

Arun Kumar Guru Vs. Orissa Forest Development Corporation Ltd. Through Its Managing Director, Kharvelanagar, Bhubaneswar

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Court : Orissa

Decided On : Mar-02-2001

Reported in : 91(2001)CLT693; 2001(I)OLR684

Judge : P.C. Naik and; P.K. Mohanty, JJ.

Acts : [Constitution of India](#) - Articles 226 and 227; [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 1; Orissa Secretariat Legal Service Recruitment Rules, 1977; Orissa Forest Corporation Service Rules, 1986 - Rule 3; Orissa Revised Pay Scale Rules, 1985

Appeal No. : O.J.C. No. 4892 of 1996

Appellant : Arun Kumar Guru

Respondent : Orissa Forest Development Corporation Ltd. Through Its Managing Director, Kharvelanagar, Bhubaneswar

Advocate for Def. : Mr. R. Mahapatra, Adv.

Advocate for Pet/Ap. : M/s A.K. Mishra, ;S.K. Das, ;S.B. Jena, ;A.K. Guru, ;B.B. Acharya, ;J. Sengupta, ;D.K. Panda and ;P.R.J. Dash, Adv.

Disposition : Writ petition dismissed

Judgement :

P.C. Naik, J.

1. The petitioner, who is serving under the opposite party as an Assistant Law Officer, has approached this Court for issuance an appropriate writ, direction or order commanding the opposite party 'to create higher post i. e. Law Officer in the Legal Branch of the Corporation and throw open the chances of promotion to the petitioner and pass such other orders as the ends of justice requires'.

2. The facts involved in this case are simple.

Admittedly, the petitioner is a Law Graduate. On being sponsored by the State Employment Exchange, Bhubaneswar for the post of Legal Assistant, he was duly selected and appointed as such under the opposite party vide appointment order issued to him on 11-8-1986 which post he joined the same day. It is averred by the petitioner that the Government in various Departments had in December, 1988 redesignated the post of Legal Assistant as Assistant Law Officer carrying the same status and scale of pay. Subsequent thereto, the Corporation also redesignated the post of Legal Assistant under it as Assistant Law Officer without any change of status and pay scale and consequently, the petitioner was designated as the Assistant Law Officer under the Corporation. It is further averred by the petitioner, that at its 53rd meeting held on 29-6-1973 the Board of Directors of the Corporation (hereinafter referred to as the Board') had resolved that 'the Government rules he adopted by the Corporation where Corporation had no rules of its own' which was reiterated at a subsequent meeting held on 13-10-1976. It is the case of the petitioner that in view of the said resolution the employees of the Corporation for whom no specific rule had been made by the Corporation, would be governed by the rules which are applicable to the State Government employees. According to the petitioner, since a post of Law Officer, Under Secretary (Law), Deputy Secretary (Legal), Joint Secretary (Legal), have been provided for in the Secretariat by virtue of the Orissa Secretariat Legal Service Recruitment Rules, 1977 and since he has put in more than five years of service as a Legal Assistant/ Assistant Law Officer, the opposite party should likewise

create a post of Law Officer to which post he may have an opportunity of being promoted or else, his zeal to work will be adversely affected on account of stagnation for want of promotional opportunity. It is averred that time and again the petitioner had submitted representations to the opposite party setting forth his case, but as the same have gone unheeded, he has been compelled to approach this Court by way of this application for appropriaterelief.

3. According to the opposite party, the claim of the petitioner is misconceived for it is not for him to demand creation of a higher post so that he could hold it. However, it is not disputed that at the 53rd meeting of the Board, a resolution was passed whereby it was resolved that in the absence of any rules the employees of the Corporation will be governed by the rules applicable to State Government employees. It is however stated by the opposite party that the said resolution itself called uponthe Board to suggest specific rules for Corporation employees where no rule existed and these draft rules were to be placed before the Board for its approval. Accordingly, the draft service rules were prepared which were duly approved and came to be known as 'The Orissa Forest Corporation Service Rules, 1986'. Rule 3 of the said rules provides that 'all previous rules, orders, circulars issued by the Management regarding conditions of employment and service of the workmen/employees arc superseded by these 'Rules' to the extent of their repugnance to these 'Rules'.' The aforesaid Rules, according to the opposite party, deal with matters relating to the general conditions of service including mode of recruitment, promotion, deputation, pay and allowances, conduct and disciplinary proceedings. Thus, it is submitted that as specific rules have been framed, the rules which are applicable to the Government servants are no longer applicable to the employees of the Corporation.

4. The post of Legal Advisor, as submitted by the opposite party, is a Class I post and as per the decision of the Board, it is to be occupied by a Member of the Superior Judicial Service (Junior Branch) who comes on deputation from the Orissa Superior Judicial Service and that this practice is continuing from the very inception. It is further submitted that the petitioner is also aware of this position and also the fact that the Legal Assistant or Assistant law Officer is an ex-cadre post for which there was no promotional avenue. It is also submitted that the post

of Legal Advisor carries a great deal of responsibilities and as such, should be manned by a senior judicial officer. It is also submitted that in view of the financial stringency, the Corporation is not of the view to create more permanent posts within its establishment as it is already over-staffed.

