absorption as Field Technician in the Directorate of Horticulture may either be adjusted in some other similar post under the Agriculture Department or they may be kept out of service, as holder of an abolished post, has no right to claim for appointment or continue in the said post.

The writ application is accordingly disposed of.

C.R. Dash, J.

I agree.