

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.1434 of 2014

Sailendra Narayan Mohanty ***Petitioner***

Mr. L.K. Mohanty, Advocate

-versus-

State of Odisha and others ***Opposite Parties***

Mr. P.C. Das, A.S.C.

*Mr. S.B. Jena, Advocate for O.P. Nos.5,
6 and 7*

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

23.02.2022

Order No.

- 02.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Heard learned counsel for the Petitioner and learned counsel for the State.
 3. The present writ petition was initially filed before the Odisha Administrative Tribunal with the following prayer:-

“In views of the facts stated in para-6 above, the applicant prays for the following relief(s):-

 - (a) The Original Application be allowed;
 - (b) The order of rejection dt. 10.4.2004 under Annexure-9 be quashed/set-aside;
 - (c) The order of granting promotion to Respondent No.5 to 7 dtd. 28.2.2005 and 2.4.2005 as per Annexure-5 be called for and quashed;
 - (d) The Respondents be directed to grant promotion to the Applicant to the post of Jr. Clerk the date his immediate juniors have given promotion with all consequential

- benefits;
- (e) Such other order(s)/direction(s) be passed granting complete relief in favour of the Applicant.”

3. The present writ petition has been registered on transfer of O.A. No.1434(C) of 2014 to this Court upon abolition of Odisha Administrative Tribunal, Cuttack Bench, Cuttack.

4. The fact of the case, in a nutshell, is that the Petitioner, who is a graduate, was appointed as N.M.R. Clerk in the office of the Assistant Engineer, Rajnagar Irrigation Sub-Division of Kendrapara district in the year 1986. Thereafter the service of the Petitioner was not regularized. Therefore, he had approached before the Odisha Administrative Tribunal (in short ‘OAT’) by filing O.A. No.2698(C) of 1996 for a direction to consider his case for regularization against the post of Clerk. The said case was disposed of by the Tribunal by order dated 12.09.1996 with a direction to the Opposite parties to consider the grievance of the petitioner.

5. The Finance Department, Government of Odisha pursuant to the direction of the Hon’ble Supreme Court formulated a policy decision dated 15.05.1997 whereunder a scheme was prepared to regularize the service of the N.M.R./DLR workers, who were continuing prior to 01.04.1993. Accordingly, pursuant to letter dated 16.04.2001 and 12.06.2001, the Superintending Engineer, Eastern Circle, Cuttack vide order dated 19.06.2001 regularized the service of the Petitioner along with other similarly placed N.M.R. employees as Work Sarkar and they were posted at Jajpur Irrigation Division.

6. Learned counsel for the Petitioner further submits that the Petitioner was placed at Sl. No.8 of the said list. A copy of the order dated 19.06.2001 has been filed as Annexure-2 to the application. The Petitioner on being relieved from his post joined in his regular

post on 22.06.2001.

7. On 01.03.2005, the Petitioner filed a representation before the Opposite Party No.3 with a prayer to consider his case for promotion to the cadre of Junior Clerk as by then he was discharging his duties attached to the post of Junior Clerk for almost 15 years while continuing as N.M.R. employee. Since the representation of the Petitioner was kept pending by the authorities, the Petitioner again filed a representation before the Opposite Party No.4 on 10.11.2012, which was forwarded to the Opposite Party No.3 by Opposite Party No.4 by his letter dated 15.11.2012.

8. While the Opposite Party No.3 vide order dated 19.10.2013 circulated a final gradation list of Junior Clerk under his administrative control. A scrutiny of the said gradation list reveals that juniors to the Petitioner were appointed as Junior Clerk and their names find place at Sl. Nos.8, 10, 12 and 16 of the aforesaid gradation list.

9. Learned counsel for the Petitioner submits that the persons, who were promoted and whose names have been reflected against Sl. Nos.48, 49 and 50 were also appointed as Work Sarkar along with the Petitioner by another letter dated 20.06.2001 issued by the Office of the Opposite Party No.3. In the said order dated 20.06.2001, the aforesaid three persons placed below the Petitioner and as such, learned counsel for the Petitioner submits that the Petitioner is eligible to be promoted prior to the persons, who were promoted and their names find place at Sl. No.48, 49 and 50, who were junior to the Petitioner.

