

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14587 of 2022

Satyanarana Rana

....

Petitioner

Mr. U.C. Mohanty, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. Y.S.P. Babu, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

04.07.2022

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the petitioner as well as learned counsel for the State. Perused the record.
3. The present writ petition has been filed by the petitioner with the following prayers:

“In the aforesaid circumstances, it is humbly prayed that this Hon’ble Court may graciously be pleased to admit this writ application and issue Rule Nisi calling upon the Opp.Parties to show cause as to why this Writ application shall not be allowed and if the Opp. Parites failed to show cause or shows insufficient cause, the said Rule may be made absolute and on hearing the parties through their counsel and on calling for records, this Hon’ble court be further pleased to:

- i) Issue appropriate writ/writs in holding that the action of the Opposite Parties/OLIC Ltd, in not considering the past services of the petitioner rendered in the grade of Junior Engineer (Civil) in the regular Establishment of OLIC Ltd., i.e. for the period from 01.11.1990 to 21.06.1999 as

qualifying services of seniority is illegal, arbitrary, unreasonable and discriminatory and accordingly this Hon'ble Court be pleased to issue appropriate direction to the Opposite Party-corporation for counting of the aforesaid period towards seniority and further promotion in the higher grade in favour of the petitioner accordingly.

- ii) This Hon'ble Court further be pleased to issue appropriate writ/direction directing the Opp.Parties to fix the of the petitioner in the grade of Jr.Engineer (Civil) above Opp.Party No.4 accordingly thereby the gradation list vide officer order No.2126 dtc.25.2.2020 of MD, OLIC Ltd. under Annexure-6 is liable to be modified / quashed and also direct the Opposite Parties to grant further promotion with all consequential service benefits at par with the Opp.Party No.4
- iii) This Hon'ble court be further pleased to pass such other appropriate writ/writs, direction/directions, order/orders as would be deem fit and proper in favour of the petitioner."

4. Further, the learned counsel for the petitioner relies upon a judgment rendered by the Hon'ble Apex Court in the case of the ***direct Recruit Class-II Engineering Officer's Association and others vrs. State of Maharashtra and others*** : reported in AIR 1990 Supreme Court 1607 paragraph-44 read as follows:-

"44. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering

the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly. (D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

(F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.

(I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of

Deputy Engi- neers.

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position.

With respect to Writ Petition No. 1327 of 1982, we further hold:

(K) That a dispute raised by an application under [article 32](#) of the Constitution must be held to be barred by principles of res judicata including the rule of constructive res judicata if the same has been earlier decided by a competent court by a judgment which became final.

5. In course of hearing, learned counsel for the petitioner submits that the petitioner may be permitted to file a fresh representation ventilating her grievance before the Managing Director, Orissa Lift Irrigation Corporation Ltd. Government of Orissa undertaking- Opposite Party No.2 which may be considered within a stipulated period of time in accordance with law.

6. Learned counsel for the State on the other hand submits that he has no objection if permission is granted to the petitioner to file the representation before the Opposite Party No.2 which will be considered and disposed of in accordance with law.

7. In view of the aforesaid limited nature of grievance of the petitioner, this Court disposes of the writ petition granting liberty to the petitioner to file a fresh representation before the Managing Director, Orissa Lift Irrigation Corporation Ltd. Government of Orissa undertaking- Opposite Party No.2 ventilating his grievance within a period of two weeks. If such a representation is filed within the time stipulated, the same shall be considered and disposed of by

the said Opposite Party No.2 taking into account judgment rendered by the Hon'ble Supreme Court of India in the case of ***direct Recruit Class-II Engineering Officer's Association and others vrs. State of Maharashtra and others*** (supra) under Annexure-9 paragraph-44 in accordance with law within a period of two months thereafter and the decision so taken on the representation of the petitioner shall be communicated within two weeks thereafter.

7. With the aforesaid observation the writ application stands disposed of.

Urgent certified copy of this order be granted on proper application.

Jagabandhu

