

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 14081 of 2013

Pratap Kumar Panda

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Petitioner

Mr. B.B. Mohanty, Advocate

Vs.

State of Odisha & Ors.

.....

Opposite parties
Mr. S.N. Nayak, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE V. NARASINGH

ORDER

08.07.2022

Order No.

09.

This matter is taken up through hybrid mode.

2. Heard Mr. B. B. Mohanty, learned counsel for the petitioner and Mr. S. N. Nayak, learned Additional Standing Counsel appearing for the State Opposite Parties.

3. The petitioner has filed this writ petition challenging the gradation list at Annexure-7 dated 30.08.1999 and the order dated 20.03.2013 passed in O.A. No. 1005(C)/2009 at Annexure-14, by which the Odisha Administrative Tribunal, Cuttack Bench, Cuttack has dismissed the said O.A.

4. Mr. B. B. Mohanty, learned counsel for the petitioner contended that the Tribunal has committed gross error apparent on the face of the record in not directing for fixation of inter se seniority. Therefore, without applying its mind in proper perspective, the order so passed by the Tribunal cannot sustain in the eye of law.

5. Mr. S.N. Nayak, learned Additional Standing Counsel appearing for the State Opposite parties contended that the gradation list was published on 03.08.1999, but it is contended that the petitioner filed his representation agitating his grievance for his inter se seniority, which was forwarded on 26.12.2006 after a long lapse of six years. Thereby, the claim of the petitioner for fixation of his inter se seniority cannot sustain in the eye of law, as it suffers from delay and latches.

4. Considering the contentions raised by learned counsel for the parties and after going through the records, it appears that the Petitioner was appointed as a Junior Horticulture Officer as per Order dated 11.11.1996. While working as Junior Soil Conservation Officer, and as per the said order, his seniority as Junior Horticulture Officer is supposed to be counted from the date of his joining under the Directorate of Horticulture. It is stated that Opposite Party No.3, who was also working as Junior Soil Conservation Officer, submitted a representation to the Director Horticulture-Opposite Party No.2 on 12.11.1996 for appointment as a Junior Horticulture Officer. Accordingly, she was appointed as Junior Horticulture Officer, vide office order dated 18.10.1997, pursuant to which she joined on 1.11.1997. It was also directed in the said office order that Opposite Party No.3 shall count her seniority as Junior Horticulture Officer from the date, she joined as such. However, in the provisional gradation list published on 6.7.1999, the Petitioner was placed at Sl. No. 138, whereas Opposite Party No.3 was placed at Sl. No. 135, though the Petitioner should have been

placed above Opposite Party No.3 having joined earlier than her. Therefore, the Petitioner filed his objection to the provisional gradation list on 20.7.1999. Despite this, final seniority list was published, vide order dated 30.8.1999 showing Opposite Party No.3 above the Petitioner. The Petitioner, thereafter, filed a representation, which was duly forwarded to the Director, vide letter dated 26.12.2006. He and Opposite Party No.3 thereafter promoted to the post of Assistant Horticulture Officer as per order dated 25.8.2008. But, the Petitioner filed O.A. No.1005(C) of 2009 challenging his inter se seniority published in the gradation list on 30.8.99 and also prayed that he should be restored to his seniority in the gradation list of Asst. Horticulture Officers.

5. Pursuant to notice, Opposite Parties entered appearance and filed their counter affidavit before the Tribunal stating, inter alia, that the petitioner joined as a Junior Horticulture Officer on 18.11.1996. Seniority was allowed to Opposite Party No.3 as per merit list communicated by the Director, Agriculture and Food Production, vide letter dated 21.9.1996 as the Petitioner passed in 1991 securing 44.04 points only, whereas Opposite Party No.3 passed in 1990 securing 76.15 points. It is further averred that the orders of the Director, Horticulture, Opposite Party No.2, directing that seniority be counted from their dates of joining are erroneous and such error can be corrected at any time as settled in the case of **Markendeya Singh and Others v. M.L. Bhanot**, (1989) 1 SLJ 193. Therefore, the claim of the petitioner for fixing his seniority over and above

opposite Party No.3 does not arise.

6. The Tribunal, after due adjudication, vide Order dated 20.03.2013 came to a definite finding that the Resolution No. 27182/C dated 12.08.1987 of the Agriculture and Co-operation Department, which governs the field, relating to recruitment and promotion of Junior Horticulture Officers and Assistant Horticulture Officers has not been followed in the appointment of the Petitioner as well as Opposite Party No.3. Therefore, the appointment of both the Petitioner and Opposite Party No.3 though dehors of rules, has been continued over a prolonged period and is to be deemed regular as per paragraph-44 of the decision of the apex Court in ***Secretary, State of Karnataka v. Uma Devi***, AIR 2006 SC 1806. But fact remains, when the Gradation List was published on 06.07.1999, the Petitioner filed representation with regard to fixation of seniority, wherein the date has not been mentioned, and was forwarded on 26.12.2006. When this Court confronted to the learned counsel for the Petitioner to provide the date of representation/objection filed for inter se seniority, he could not place the same from record to substantiate the same. Therefore, it is apparent that the undated representation filed by the petitioner is just an eyewash to draw attention, which has been acted upon/forwarded on 26.12.2006. It is delayed for more than 6 years and as such, such a delayed application cannot also be taken into consideration with regard to inter se seniority.

7. In ***Shiba Shankar Mohapatra v. State of Orissa***, (2011) 1 SCC (L & S) 229, the apex Court held that seniority not challenged within a reasonable period of 3 to 4 years

cannot be challenged on a later date. In the present case, the petitioner has not mentioned the date on his representation/objection, but that was forwarded on 26.12.2006, after a long lapse of 6 years. Therefore, the grievance of the petitioner cannot sustain in the eye of law, as the same is suffered from delay and latches.

8. In that view of the matter, this Court is of the considered view that the Tribunal has not committed any error in the order dated 20.03.2013 passed in O.A. No. 1005 (C)/2009 so as to warrant interference of this Court. Accordingly, the writ petition merits no consideration and is accordingly dismissed.

Alok /subhasmita

