

ORISSA HIGH COURT, CUTTACK

ORIGINAL JURISDICTION CASE NO.4886 OF 1993

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Shri Satya Narayan Das
and others

.....

Petitioners

Versus

The Orissa Samall Industries
Corporation Limited and
others

.....

Opposite Parties

For Petitioner - M/s J.K.Rath, R.N.Mishra,
S.K.Das and
S.R.Mohapatra

For Opp.Parties - Mr. G.A.R.Dora

PRESENT:-

THE HON'BLE MR. JUSTICE P.K.MOHANTY
AND
THE HON'BLE MR. JUSTICE PRADIP MOHANTY

PRADIP MOHANTY, J. The petitioners, who are working as Junior Managers in the Orissa Small Industries Corporation Limited (for short "the Corporation"), have, in this application under Articles 226 and 227 of the Constitution, prayed for a direction to the opposite parties to consider their cases for promotion to the post of Assistant Manager, which they have been illegally denied.

2. According to the petitioners, on being appointed in different posts, they came to be promoted to the rank of Junior

Manager. Their next promotional post is Assistant Manager. The Orissa Small Industries Corporation Limited Ministerial Service Recruitment and Promotion Rules, 1979 (hereinafter referred to as “the Recruitment Rules”) governs such promotion. Although the petitioners are eligible for promotion to the post of Assistant Manager in terms of Rule 5(3) of the Recruitment Rules, their cases were not considered for such promotion. Being aggrieved, they made representations to opposite party no.2, which were rejected, vide Annexure-8 series, on the ground that the petitioners do not possess the requisite qualification to hold the post of Assistant Manager as per the decision of the Board of Directors of the Corporation dated 16.08.1985. The petitioners have, therefore, by this writ petition sought for quashing of Annexure-8 series. According to the petitioners, the aforesaid decision of the Board of Directors does not come in their way of being considered for promotion to the rank of Assistant Manager.

3. The opposite parties have filed counter affidavit wherein it has been stated that pursuant to the decision of the Board of Directors dated 16.08.1985, 25 per cent of the posts of Assistant Manager would be filled up by way of promotion from amongst the Junior Managers possessing Degree qualification. It has been further asserted that petitioner no.1 is not even passed Matriculation, though the other petitioners are Matriculates. Since the petitioners do not have the requisite educational qualification, they are ineligible for being considered for promotion to the post of Assistant Manager.

4. The petitioners have filed rejoinder affidavit and additional affidavit wherein it has been stated that the resolution of the Board of Directors dated 16.08.1985 was never given effect to. On the contrary, they have brought on record the resolution of the Board of Directors dated 30.06.1990, which goes to show that no educational qualification has been prescribed for the post of Assistant Manager (General). To this, the opposite parties have filed reply

stating that the said resolution dated 30.06.1990 has not been implemented, as would appear from Annexure-B/1.

5. Admittedly, none of the petitioners has got Degree qualification. Therefore, the question that arises for consideration is whether the Corporation is justified in introducing the Degree qualification as the minimum requirement for the post of Assistant Manager by way of a resolution of the Board of Directors when the same has not been prescribed in the Recruitment Rules.

6. The Recruitment Rules, which have been marked as Annexure-5, deal with promotion in Part-III. Sub-rule (3) of Rule 5, which provides the methodology for promotion from Grade-II to Grade-I and is relevant for deciding the lis between the parties, is extracted hereunder:

“Promotion to the posts under Grade-I of Rule-2(1) shall be made from amongst the persons under Grade-II of the said Rule who have completed 3 years of service and have been confirmed.”

The post of Assistant Manager, after restructuring, comes under Grade-I category. Part-III of the Recruitment Rules nowhere prescribes the minimum educational qualification. Therefore, the Board of Directors of the Corporation in their resolution dated 16.08.1985 have prescribed the minimum educational qualification for the post of Assistant Manager. Matters, which have not been prescribed in the Recruitment Rules, can always be supplemented by way of instruction or resolution of the Board of Directors. Except a bald assertion of the petitioners in their affidavit that the resolution dated 16.08.1985 has not been given effect to, there is no supporting material on record to come to the conclusion that the said resolution has, in fact, not been given effect to. On the other hand, the specific ground taken by the opposite parties is that the resolution dated 16.08.1985 has been acted upon. In view of the aforesaid, the

irresistible conclusion would be, the resolution of the Board of Directors dated 16.08.1985 has been given effect.

6. The resolution dated 30.06.1990, on which reliance has been placed by the petitioners, has not been implemented in view of the subsequent resolution of the Board of Directors dated 28.09.1991, which has been annexed as Annexure-B/1. Therefore, the resolution dated 30.06.1990 is of no assistance to the petitioners. In other words, the resolution dated 16.08.1985 has to be held to be in force and binding.

7. As no educational qualification for the post of Assistant Manager was prescribed in the Recruitment Rules, the Board of Directors of the Corporation prescribed the same by their resolution dated 16.08.1985. This Court is of the considered view that in doing so no illegality has been committed by the Board of Directors. Since the petitioners did not have the minimum qualification, as prescribed by the resolution dated 16.08.1985, the Corporation has not considered their cases for promotion, and rightly so.

8. In the result, this writ application is devoid of any merit and is dismissed as such. No costs.

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Pradip Mohanty, J.

P.K.MOHANTY, J. I agree.

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P.K.Mohanty, J.

Orissa High Court, Cuttack
August 20th, 2004 / *Samal*

True copy
Attested