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**(2003) 12 OHC CK 0028**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 1562 of 2002**

Sukanta Patra

APPELLANT

Vs

Principal Secretary and Others

RESPONDENT

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**Date of Decision :** 11-12-2003

**Acts Referred:**

**Citation :** (2004) 97 CLT 682

**Hon'ble Judges :** P.K. Mohanty, J;P.K. Misra, J

**Bench :** Division Bench

**Advocate :** B.K. Sahoo and K.C. Sahoo, for the Appellant; A.G.A., for the Respondent

**Final Decision :** Dismissed

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## Judgement

P.K. Mohanty, J.—Heard Mr. B. K. Sahu, learned counsel for the petitioner.

2. The petitioner was appointed as a Stipendiary Engineer on a consolidated stipend of Rs. 2000/- per month by order dated 7.4.1992 of the Government of Orissa in the Department of Energy and assigned to Orissa Lift Irrigation Corporation with a direction to the Corporation to issue detailed posting order, a copy whereof is Annexure 1. The Lift Irrigation Corporation in its order dated 25.4.1992 (Annexure 2) pursuant to the letter of the Energy Department of the Government of Orissa, posted the petitioner to L.I. Division, Aul. The petitioner was transferred to Grid Corporation, which issued posting order dated 17.7.1997 and posted him as a Stipendiary Engineer (shift) TL S/D, Ganjam (Annexure 3) in which he joined.

The petitioner while was continuing as a Stipendiary Engineer, was appointed by the Grid Corporation permanently as Stipendiary Engineer (E) with effect from 25.7.1997 F.N., which is the date of joining of the petitioner in Grid Co. and re-designated him as Assistant Manager (Grade-E 3) with effect from the said date on terms and conditions of the Grid Co. officers' Service Regulation, a copy whereof is Annexure-4.

3. The petitioner assails the order dated 4.6.1997 (Annexure - 4) as illegal and arbitrary and prays for a direction to absorb him in the Grade of Assistant Manager, Grade III with effect from 3.12.1996, the date of the Government Resolution (Annexure 5). It is the contention of the learned counsel for the petitioner that the Government having taken the resolution on 12th March, 1996 (Annexure 5) for appointing the Stipendiary Engineers as Assistant Engineers or in equivalent posts carrying the same scale, the petitioner ought to have been appointed as such with effect from that date and given the salary and other service benefits reckoned on that basis. The learned counsel has brought to our notice the decisions in Managobinda Son and Ors. v. State of Orissa and Ors. in O.J.C. No. 8350 of 2001 and in Laxman Jena and Ors. v. State of Orissa and Ors. in O.J.C. No. 11281 of 2001 in support of his contention.

4. Undisputedly, the petitioner was continuing as a Stipendiary Engineer under the Grid Corporation of Orissa Ltd. as on 4.8.1997 when pursuant to the resolution of the Government, he was permanently absorbed in the Grid Co. Service as Stipendiary Engineer with effect from 25.7.1997 F.N., the date on which he joined the Grid Co. On being permanently absorbed in Grid Co. he was re-designated as Assistant Manager (Grade-E III) with effect from that date on the terms and conditions applicable to the Grid Co. Officers. The Government, in its Resolution dated 12.3.1996, copy whereof is annexure 5, taking into consideration the demands of the Stipendiary Engineers for regularization of their services in the cadre of Assistant Engineers or against similar posts, decided that the Stipendiary Engineers of the different disciplines are to be appointed in the post of Assistant Engineers carrying the scale of pay of Rs. 2000-3500/- or any similar posts on ad hoc basis against the regular vacancies, the services of the Assistant Engineers are to be regularized through Validation Act and some of the provisions of the Orissa Engineering Service (Recruitment and Conditions of Service) Rules, 1941 are to be amended with the approval of the Cabinet.

5. In consideration of the said decision of the Government at paragraph 6 resolved and directed the appointing authorities of the Departments of the Government to appoint the Stipendiary Engineers of different disciplines as Assistant Engineers against the existing vacancies of the Assistant Engineers on ad hoc basis for a period of one year except Civil and Mechanical, to be appointed on ad hoc basis by the Department of Water Resources. It was stipulated in paragraph 6 of the Government Resolution, while appointing them as Assistant Engineers on ad hoc basis, the following conditions are to be followed :

(i) O. R. V. Act and Rules Will be applicable.

(ii) The selection of Stipendiary Engineers to the post of Assistant Engineer on ad hoc basis to be adjudged their suitability taking into their performance and C.C.Rs. by a Committee already constituted vide Water Resources Department Order No. 4353 dated 17.2.1995.

(iii) The Stipendiary Engineers of different disciplines who cannot be appointed as Assistant Engineers on, ad hoc basis immediately will be engaged against the subsequent vacancies of different Departments and public Undertakings/Boards/Corporations.

