

**ORISSA HIGH COURT
CUTTACK**

ORIGINAL JURISDICTION CASE NO.13842 OF 1998

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

Subodh Chandra Debanath
Petitioner

Versus

Union of India and others Opposite Parties

For Petitioner - M/s R.B.Mohapatra and
N.R. Routray

For Opp.Parties - Standing Counsel (Central)
(for O.Ps. 1 to 4) and
Mr. P.V.Balakrishna
(for O.P. No.5)

PRESENT :-

**THE HON'BLE MR. JUSTICE I.M.QUDDUSI
AND
THE HON'BLE MR. JUSTICE PRADIP MOHANTY**

Date of hearing & judgment – 23.03.2006

I.M. QUDDUSI, J. The petitioner has filed the instant writ petition with a grievance that while allowing O.A. No.614 of 1992, filed by him, vide judgment and order dated 04.05.1998, the Central Administrative Tribunal, Cuttack Bench, though directed to regularize his service with effect from the date of his initial engagement as a casual labourer, denied the consequential benefits, which were provided by its Hyderabad Bench to opposite party no.5, who is a similarly

circumstanced person, pursuant to which the department has also extended the consequential benefits to him (opposite party no.5) happily.

2. Brief facts of the case are that the petitioner was engaged as a casual Assistant Store Keeper on 21.08.1972 along with opposite party no.5 and one J.V.Ratnam in the Naval Store Department under the Eastern Naval Command, Visakhapatnam. He was then posted under the Commanding Officer, INS, Chilka, district Puri. While working in that capacity, his services were regularised along with other persons including opposite party no.5 on 04.04.1975. On 04.12.1989, opposite party no.3 published a seniority list of Store Keepers in all the Naval Commands, in which the name of the petitioner was shown much below the name of opposite party no.5. Petitioner's name was shown against Sl. No.267 (computerized 1628), whereas the name of opposite party no.5 was shown against Sl. No.195 (computerized 1552).

3. It appears that opposite party no.5 had approached the Central Administrative Tribunal, Hyderabad Bench, by filing an O.A., wherein a direction was issued by the Tribunal to regularize his appointment with effect from the date of his initial engagement. Therefore, his appointment was regularised with effect from 21.08.1972. But the appointment of the present petitioner was not regularized from that date. Thus, different principles were applied to the petitioner and opposite party no.5 in respect of regularisation of their appointment. Therefore, the petitioner also approached the Central Administrative Tribunal, Cuttack Bench, by filing the above-mentioned O.A. The Tribunal accepted the plea that the principle, which was made applicable in the case of opposite party no.5, should also be made applicable to the petitioner with regard to regularization, but denied the consequential benefits. As a result, the petitioner got the benefit of regularization, seniority, etc., with effect from the date of his initial engagement, but did not get the financial and other service benefits, which were given to opposite party no.5

under the directions of the Central Administrative Tribunal, Hyderabad Bench. It may be mentioned here that pursuant to the direction given by the Central Administrative Tribunal, Hyderabad Bench, the promotion of opposite party no.5 was also ante-dated. Such benefits have, however, been denied to the petitioner.

4. Aggrieved by the decision of the Tribunal denying the consequential benefits and also against the discrimination shown by opposite parties 1 to 4 towards two similarly circumstanced employees, i.e., the petitioner and opposite party no.5, the petitioner has approached this Court by way of filing the instant writ petition.

5. Opposite party No.1 is "the State" within the meaning of Article 12 of the Constitution of India. It is expected from "the State" that none of its actions should be discriminatory and violative of the fundamental rights envisaged in the Constitution. If, in between two similarly circumstanced persons, one is given the consequential financial and other service benefits and the other is denied of the same, it definitely amounts to discrimination and violative of Articles 14 and 16 of the Constitution. When the petitioner and opposite party no.5 were initially engaged on 21.08.1972 as casual Assistant Store Keepers with the identical conditions of service, there was no reason to make discrimination and treat them differently.

6. There is a catena of decisions of the Hon'ble apex Court to the effect that in case two unequals are treated differently, it cannot be said that the action is discriminatory or violative of fundamental rights, but if two equals are treated differently, there is no doubt that the action of the State would be discriminatory and violative of Articles 14 and 16 of the Constitution of India. In one of such decisions, i.e., in the case of **Probadha Verma and others -v- State of Uttar Pradesh and others**, AIR 1985 SC 167, it has been held thus:-

"Article 14 of the Constitution forbids the State to deny to any person equality before the law or the equal protection of the laws within the territory of

