
(1996) 11 OHC CK 0022
In the Orissa High Court
Case No : O.J.C. No. 8595 of 1996

Susanta Kumar Kar

APPELLANT

Vs

Registrar (Judicial), Orissa High Court

RESPONDENT

Date of Decision : 14-11-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16

Orissa High Court (Appointment of Staff) Rules, 1963 — Rule 6

Citation : (1997) 83 CLT 335 : (1997) 1 OLR 463

Hon'ble Judges : S.N. Phukan, C.J.; A. Pasayat, J

Bench : Division Bench

Advocate : Abhiram Swain, R.K. Sahoo, P.K. Mohapatra and B.D. Tikayat, for the Appellant; R.K. Mohanty, Additional Government Advocate, for the Respondent

Judgement

A. Pasayat, J.—Petitioner has prayed for a direction to the Registrar (Judicial) of this Court to accept applications submitted directly in this Court to be considered for appointment as Junior Assistant in the establishment of the Court. It is stated that insistence is being made on the names being sponsored by Employment Exchanges of the State keeping out of consideration applications made directly.

2. Rule 6 of the Orissa High Court (Appointment of Staff) Rules, 1963 (in short, "the Rules") is characterised by petitioner to be unreasonable and arbitrary. Reliance is also placed on the Resolution of the Government of Orissa, Labour and Employment Department dated 7th February, 1990 stating that the need for compulsory sponsoring arrangement by Employment Exchanges in the State in regard to relevant vacancies under the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (in short, "the Act") has undergone amendment and there is no need for the name being sponsored through Employment Exchange.

The learned Additional Government Advocate submitted that the Rules are very clear, and therefore, there is no scope for entertaining any application directly from any applicant.

3. Rule 6 of the Rules reads as follows :

"6. All appointments by direct recruitment in Class III service shall be made by notifying the vacancies to the local Employment Exchange :

Provided that such notification will not impose any obligation on the appointing authority to recruit any person through the Employment Exchange to fill any vacancy merely because that vacancy has been notified:

Provided further that failing recruitment through the Employment Exchange either in part or whole the vacancies may be filled up by advertising them in the newspapers and Official Gazette."

On a bare reading of the aforesaid rule, it is clear that appointments by direct recruitment in Class III service are to be made by notifying the vacancies to the local Employment Exchange. The second proviso permits filling up vacancies by advertisement in newspaper and official gazette when recruitment through Employment Exchange has failed.

4. The moot question is whether there is any scope for accepting applications directly notwithstanding the requirement to notify the vacancies to the Local Employment Exchange. Excluding the candidates who are not sponsored through the medium of Employment Exchange and restricting the choice of selection to the candidates sponsored through the medium of Employment Exchange, would offend the equality clause of Arts. 14 and 16. It is not open to Government to impose restriction on the field of choice. Even if paper publication is made that may not reach many a handicapped who may be unable to have access to the newspaper. It is to be noted that sponsoring through the medium of Employment Exchange does not violate Arts. 14 and 16. On the other hand, it would advance the rights to the handicapped. But at the same time, realities of life cannot be lost sight of. There may be many candidates who have not been able to sponsor their names, though their names are either registered or are waiting to be registered in the Employment Exchange. They would be deprived of opportunity to be considered with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the Employment Exchange. Many a deserving candidates are deprived of the right to be "considered for appointment to a post. Requisitioning authority/establishment has to intimate the Employment Exchange, and the Employment Exchange should sponsor the names of the candidates to the Requisitioning Departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate Department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their offices, notice boards or at such other place as deemed proper. Then it shall consider the applications of all the candidates who have applied. If this process is adopted fair-play would be subserved, and the equality of opportunity in the matter of employment would be available to all eligible candidates. Similar view was expressed by the apex Court in The Excise

Superintendent (Malkapatnam, Krishna District, Andhra Pradesh v. K. B. N. Visweshwara Rao and Ors. : 1996 (7) SCC 201

5. It is the stand of learned Additional Government Advocate that large number of applications shall be made if direct applications are received. We find no substance in such a plea. Keeping in view the large number of unemployed persons in the country, it would be unreasonable to restrict the consideration of only cases sponsored through Employment Exchange. In any event on the anvil of fair-play, any inconvenience caused by large number of applications being made becomes inconsequential.

6. In the result, we direct the Registrar (Judicial) of the Court to accept the applications directly made by the candidates whose names are not sponsored by the Employment Exchange. Rule 6 of the Rules may be amended suitably to bring it in line with the observations made by the apex Court in The Excise Superintendent, Malkapatnam's case (supra). It has to be noted that keeping in view the sharp increase in the Live Register positions in the face of a steep decline in the number of vacancies notified to the various Employment Exchanges relaxations have been made by the Government of Orissa in the Labour and Employment Department by Resolution dated 7-2-1990. As a matter of abundant caution it has been notified in the said Resolution that the employer shall not entertain any application from any candidate in response to any advertisement or notice for a post unless he has registered his name in any Employment Exchange" in the State. After any such direct recruitment is made from open market, the employer is to intimate the concerned Employment Exchange the details of candidates selected for the vacancies. The vacancy shall be notified in the notice board of this Court and the notice boards of all the District Courts of the State indicating the details relating to number of posts vacant, requisite qualification and the procedure for making the application. It has to be specifically mentioned in the notice that the employment registration number is to be indicated in the application.

The writ application is disposed of accordingly.

S.N. Phukan, C.J.

7. I agree.