10. In such view of the matter, learned counsel for the Petitioner contends that the Petitioner is entitled to be promoted to the post of Junior Clerk from the date from which persons junior to the

Petitioner were promoted and appointed as Junior Clerk.

11. Argument of the Petitioner is based on the principle of “seniority in the feeder cadre” in which should be taken into consideration for promotion while determining inter se seniority among the employees. In this context, he also referred to some decisions of the Odisha Administrative Tribunal. Challenging the inaction of the authorities, the Petitioner again approached to the Odisha Administrative Tribunal by filing O.A. No.323 of 2014 for redressal of his grievance. Learned Odisha Administrative Tribunal after hearing the parties by order dated 07.02.2014 disposed of the O.A. with a direction to the Opposite Party No.3 to consider the grievance of the Petitioner within a period of two months. Pursuant to the said order, the Petitioner approached to the Opposite Party No.3, who in turn by his order dated 10.04.2014 has rejected the claim of the Petitioner with an observation that the Juniors to the Petitioner were promoted in compliance to order passed by the Odisha Administrative Tribunal. In that context, as submitted by learned counsel for the Petitioner, no such order/direction issued by the Odisha Administrative Tribunal was referred to by Opposite Party No.3 while rejecting the claim vide order dated 10.04.2014.

12. Further while rejecting the representation of the Petitioner vide order dated 10.04.2014, the Odisha Administrative Tribunal has further held that there is a delay in challenging the promotion of the Opposite Party No.5 to 7 to this petition in the year 2005. As such, the Petitioner has challenged the promotion of Opposite Party Nos.5 to 7 which were rejected only on the ground of delay. In the said context, the Tribunal referred to a judgment of Hon’ble Supreme Court in the case of ***Shiba Shankar Mohapatra and others vrs. State of Orissa and others*** : reported in (2010) 12 SCC 471. Accordingly

the representation submitted by the Petitioner was rejected and the claim of the Petitioner was denied. Hence, the present writ petition.

13. Learned counsel for the Petitioner submits that the Petitioner is squarely covered under the Scheme dated 15.05.1997 formulated by the Government of Odisha as per direction of the Hon'ble Supreme Court. Accordingly, he was given the benefit under the said scheme and was brought over to the work charge establishment along with many other similarly situated persons. However, when the question of promotion arose in the year 2005, the Opposite Parties has acted in an arbitrary, illegal and discriminatory manner to consider the case of the Petitioner for promotion and they have considered the case of many other persons including Opposite Party Nos.5 to 7. According to the Petitioner, they are junior to him. Learned counsel for the Petitioner further submits that most surprisingly no DPC was held since 2005 while considering the promotion of Opposite Party Nos.5 to 7. He further submits that the employees were promoted by adopting pick and choose method and the case of deserving candidates like the Petitioner have been ignored in the process. Although the Petitioner is legally entitled to be considered for promotion and given promotion to the next higher post, the authorities have not done so. Further the Petitioner has made specific allegation against the Opposite Party Nos.5 to 7 but at the moment he does not want to press that ground and abandoned the same.

14. It is further contended by the learned counsel for the Petitioner that the Petitioner has retired from service on attaining the age of superannuation w.e.f. 30.09.2021. Therefore, learned counsel for the Petitioner fairly submits that he is not challenging the gradation list as such and he is also not claiming seniority against Opposite Party Nos.5 to 7. He further submits that the prayer in the present case is

confined to the pensionary benefits as due and admissible to the Petitioner and for re-fixation of his salary upon notional promotion of the Petitioner from the date his juniors were given promotion to the post of Junior Clerk.

