

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 18463 of 2017

State of Odisha & Ors.

.....

Petitioner

Mr. A.K. Mishra, AGA

Vs.

Jyostnamayee Mishra & Anr.

.....

Opposite Parties

*Mr. S. Mishra, Advocate
(O.P.1)*

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE G. SATAPATHY

ORDER

12.10.2022

Order No.

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This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Mishra, learned Additional Government Advocate appearing for the State-petitioners and Mr. S. Mishra, learned counsel appearing for opposite party no.1.

3. The State-petitioners have filed this writ petition seeking to quash the orders dated 08.01.2016 under Annexure-3 passed in O.A. No.1696 of 2010, by which the Odisha Administrative Tribunal, Bhubaneswar has directed the petitioners to consider the case of opposite party no.1 and promote/appoint her to the post of Tracer against any vacant post and if no such post is available, then by reverting the last person promoted after the direction in O.A. No.742 of 2009 was issued, and further to quash the order dated 28.02.2017 under Annexure-6, by which the Tribunal has rejected the review petition filed by the State-petitioners.

4. Mr. A.K. Mishra, learned Additional Government

Advocate appearing for the State-petitioners contended that opposite party no.1 was working as a Peon. She was not entitled to get promotion to the post of Tracer, as the same is not a promotional post of the Peon. As such, opposite party no.1 was given opportunity to attend the interview on 15.02.1991, but she could not come out successful as per records available before the Superintending Engineer, P.H. Circle, Bhubaneswar. Thereafter, the second interview was held on 18.06.1999 in the office of the Chief Engineer P.H. (Urban), Odisha, Bhubaneswar for the post of Tracer. As per Works Department letter no.4775 dated 26.02.1980 (para-3-d), opposite party no.1 did not possess requisite qualification of Tracer, because the requirement was that the candidate should have possessed matriculate qualification with experience of two years in tracing from blue printing or a certificate of Draftsmanship from Industrial Training Institution. Therefore, the case of opposite party no.1 was forwarded by the Executive Engineer, P.H. Division, Puri to the office of the Chief Engineer, Public Health (Urban), Odisha for appearing the interview. But in the initial scrutiny of the applications of the intending candidates, opposite party no.1 was found unsuitable due to want of requisite educational qualification. Thereby, she was not called for the interview/test. Consequentially, the pensionary benefit as admissible to the post of Tracer which opposite party no.1 now claims is not admissible.

5. Mr. S. Mishra, learned counsel appearing for opposite party no.1 contended that though opposite party

no.1 has already retired from service from the post of Peon, but she is entitled to get the benefit of Tracer as per the order of the Tribunal and the differential amount should be paid to her by fixing notionally from the date of her retirement and revised pensionary benefit, as due and admissible to her, should also be paid to her. Thereby, the writ petition so filed by the State-petitioners cannot sustain in the eye of law and the same is liable to be dismissed.

6. Having heard learned counsel for the parties and after going through the records, it appears that opposite party no.1 was appointed as Peon. In 1980 she was transferred to Puri P.H. Sub-division and continuing as such there. She made several representations before petitioners no.2 and 3, so also before the Minister of Works and U.D. Department for her promotion/appointment to the post of Tracer. She was called for an interview for the post of Tracer, vide office order dated 07.02.1991, but she could not successful. Thereafter, on 09.03.1999 she was directed to appear in the interview on 16.03.1999, but the said interview was postponed. She was not eligible because of para-3(d) of the letter no.4775 dated 26.02.1980 issued by the Works Department which states as follows:

“3 (d) Candidates for the posts of Tracer under categories I,II and III shall be matriculate with experience of 2 years in tracing from blue printing of a certificate of Draftsmanship from Industrial Training Institution”.

Therefore, even though opposite party no.1 applied for

the same, she having not possessed requisite qualification for grant of promotion was not called for interview.

7. The Tribunal, after due adjudication, in paragraph-6 of the order dated 08.01.2016 held as follows:

“6. Accordingly, we allow the O.A. and quash the order vide Annexure-3 and direct Respondents to consider the case of the applicant and promote/appoint her to the post of Tracer against any vacant post and if no such post is available, then by reverting the last person promoted after the direction in O.A. No.742/2009 was issued. The entire exercise be completed within a period of three months from the date of receipt of a copy of this order”.