6. In paragraph 7, it was resolved that the Stipendiary Engineers, who are working in different State Government Undertakings, Corporation, Semi-Government Organizations and Statutory Boards may also be appointed as Assistant Engineers or in equivalent posts carrying the same scale, subject to their suitability and satisfactory performance. A reading of paragraphs 6 and 7 of the Government Resolution dated 12.3.1996, copy whereof is Annexure 5, makes it clear that by such Resolution, the Government directed that the Stipendiary Engineers working either in the Government Departments or in Government Undertakings, Corporations, Semi-Government Organizations and Statutory Boards may also be appointed as Assistant Engineers or in equivalent posts, subject to their suitability and satisfactory performance. Thus, the appointment to the post of Assistant Engineers or equivalent posts are to be made by such authorities, subject to their suitability and satisfactory performance and as such, a decision in each case has to be taken by the appropriate authority and thereafter only, such Stipendiary Engineers are to be appointed to those posts. It is not automatic nor the Resolution contemplates that the Stipendiary Engineers working either in the Government Departments or elsewhere, as indicated, are to be designated or appointed as such without finding out the suitability and satisfactory performance of such Stipendiary Engineers. A Stipendiary Engineer in service with the Government Department or the Government Undertaking Corporation, Semi-Government Organizations and Statutory Boards are therefore necessarily to be considered by their respective appointing authorities with regard to their suitability and satisfactory performance and only thereafter, if they are found suitable and have satisfactory performance, can be appointed as Assistant Engineers or in any equivalent posts in terms of the Government Resolution. Thus, the appointment has to take effect from the date, the decision is taken by such authorities and the date from which such authorities found one suitable to the post.

7. The two decisions of learned Single Judge in case of Mangobinda Sen and others and in Laxman Jena and others (supra) relied on by the learned counsel in support of petitioner's case is of no avail. It appears that the aforesaid judgments have been rendered and directions have been issued in those cases taking note of para 5 of the Government Resolution dated 12.3.1996 without noticing the directive portions in para 6 and 7 thereof and otherwise also no ratio is laid so as to have a binding precedence. Paragraphs 6 and 7 of the very resolution of the Government perhaps were not brought to the notice of the Court while considering those cases. In Para 6 of the Government Resolution (Annexure 5), the State Government had taken a policy decision that the Stipendiary Engineers should be appointed as Assistant Engineers or in any similar post on ad hoc basis against regular vacancies, the services of ad hoc

Assistant Engineers to be regularized by Validation Act and some provisions of Orissa Engineers Service (Recruitment and Conditions of Services) Rules, 1941 are to be amended. But the directive portion of the resolution at paragraphs 6 and 7 thereof, which have been quoted herein before have not been taken into consideration. Paragraphs 6 and 7 of the Government Resolution clearly stipulates that respective Departments of the Government and the State Government Undertakings, Corporations, Semi-Govt. Organizations and Statutory Boards shall make such appointments only after such appointing authorities adjudge the suitability and performance of such Stipendiary Engineers in terms of principles laid therein. The Resolution does not contemplate automatic promotion to be given by the respective appointing authorities by virtue of the Resolution of the Government from the date of such Resolution. The Government Resolution, therefore, contemplates an element of selection in manner laid in the Resolution and therefore, the appointing authority has to consider the adjudge, the suitability and performance of such Stipendiary Engineers for promotion or adjusting them in the post of Assistant Engineers or in any other similar posts. No right is vested on a Stipendiary Engineer for promotion or adjustment in the post of Assistant Engineer on the basis of the Government Resolution as it is without and before the appointing authority takes a decision in the matter by adjudging their suitability and performance. The Stipendiary Engineer, therefore, have a vested right to claim salary and other benefits of Assistant Engineer or other similar posts only after their suitability and performance are adjudged and they are appointed by the respective appointing authorities to such post. The decisions referred to and relied by the learned counsel for the petitioner is of the consequence.

8. In the case at hand, the appointing authority, Grid Co. in its letter dated 4.8.1997 (Annexure 4), pursuant to Notification dated 19.3.1997 of the Government of Orissa, Department of Energy read with their notification dated 21.3.1997 and office order dated 12.6.1997, communicated the decision to permanently appoint the petitioner in the services of Grid Co. and Stipendiary Engineer (Elec.) with effect from 25.7.1997 (F.N.), the date when the petitioner joined the Grid Co. and on being permanently absorbed, he was re-designated as Assistant Engineer Manager (Grade-E- III) with effect from the date on the terms and conditions of Grid Co. Officers' Service Regulations. The pay of the petitioner was fixed accordingly. The petitioner, as such, has a right to be paid the salary and other perquisites from the date he is adjudged suitable to hold the post and appointed or adjusted as such but not from the date the Government took the Resolution as matter of policy in Resolution dated 12.3.1996.

9. In that view of the matter, we do not find any merit in the writ petition and accordingly, we dismiss the writ petition in limine.

P.K. Misra, J.

10. I agree.