

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Bighnaraj Panda Vs. Central Institute of Plastic Engineering and Technology and ors.

Bighnaraj Panda Vs. Central Institute of Plastic Engineering and Technology and ors.

SooperKanoon Citation : sooperkanoon.com/533811

Court : Orissa

Decided On : Apr-27-1995

Reported in : 1995(II)OLR512

Judge : S. Chatterji and ;R.K. Patra, JJ.

Acts : [Constitution of India](#) - Articles 226 and 227

Appeal No. : O.J.C. No. 2517 of 1991

Appellant : Bighnaraj Panda

Respondent : Central Institute of Plastic Engineering and Technology and ors.

Advocate for Def. : P.K. Misra, N.C. Pati, S.K. Swain, B. Sahoo, A.K. Sahoo and R.N. Dash for Opp. party Nos. 1 and 2 and ;A.K. Misra, Adv. for Opp. party No. 1

Advocate for Pet/Ap. : B.R. Dash, K.C. Pradhan and H.K. Baliyarsingh

Judgement :

S. Chatterji, J.

1. The present writ petition is at the instance of one Bighnaraj Panda who seeks the following reliefs :

' xx xx (ii) That the opp. party Nos. 1 and 2 be directed to file their show cause within a stipulated time why the writ application should not be allowed and in the event they fail to file their show cause or show insufficient cause then in the writ application after hearing the petitioner's advocate be allowed,

(iii) And to issue a writ of mandamus to the opp. party Nos. 1 and 2 to declare the result of the petitioner.

(iv) That in the event if it is necessary, orders to call for the comment sheet and result sheet and the mark sheet may also be called for from the interview board held on 25-10-1990.

(v) And to issue rule nisi to the opp. party Nos. 1 and 2 for appointing the petitioner in the post of Technician Grade II Testing Trainee from the date of appointment of opp. party No. 3, that is from 30-11-1990, and for terminating the opp. party No. 3 from the Testing Department. xx xx'

2. It is stated in detail that opp. party No. 1 the Central Institute of Plastic Engineering and Technology (for short 'CIPET') at Madras is an autonomous institute under the Ministry of Petroleum, Department of Chemicals and Petro-Chemicals, Government of India and it is a 'State' as envisaged under Article 12 of the Constitution. The petitioner is a Science Graduate having post-graduate diploma in Plastic Testing and Quality Control from CIPET, and he had applied for the post of Technical Grade II Testing Trainee Code TT/BBS/90/93 in response to an advertisement published in the Employment News dated 30th of June and 6th of July, 1990 by opp. party No. 2, senior Manager (Project), Central Institute of Plastic Engineering and Technology Extension Centre. Bhubaneswar. The petitioner was thereafter called for interview on 25th October, 1990. It is further stated that interview was held for the post of Technician Grade II Training both Processing and Testing and also for the post of Operator Trainee Grade III (Processing) on 25-10-1990 and interview was also conducted on 26-10-1990 for the post of Technician Grade II Tool Room/Design, etc. The result of the interview in respect of Tool Room/Design department was published and posts were filled up in 1990, whereas the result of interview in respect of Testing Department has not yet been published by opp. party No. 2. The petitioner was selected in the

interview for the post of Technician Grade II Testing Trainee. It is alleged that the petitioner by his letter dated 15-2-1991 requested opp. parties 1 and 2 for publishing the result of interview for the post of Technician Grade II Testing Trainee but the said opposite parties have neither published the result nor communicated their reply to the petitioner regarding his appointment. Consequently the petitioner has come to the writ Court seeking the reliefs as indicated above.

3. The writ petition was contested by opp. parties 1 and 2 by filing a comprehensive counter affidavit. It is disclosed inter alia, that opp. party No. 3 Jitendra Patnaik had applied for the post of Technician Trainee. Grade II (Processing) vide his application dated 14-7-1990 and he had been called for the interview for the said post in accordance with the advertisement. On being selected he was subsequently appointed as a Technician Grade II (Processing). However, so far as the petitioner is concerned, although the interview was held on 25-10-1990 and a panel was prepared for filling up the posts of Technician Grade II Testing Trainee as and when vacancies would arise and no appointment order had been issued in favour of the petitioner since no vacancy had arisen. It is placed on record that the advertisement had been issued and the interview had been held in anticipation of vacancies in future. But in the present case since another person who had earlier taken the required ' training and had been posted at Madras in the headquarters office was transferred to the Bhubaneswar office, no vacancy arose at Bhubaneswar after the advertisement and interview. Therefore, there was no occasion for opp. parties 1 in 2 to issue any letter of appointment to the petitioner. The other allegations made by the petitioner have however been denied.

4. The learned advocate appearing for the petitioner has submitted that the acts done and/or caused to have been done by opp. parties 1 and 2 are obviously irregular and illegal, inasmuch as after the advertisement and interview of the petitioner and further selection having been made, appointment cannot be denied to him on the alleged plea that person from Madras was transferred to Bhubaneswar. This is contrary to and inconsistent with the provisions of law. It is admitted that the petitioner cannot insist on issue of any letter of appointment, but

the plea that the vacancy has already been filled up by transfer of another person is not permissible in law. He has argued further that once advertisement was issued for the vacancy at Bhubaneswar for which interview was held and selection was made, that vacancy could not have been filled up by transfer of another person from Madras to frustrate the legitimate expectation of the petitioner in support of his contention, he has referred to a decision reported in 1991 Lab. I. C. 1460(Shankarsan Dash v. Union of India) and, in particular, has drawn attention of the Court to para-7 at page 1463 which runs as follows :

'7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions State of Haryana v. Subhash Chander Harwaha, (1974) 1 SCR 165 : (1973 Lab IC 1218), Miss Neelima Shangia v. State of Haryana, (1986) 4 SCC 268 : (1987 Lab IC 34), or Jitendra Kumar v. State of Punjab, (1985) 1 SCR 899 : (AIR 1984 SC 1850).'

