

(2003) 05 OHC CK 0016

In the Orissa High Court

Case No : Writ Petition (C) No. 2641 of 2002

State Transport Employees Federation

APPELLANT

Vs

O.S.R.T.C. and Others

RESPONDENT

Date of Decision : 02-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 96 CLT 380

Hon'ble Judges : B.P. Das, J;B. Panigrahi, J

Bench : Division Bench

Advocate : S. Rath, for the Appellant; K.C. Kar, Chittaranjan Kar, A.K. Mohanty (A), R.K. Behera and R.C. Pradhan, for the Respondent

Final Decision : Dismissed

Judgement

B. Panigrahi, J.—In this case the state transport employees Federation being represented through its Vice-President, Mathura Charan Sahoo has questioned the legality, validity and propriety of the appointment of the opp. party No. 3 as the District Transport Manager (Enquiry) (hereinafter referred to as the D.T.M.). The petitioner has claimed as a federation of Union of Employees of Orissa State Transport Corporation (in short, "OSRTC") and its main purpose is to espouse the service conditions of the employees and to safeguard the interest of the organisation. It is stated that the opp. party No. 1 is a statutory body constituted with effect from 1.5.1974 u/s 3 of the Road Transport Corporation Act, 1950. The Corporation has framed its own regulation under the name and style of OSRTC Employees (Classification, Recruitment and Conditions of Service) Regulation, 1978 (hereinafter referred to as the Service Regulation). As per the provisions of the Service Regulation the D.T.M. is the appointing and disciplinary authority in respect of Class-III and Class-IV posts under different zones. The DT.M. is the zonal head and Chief Administrative Officer of the Corporation of the aforesaid zone, It has been inter alia stated that due to the inefficient administration, corruption and nepotism the Corporation has sustained heavy financial loss as a

reason whereof, it is not able to discharge its financial obligation due to the employees. It is further stated that the loss has been multiplied into several crores.

2. Opp. party No. 3 was initially appointed as Assistant Transport Manager by Office Order No. 4695 dated 9.2.1982. He was promoted to the rank of the District Transport Manager on ad hoc basis for a period of three months or till regular selection is held by the State Transport Service Board. Pursuant to the Order No. 8043 dated 5.3.1991, the opp. party No. 3 joined in the post at Bhawanipatna on 12.3.1991. The initial appointment had been extended from time to time to meet the administrative exigency of the Corporation. Finally his appointment was regularised by virtue of the Order No. 4235 dated 19.2.2001. The petitioner therefore, being aggrieved by such appointment has filed this case.

3. It has been further stated by the petitioner that one Jagannath Das, a retired employee of the Corporation filed a writ petition being O.J.C. No. 8499 of 2001 against the State of Orissa and OSRTC praying therein for a vigilance enquiry for the lapses committed by the Corporation. In the said case another Division Bench of this Court has passed an ad interim injunction restraining the opp. party No. 3 from functioning as Establishment Officer.

4. The opp. parties 1 & 2 filed their counter whereby they disputed the averment made in the petition and have stated, inter alia, that there was no legality in the appointment of opp. party No. 3 as D.T.M. There has been no flagrant violation or infraction of the provisions or Regulation. The opp. party No. 3 was appointed as Assistant Transport Manager on 9.2.1982 along with 10 other candidates. He was subsequently promoted as D.T.M. along with other six Assistant Transport Manager in 1991 and continued in that post till all of them were regularized. The case of the opp. party No. 3 was placed before the Service Selection Board and on the recommendation of the Service Selection Board the post of opp. party No. 3 was regularised as D.T.M, This was done after thorough examination of the service record by the Chairman-cum-Managing Director, who is a very senior and efficient officer. Since the appointment of opp. party No. 3 as D.T.M. was made on the basis of the recommendation of the Service Selection Board by the opp. parties 1 and 2, palpably there has been no infraction of Rules, the petitioner could not have questioned such appointment. It is true that some recovery has been shown in the audit report and steps have been taken by opp. parties 1 and 2 for recovery of the said amount. But that itself is not sufficient to question his appointment as D.T.M. It has been stated that the petitioner not being a person affected, therefore, he could not have challenged the, opp. party No. 3 "s appointment in this writ petition. Thus the writ petition has been filed being actuated with malice, therefore, it should be dismissed in limine.

5. Mr. Rath, learned advocate appearing for the petitioner has advanced an inexorable plea that the petition at the instance of the employees federation is maintainable as its main purpose is to expouse the welfare of the employees working in the Corporation. It has been further stated that opp. party No. 3 did

not possess requisite qualification and there was no occasion for opp. parties 1 and 2 to appoint him as D.T.M.

6. While examining Mr. Rath's contention it has to be first adverted to the question whether the petitioner has been affected by the opp. party No. 3's appointment as D.T.M. and further whether there was any infraction or violation of the statutory Regulation. Not only opp. party No. 3, but also along with him two others were given promotion. It is not understood as to how the petitioner-federation has been affected by the promotion of opp. party No. 3 leaving the other two officers. It is found that from at least 1991 opp. party No. 3 has been working as D.T.M. on ad hoc basis. He completed almost more than 10 years in the same post on ad hoc basis. Thus on review of the service record the authorities found him suitable to give him promotion to the rank of D.T.M. We are at a loss to understand how the federation has been affected by such promotion, particularly when it has not satisfied us that there was any infraction to the Regulation framed whereby the recruitment to all types of posts are being controlled. While considering the above question, we however feel it inclined to rely on a recent judgment of the Supreme Court reported in Vinoy Kumar Vs. State of U.P. and Others, in which it has been held :

"In the instant case the petitioner had not filed the petition in public interest and did not disclose the circumstances which prevented the affected persons from approaching the court. In the discharge of his professional obligations, the petitioner advocate is not obliged to file the writ petition on behalf of his clients. No circumstance was mentioned in the petition which allegedly incapacitated the affected persons from filing the writ petition. Section 30 of the Advocates Act only entitles an advocate to practise the profession of law and not to substitute himself for his client. The filing of the writ petition in his own name, being not a part of the professional obligation of the advocate, the High Court was justified in dismissing the writ petition holding that the petitioner had no locus standi."

7. In a judgment reported in R.K. Jain Vs. Union of India and Others, the Supreme Court has held as follows :

"...In service jurisprudence it is settled law that it is for the aggrieved person, i.e. non-appointee to assail the legality of the offending action, Third party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public spirited person."

8. Therefore, from the ratio of the above judgment there has been no slightest doubt whatsoever that the petitioner has not been affected by the opp. party No. 3's appointment as D.T.M. and has, therefore, no locus standi to maintain this case. It is further open to the opp. parties 1 and 2 to take immediate steps to realise the money from opp. party No. 3 as per the audit report and not to assign any financial responsibility to him.

9. With the above observations, the writ petition is dismissed.

B.P. Das, J.

10. I agree