On perusal of the aforesaid order, it is evident that the Tribunal has not taken note of para-3-d of letter no.4775 dated 26.02.1980 of the Government of Odisha in Works Department and passed the order directing to give promotion/appointment to the post of Tracer against any vacant post and if no such post is available, then by reverting the last person promoted after the direction in O.A. No.742 of 2009 was issued. Therefore, the Tribunal has committed gross error apparent on the face of the records by issuing such direction. If opposite party no.1 does not possess requisite qualification, she cannot be considered for promotion. More so, on the basis of the post held by her, if she retired from service, she is entitled to get the legitimate claim in the retired post. As the said benefit was not extended to her, this Court, vide orders dated 09.02.2021 and 07.07.2022 called upon learned State Counsel to file an affidavit and in response to same, learned State Counsel filed compliance affidavit on 15.09.2022, paragraphs-7 & 8 whereof reads as

follows:

“7. That, basing upon the Annexure H/4 series and after verification of documents, it is found that, the Opp. Party has been granted/ paid the following retirement benefits as under;

a) Final GPF amount Rs.100930/- sanctioned in favour of Smt. Jyostnamayee Mishra, Peon (Retired) vide A.G. (A&E) Odisha, Bhubaneswar vide Order No. FUND-3/2019-2020SPR No-1106/203 has been paid to her vide Bill No. 32 of 2019-20 and Voucher No.128 dt. 24.07.2019. The photo copy of the relevant page of the Bill Register is annexed herewith as **Annexure-1/4**.

b) Un-utilized Earned Leave for a period of 300 days amounting to Rs.3,42,720/-, sanctioned vide order No.3857 dtd.29.06.2019 of erstwhile Executive Engineer. P.H. Division, Puri has been paid to her vide Bill No.46 of 2019-20 and Voucher No.2874 dtd: 11.07.2019. The Photo copy of the relevant page of the Bill Register is annexed herewith as **Annexure-J/4**.

c) An amount of Rs.7500/- towards refund of G.I.S. sanctioned vide order No.4603 dtd. 03.08.2019 of erstwhile Executive Engineer, P.H. Division, Puri, has been paid to her vide Bill no. 69 of 2019-20 and Voucher No.38 dtd: 22.08.2019. The photo copy of the relevant page of the Bill Register is annexed herewith as **Annexure-K/4**.

d) As per report of the Treasury Officer, District Treasury Puri, (under Annexure-H/4 series).

i) The arrear pension @ Rs.15, 300/- pm w.e.f. Dt: 01.06.2016 to 31.05.2021 amounting to Rs. 41,922/- has been paid to the Opp. party vide TV No. 208 dt: 11.06.2021.

ii) The CVP (Commuted Value of Pension) for Rs.6, 01,768/- has been paid to the Opp. Party vide TV No.319 dt: 25.06.2021.

iii) The DCRG Gross Amount of Rs.5,65,488/- and Net Rs.5,63,230/- after adjustment of Rs.1610/- towards (0216-House license fees) and Rs. 648/- towards (0215- water Tax and Sanitation) has been paid to the Opp. Party vide TV No.-210 dt:11.06.2021

8. That, all the other facts have already been submitted, in this Hon'ble court through my affidavit dated: 16.08.2022”.

8. Mr. S. Mishra, learned counsel appearing for opposite party no.1 disputes such position with regard to the post from which opposite party no.1 was retired from service, but claims for grant of differential benefit in the promotional post of Tracer in compliance of the order

passed by the Tribunal. The same is not admissible to opposite party no.1, as she had no requisite qualification for promotion. Therefore, the Tribunal has committed gross error directing the petitioners to consider the case of opposite party no.1 and promote/appoint her to the post of Tracer against any vacant post and if no such post is available, then by reverting the last person promoted after the direction in O.A. No.742 of 2009 was issued.

9. In view of such position, the orders dated 08.01.2016 and 28.02.2017 passed by the Tribunal in O.A. No.1696 of 2010 and R.P. No.28 of 2016 respectively extending the benefit of promotion to the post of Tracer and rejecting the review petition filed by the State-petitioners cannot sustain in the eye of law. Accordingly, the same are liable to be quashed and are hereby quashed. As the pensionary benefit has been extended to opposite party no.1 in the post of Peon, the writ petition stands disposed of accordingly.

10. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

Alok/Subhasmita

(G. SATAPATHY)
JUDGE