India. While Article 14 applies to all persons within the territory of India, Article 16 applies only to citizens of India. Clause (1) of Art. 16 guarantees equality for all citizens in matters relating to employment or appointment to any office under the State. Thus, Article 16 is an instance of the application of the general rule of equality laid down in Art. 14, with special reference to the opportunity for appointment and employment under the Government (see *Banarsi Dass v. State of Uttar Pradesh*, 1956 SCR 357, 361 : (AIR 1956 SC 520 at P. 521). Today, the Government is the largest employer in the country and employment or appointment to an office under it is a valuable right possessed by citizens. Article 14, however, does not forbid classification. The principle underlying the guarantee of Art. 14 is not that the same rules of law should be applicable to all persons within the territory of India irrespective of differences of circumstances. It only means that all persons similarly circumstanced should be treated alike and there should be no discrimination between one person and another if as regards the subject-matter of the legislation, their position is substantially the same. By the process of classification, the State has the power to determine who should be regarded as a class for the purposes of legislation and in relation to a law enacted on a particular subject. The classification to be valid, however, must not be arbitrary but must be rational. It must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable nexus or relation to the object of the legislation. In order to pass the test, two conditions have to be fulfilled, namely, : (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) the differentia must have a rational nexus or relation to the object sought to be achieved by the legislation (see *In re The Special Courts Bill*, 1978 (1979) 2 SCR 476, 535 : AIR 1979 SC 478 at P. 509).

Similarly, in ***Air India -v- Nargesh Meerza and others***, AIR 1981 SC 1829, in respect of applicability of Article 14 of the Constitution of India, the apex Court has laid down as follows:-

“ (1) In considering the fundamental right of equality of opportunity a technical, pedantic or doctrinaire approach should not be made and the doctrine should not be invoked even if different scales of pay, service terms, leave, etc., are introduced in different or dissimilar posts.

Thus, where the class or categories of service are essentially different in purport and spirit, Artc. 14 cannot be attracted.

(2) Art. 14 forbids hostile discrimination but not reasonable classification. Thus, where persons belonging to a particular class in view of their special attributes, qualities, mode of recruitment and the like, are differently treated in public interest to advance and boost members belonging to backward classes, such a classification would not amount to discrimination having a close nexus with the objects sought to be achieved so that in such cases, Art. 14 will be completely out of the way.

(3) Article 14 certainly applies where equals are treated differently without any reasonable basis.

(4) Where equals and unequals are treated differently, Art. 14 would have no application.

(5) Even if there be one class of service having several categories with different attributes and incidents, such a category becomes a separate class by itself and no difference or discrimination between such category and the general members of the other class would amount to any discrimination or to denial of equality of opportunity.

(6) In order to judge whether a separate category has been carved out of a class of service, the following circumstances have generally to be examined:-

- (a) the nature, the mode and the manner of recruitment of a particular category from the very start,
- (b) the classifications of the particular category,
- (b) the terms and conditions of service of the members of the category,

(c) the nature and character of the posts and promotional avenues;

(d) the special attributes that the particular category possess which are not to be found in other classes, and the like.”

7. In the instant case, both the petitioner and opposite party no.5 were initially appointed on the same date, i.e., 21.08.1972. Status of both the persons was of a casual Assistant Store Keeper. Thus, both the petitioner and opposite party no.5 were similarly circumstanced persons. Regularization of both the persons was considered but the same was denied, against which opposite party no.5 first approached the Central Administrative Tribunal, Hyderabad Bench, and got the relief. In pursuance of the order passed by the Central Administrative Tribunal, Hyderabad, his services were regularized from the date of his initial appointment i.e., 21.08.1972, and consequential benefits of salary, seniority and notional promotion were made available to him accordingly. But, in case of the petitioner, as he had not approached the Tribunal, he was denied the benefit of regularization. When he approached the Central Administrative Tribunal, Cuttack Bench, the Tribunal too did not consider that the petitioner has been discriminated with the similarly circumstanced person and that he should have been given the same treatment, which has been given to the similarly situated person, i.e., opposite party no.5. Therefore, in our opinion, the Tribunal has committed manifest error of law in not providing the petitioner parity with opposite party no.5.

8. In view of the above-mentioned facts and circumstances, this writ petition is allowed. The part of the impugned judgment and order of the Tribunal by which grant of consequential benefits has been refused to the petitioner is quashed. A writ in the nature of mandamus is issued commanding opposite parties 2 to 4 to accord the same financial and other consequential service benefits to the petitioner, which have already been made available to opposite party

no.5 while regularizing his services. This shall be done within a period of four months from the date of receipt of this order. Needless to mention that learned Central Government Standing Counsel will also intimate opposite parties 1 to 4 about this order.

9. Requisites for communication of this order shall be filed within a week.

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I.M.Quddusi, J.

PRADIP MOHANTY, J.

I agree.

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Pradip Mohanty, J.

Orissa High Court, Cuttack
 March 23, 2006 / *Nayak*