He has also referred to another decision, JT 1993(3) SC 15 (Union of India and Ors. v. Hindustan Development Corporation and Ors.) as to the doctrine of legitimate expectation.

5. Mr. P. K. Misra, learned advocate appearing for opp. parties 1 and 2 has, on the other hand, argued that the allegations and prayers in the writ petition are thoroughly misconceived. Although it is clear that the petitioner was selected and his name was in the panel for being appointed to the post of Testing Trainee and

when vacancy would arise, since the vacancy which was available at the time of advertisement was filled up by another person on transfer from Madras, the petitioner cannot insist on issuance of any letter of appointment. He has further submitted that mere selection of the petitioner did not vest any right in him to be appointed. He has drawn inspiration from the decision AIR 1991 SC 1612, the same case reported in 1991 Lab. I C 1460 (supra) where a person was selected for Indian Police Service and though vacancies were available he was not appointed. His claim for appointment was negated by the Supreme Court holding that mere selection did not vest an indefeasible right in him for being appointed in the vacancy. It is submitted that this decision has been followed by a subsequent decision reported in AIR 1993 SC 796 (Union Territory of Chandigarh v. Dilbagh Singh and Ors.).

6. Mr. Misra has, however, developed his argument that existence of vacancy does not give a legal right to a candidate in the select list to be appointed to a post. He has referred to the decision AIR 1973 SC 2216 (State of Haryana v. Subash Chander Narwaha). Out attention has also been drawn to an unreported decision of this Court dated 11-11-1993 in OJC Nos. 1601 of 1991 which relied on AIR 1991 SC 1612 (supra; and AIR 1993 SC 796 (supra) holding inter alia that a select does not acquire an indefeasible right to be appointed to a post.

7. By referring to another decision, AIR 1984 SC 1850 (Jitendra Kumar v. State of Punjab and Ors.) Mr. Misra has submitted that the process of selection and selection for the purpose of recruitment against anticipated vacancies do not create a right to be appointed to the post which can be enforced by a mandamus.

8. The thrust of his entire submission is that the petitioner cannot have a claim to the post only on being selected. Besides, the reliefs sought by the petitioner are not available and the writ petition is otherwise liable to be dismissed.

9. Having heard the learned lawyers for the respective parties as aforesaid, we find that every reported decision is obviously correct in view of the facts and circumstances of each case. There is no dispute about the proposition that mere selection does not confer any right upon a candidate to insist on letter of appointment. It is also not disputed proposition that in absence of a vacancy a

selected candidate cannot insist on immediate appointment. A panel may be prepared anticipating vacancies which should have its own life for a certain specific period until vacancies occur; But the story in the present case is altogether different were specifically to fill up the vacancy that was existing at Bhubaneswar the advertisement was made. The petitioner having all the eligibility criteria responded to the advertisement and his candidature was considered. He was called for inter view and was selected. There the theory and doctrine of legitimate expectation starts. If this legitimate expectation is frustrated by any mala fide act, the same cannot be sustained in law. If in fact there was no vacancy at Bhubaneswar, certainly the petitioner cannot ask for the relief in the manner he has done. But where a vacancy existed at Bhubaneswar and for filling up the same advertisement made and a person like the petitioner was selected, the post having been-filled up by transfer of another person from Madras such a step was unwarranted and uncalled for. This would frustrate the legitimate expectation of the petitioner and is to be deemed as not bona fide, but otherwise. Any action of the State authorities must be fair and without any touch of mala fide. The concept of mala fide in fact and the concept of mala fide in, law have since been considered by various High Courts and the apex Court in appropriate cases.

10. The concept of legitimate expectation is of recent philosophy. The Court's jurisdiction to interfere is very much limited and much less in granting any relief in a claim based purely on ground of legitimate expectation. But in each case the facts have to be considered in proper perspective. In a recent judgment the appex Court in the case of Union of India and Ors. v. Hindustan Development Corporation, AIR 13194 SC 988, has observed inter alia :

'33-34 On examination of some of those important decisions it is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negating a proviso or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires

otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute- right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the Courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation; it would primarily be a question of fact. If these tests are satisfied and if the Court is satisfied that a case of legitimate expectation is made put then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which depends on several factors.'

11. Upon perusal of the materials on record, we do not appreciate the stand taken by opp. parties 1 and 2. The legitimate expectation of the petitioner was frustrated due to transfer of another employee from Madras to create an artificial position that since no vacancy is there, selection of the petitioner in response to the advertisement and his success in the selection will be nothing but fire rhetoric empty of all meaning and worth. The entire exercise of publishing the advertisement, conducting interview and getting the selection list prepared cannot be treated as an empty ritual also. The step of transfer is not bad but in the present case the step of transfer to fill up the vacancy at Bhubaneswar for which advertisement was published and selection was made is otherwise bad in facts

and in law. Such a step cannot be sustained. The step taken by opp. parties 1 and 2 to transfer opp. party No. 3 from Madras to Bhubaneswar is found to be bad in law and is therefore quashed. The petitioner's case for appointment should be considered if he is otherwise fit in terms of the selection for the vacancy at Bhubaneswar. This judgment will not, however, cause any prejudice to opp. party No. 3 who has been transferred from Madras to Bhubaneswar. It is left to opposite parties 1 and 2 either to accommodate him in any other post or to create any supernumerary post or transfer him back to Madras. The case of the petitioner to the above extent should be reconsidered by opp. parties 1 and 2 within a period of three months from today. With this observation and direction the writ petition is allowed in part. There shall be no order as to costs.

R.K. Patra, J.

12. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com