
(2015) 01 OHC CK 0013

In the Orissa High Court

Case No : Writ Petition(C) No. 21454 of 2014

Trilochan Mohanty

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:

Citation : (2015) 01 OHC CK 0013

Hon'ble Judges : Amitava Roy, C.J. Dr., J.; Akshaya Kumar Rath, J.

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioner has prayed inter alia to quash the order dated 01.06.2012, vide Annexure-12, passed by the Government of Orissa in its Law Department creating the posts of Superintendent Level-II and Level-I in the cadre of Typist in the Subordinate Judiciary of the State. An ancillary prayer has been made to create the said post with effect from 25.02.1992 and promote him to the post of Superintendent Level-II with effect from 29.02.1992 and grant consequential benefits.

2. The case of the petitioner is that he was appointed as Junior Typist in the Judgeship of Cuttack on 04.08.1967. Thereafter he was promoted to the post of Senior Grade Senior Typist. While the matter stood thus, the Government of Orissa, Political and Services Department by the resolution dated 01.06.1978, vide Annexure-1, took a decision that a post of Head Typist in the office of Heads of Department will be admissible for every six Typists and when the number of Junior and Senior Grade Typists in an office will be more than 50% of the above yardstick another supervisory post of Head Typist will be admissible.

3. The further case of the petitioner is that pursuant to the Office Memorandum dated 09.04.1980, vide Annexure-2, posts of Head Typist and Superintendent were created in all the Heads of Departments of the State with effect from 09.04.1980 except the Judgeships of the State. As per the yardstick fixed in

Annexures-1 and 2, fourteen posts of Head Typist were admissible in the Judgeship of Cuttack, out of which at least three posts were to be converted to the post of Superintendent, but then the opposite parties did not create the post of Head Typist and Superintendent on the ground that the establishment of the District and Sessions Judge is not the Heads of Department. Challenging, inter alia, the action of the Government, a writ application was filed before this Court, which was registered as O.J.C. No. 950 of 1985. By judgment dated 22.02.1991, this Court directed that the post of Head Typist in the judgeship of Cuttack should be created within a period of three months. Pursuant to the said direction of this Court, the opposite parties 1 and 2 issued notifications on 05.09.1991 and 25.02.1992 creating five posts of Head Typist in the Judgeship of Cuttack as against fourteen posts. The opposite parties did not convert one of the posts of Head Typist to the post of Superintendent. Aggrieved by the action of the opposite parties in creating less number of posts of Head Typist than the approved yardstick, the petitioner along with some other Typists of the judgeship of Cuttack filed writ application before this Court, which was registered as O.J.C. No. 370 of 1993. By judgment dated 12.08.2011, a Division Bench of this Court allowed the writ application with a direction to the opposite parties to create posts of Superintendent Level-II and Level-I in consonance with the latest decision of the Government by applying the revised yardstick of Head Typist in the office of the Heads of Department as per the Political and Services Resolution dated 01.06.1978 in respect of Heads of Department in the judgeship of Cuttack within six months.

4. It is further pleaded that since the order was not implemented, a contempt petition being CONTC No. 559 of 2012 was filed. During pendency of the said application, the opposite party No. 1 by order dated 01.06.2012 created sixteen posts of Superintendent Level-II and eleven posts of Superintendent Level-I and the opposite party No. 2 by order dated 06.07.2012 created nineteen posts of Superintendent Level-II and fifteen posts of Superintendent Level-I vide Annexures-12 and 13 respectively in different judgeships of the State in addition to the posts of Head Typists already created under Annexures-4 and 5. It was mentioned in the said order that the posts are created only from the date those are actually filled up. It is further stated that during pendency of the aforesaid writ application, the petitioner and some other Typists retired from service and some of them also expired. The opposite parties deliberately created the posts prospectively to deny the promotional benefit particularly to the petitioners, who retired from service during pendency of the writ application.

5. Heard Mr. A.K. Mohapatra, learned counsel for the petitioner and learned Government Advocate.

6. Mr. Mohapatra, learned counsel for the petitioner submits that because of step motherly attitude of the opposite parties, the petitioner is running from pillar to post. On jejune grounds the posts were not created for which the petitioner along with others filed O.J.C. No. 370 of 1993. By judgment dated 12.08.2011,

this Court directed the opposite parties therein to create posts of Superintendent Level-II and Level-I within six months from the date of receipt of order. Since the same was not done, a contempt application was filed. During pendency of the contempt application, the opposite party Nos. 1 and 2 have created posts of Superintendent Level-II and Level-I in different Judgeship of the State vide Annexures-12 and 13 mentioning therein that those posts are created only from the date those are actually filled up. Sri Mohapatra further submits that had the posts being created with effect from 25.02.1992, the petitioner would have been promoted. The action of the opposite parties in creating the posts prospectively smacks malafide. The submission of Sri Mohapatra is difficult to fathom.

7. A Division Bench of this Court in O.J.C. No. 370 of 1993 directed the opposite parties therein to create posts of Superintendent Level-II and Level-I in consonance with the latest decision of the Government by applying the revised yardstick of Head Typist in the office of the Heads of Department as per the Political and Services Resolution dated 01.06.1978 in respect of Heads of Department in the judgeship of Cuttack within six months. Since the order was not implemented, an application for contempt was filed. In the said application, a show cause notice was filed by the opposite parties asserting that by communication dated 01.06.2012 issued by the Government of Orissa in the Law Department, sixteen posts of Superintendent Level-II and eleven posts of Superintendent Level-I in the pay scale mentioned therein had been created in the cadre of Typist in the subordinate judiciary as detailed therein. Upon hearing learned counsel for the parties and on a consideration of the judgment and order dated 12.08.2011 and more particularly the direction issued by this Court and noticing the fact that the opposite parties in fact have created the posts, the application for contempt was closed.

8. In O.J.C. No. 370 of 1993, a prayer was made by the petitioner for issuance of a direction to the opposite parties to create the post of Superintendent Level-II and Level-I as per the direction of the Government in respect of the Heads of Department in the Judgeship of Cuttack. No prayer was made therein to create posts from retrospective effect. In the instant writ application, the prayer is to create the post with effect from 25.02.1992. Thus, the present writ application is hit by the principles of constructive res judicata. The petitioner cannot be permitted to approach this Court by filing successive writ applications for the self same cause of action.

The writ application being devoid of merit is accordingly dismissed.