15. On the other hand, learned counsel for the State submits that the representation of the Petitioner has been considered and rightly rejected by the authorities by order dated 10.04.2014. Learned counsel for the State fully supports the order of rejection passed by the Opposite Party No.3. Further contends that the Petitioner did not approach the Tribunal challenging the gradation list prepared by the Department within a reasonable time. As such, in view of the ratio laid down by the Hon'ble Supreme Court in the case of ***Shiba Shankar Mohapatra and others vrs. State of Orissa and others*** (supra), the petitioner is not entitled to relief claimed by him in the writ petition.

16. It is further submitted by Mr. Das, learned counsel for the State that after completion of +2 Arts, the Opposite Party No.7 is N.M.R. in the year 1989 under Jajpur Irrigation Division being a Junior N.M.R Clerk in the division office. While discharging his duty satisfactorily pursuant to resolution dated 15.05.1997, 17 numbers of the qualified N.M.R. were appointed as Work Sarkar under the work charged establishment including the Petitioner as well as Opposite Party No.7 vide order dated 19.06.2001. On such appointment, Opposite Party No.7 was posted at Mahanadi Civil Division. He further submits that in view of the educational qualification of the Opposite Party No.7, he was attached to Head Clerk assisting in tender work as well as clerical work and many instruction have been cited in support of his argument the opposite party nos.5 to 7 are eligible and they are given promotion.

17. Mr. Das, learned counsel appearing for the State had also paid emphasis to the case of ***Shiba Shankar Mohapatra and others vrs. State of Orissa and others*** (supra) and argued that the Petitioner is estopped to challenge the promotion of Opposite Party Nos.5 to 7 at this stage.

18. In reply to the argument advanced by learned counsel for the State, Mr. Mohanty, learned counsel appearing for the Petitioner draws attention of this Court to the counter affidavit filed by the State- Opposite Parties to impress upon the Court that the State- Opposite Parties in their counter affidavit have clearly stated that no DPC was conducted at the relevant point of time for giving promotion to eligible employees. Therefore, he submits that the authorities adopted pick and chose method and selected the candidates of their choice and have been given promotion to such candidates. It is the further case of the Petitioner that the Petitioner has been discriminated while considering his case for promotion on the question of delay in challenging the gradation list. Mr. Mohanty, learned counsel for the Petitioner submits that on the publication of the gradation list, he had approached the authorities by filing representation, however, the authorities did not take any decision on the same and kept the matter pending at their level. As a result of which the petitioner had taken shelter of the Tribunal against such inaction of the Opposite Parties.

19. Having heard learned counsels for the parties and upon perusal of the relevant documents filed along with respective pleadings, this Court is of the considered view that the Petitioner should have given promotion to the post of Junior Clerk along with Opposite Party Nos.5 to 7 and many other similarly situated persons. In view of the fact that they were all appointed as Work Sarkar pursuant to the

Finance Department resolution dated 15.05.1997. Moreover, it has been clearly demonstrated that the Petitioner was senior to the Opposite Party Nos.5 to 7 in the feeder cadre. However, since the Petitioner is retired from service, the question of seniority has become irrelevant and learned counsel for the Petitioner does not want to press the same any more in this writ petition. The only question now left for this Court to be considered as to whether the Petitioner is entitled to get pensionary benefits on the basis of the salary attached to the promotional post. After considering the above contentions, this Court is of the considered view that of the relevant point of time the Petitioner was eligible to be promoted to the post of Senior Clerk. However, his case was not considered by the authorities till the date of his retirement. Moreover, O.A. was filed and was pending for almost eight years by the time this O.A. was transferred to this Court. The Petitioner has already been superannuated. Considering the aforesaid aspects, this Court deems proper that the authorities shall do well to give notional promotion to the Petitioner to the post of Junior Clerk at least for a day before the retirement and on the basis of salary attached to the said post. The notional and other benefits payable to the Petitioner other retiral dues to be recalculated and the same be paid to the Petitioner within a period of three months from the date of production of certified copy of this order.

20. With the aforesaid observation, the writ petition is disposed of.

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