5. A rejoinder was filed by the petitioner wherein it is stated that as the Corporation had adopted the Finance Department Resolution No POC/3224219/85/F. dated 22-8-1985 and had also adopted the revised pay scale of the Government for the employees of the Corporation, the staffing pattern of the Government should also be adopted since at the 53rd and 78th meetings of the Board it was resolved that the rules applicable to the Government employees shall be applicable to the employees of the Corporation. A reference has also been made to the case of one Shri Swain who was working as an L.D. Assistant and promoted as Legal Assistant. However, that being the subject-matter of a pending writ application, any reference to that dispute would not be proper. It is also stated that the post which is being held by the petitioner is an ex-cadre post and does not have any promotional avenue and as no specific rules have been framed with regard to the said post, the rules and regulations dealing with similar posts under the Government relating to appointment and promotion should be adopted by the Corporation. A reference has also been made to the Orissa Revised Pay Scale Rules, 1985 whereunder the pay of Legal Assistants in Departments excepting Law Department has been revised. However, it is submitted by the petitioner that no decision has been taken by the Corporation for creation of a post of Law Officer though it was so provided by the Government in various Departments. This led to filing of an additional counter which in turn resulted in another affidavit by the petitioner and on behalf of opp. party bringing out fresh averments. But, the same are not being considered as the basic issue for decision in this writ application is, whether in view of the resolutions passed at the 53rd and 78th meeting of the Board, all the rules applicable to State Government employees are applicable to the employees of the Corporation; and whether the petitioner can claim for creation of a higher post for opening to him promotional avenue merely because such a post has been created by the Government in the Secretariat.

6. It is no doubt true that at the 53rd meeting of the Board of Directors held on 29-6-1973 it was resolved that the Government rules be adopted by the Corporation where Corporation had no rules of its own- But the resolution itself further provided that the Corporation should frame specific rules for Corporation employees where no rules existed and that the said rules were to be placed before the Board for approval. It is not disputed by the learned counsel for the petitioner that draft service rules which ultimately came to be known as the Orissa Forest Corporation Service Rules, 1986 are in force. These rules lay down the general conditions of service including mode of recruitment and matters connected thereto pay and allowances, joining time, leave, disciplinary proceedings and maintenance of service records. Thus, the said rules are comprehensive in nature and, as such, the question of any other rule being applicable to the Corporation in such matters does not arise.

7. The case of the petitioner is that since a post of a Legal Officer has been created in some Government departments, the Corporation is obliged to create such a post to which the petitioner can be promoted. This contention cannot be accepted. Whether to create a post or not to create a post is within the discretion of the Corporation and the mere fact that such a post has been created by the Government does not mean that the Corporation is obliged to create similar post(s). That apart, what would be the starring pattern and what would be the posts available under it, is for the Corporation to decide and naturally one of the relevant considerations would be the Corporation's requirement and its financial position. It is being clearly brought out in the counter affidavit filed by the Corporation which is supported with the opinion of M/s. Tata Consultancy that the Corporation is already over staffed and the financial position of the Corporation is also not good, and, as such, it is the clear case of the opp. party that it is not inclined to create any further posts in its establishment.

8. It may also be stated that it is not for the Court to decide whether there is a need for a post as that aspect is to be considered and decided by the employer. At this stage, reference may be made to a decision of the Apex Court in Tech Executive (Anti Pollution) Welfare Association v. Commissioner of Transport Deptt and another, A. I. R. 1997 S. C. 3662 wherein challenge was made to an order of

the Tribunal directing creation of post to provide promotional avenues. It was laid down therein that creation of promotional avenues was exclusively within the purview of the appropriate Government and directions in that regard cannot be issued by the Court. In paragraph-4 of the said judgment, it was observed thus :

'.....It would be for the appropriate Government to take policy decision and Tribunal is not competent to give directions to lay down the policy or to issue directions to create promotional avenues. Such a direction would amount to entrenching upon area of policy making which is exclusively within the purview of the appropriate Government.....,'

Thus, the prayer of the petitioner for directing the opposite party to create a post of Law Officer so as to provide a promotional avenue to him cannot be accepted. However, this will not prevent the opposite party to create a post if at any time it decides that it is necessary to do so.

9. It is no doubt true that the Corporation has adopted some of the circulars of the State Government regarding revision of pay scale and re-designation of the post. But that does not mean that it is bound to accept and adopt all rules, circulars issued by the Government which exclusively apply to Government servants. In other words, it is for the Corporation to accept, adopt or not to accept or not to adopt any circular issued by the Government unless it is obliged to do so by some Governmental order. Thus, the fact that it has accepted the Finance Department notification regarding revision of pay scale does not mean that it will also adopt or can be compelled to adopt all such circulars or orders that may be issued by the Government departments or that if a particular post is created in any department of the Government, the same will be of necessity, have to be created under the Corporation. Reliance of the petitioner on the rules relating to creation of post in the Secretariat and other circulars is mis-conceived,

10. In the case at hand, after the counter affidavit was filed, the petitioner filed one rejoinder some time in November, 1996 which led to filing of an additional affidavit by the opposite party. In reply, an additional rejoinder was filed which again resulted in filing of an additional counter affidavit. Thereafter, another reply was filed by the petitioner and in each rejoinder something new was sought to be

brought on record.

11. In the opinion of the Court, rejoinder is not for raising a fresh plea which was not raised in the writ petition. It is basically to explain something which may become necessary in view of the averments made in the counter affidavit which may be something not arising from any averment made in the writ petition. If new facts are to be brought on record or a relief other than what was originally claimed, is to be included, then the proper course is to amend the writ petition and not go on filing rejoinder after rejoinder like that has been done in the present case.

12. It may be mentioned that in the writ petition, limited prayer was made for a direction to the opposite party, i.e. the Corporation to create higher post of Law Officer in the legal branch of the Corporation and throw open the chances of promotion to the petitioner. But, subsequently, by way of rejoinder, the petitioner enlarged upon his prayer. But, the prayer made in the writ petition was neither amended nor any additional prayer was made. As such, the decision is confined to the prayer made in the writ petition, which, for reasons set out above, cannot be granted.

13. Thus, the writ petition fails and is dismissed but in the circumstances, there shall be no order as to costs,

P.K. Mohanty J.

1. I agree.

2. Writ petition dismissed.