

PETITIONER:
GOVERNMENT OF ORISSA THROUGH SECRETARY, COMMERCE & TRANSPORT

Vs.

RESPONDENT:
SHRI HARAPRASAD DAS & ORS.

DATE OF JUDGMENT: 24/11/1997

BENCH:
G.T. NANAVALI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:
THE 24TH DAY OF NOVEMBER, 1997

Present:

Hon'ble Mr. Justice G.T.Nanavati
Hon'ble Mr. Justice S.P.Kurdukar

Dinabandhu Mishra and Jana Kalyan Das, Advs. for the
appellant

R.S.Jena, Adv. for the Respondents.

J U D G M E N T

The following Judgment of the Court was delivered:

NANAVALI, J.

Leave granted.

Heard learned counsel for the parties

This appeal arises out of the order passed by the Orissa Administrative Tribunal in O.A. No.346 of 1995. The O.A. was filed by the four respondents against the Government of Orissa and the Director of Printing, Stationery and Publication for a declaration that they are entitled to be appointed as Copy Holders and for an appropriate direction to the Government and the Director.

The Orissa Government is running a Press and in its Production Branch it has a Proof Reading Section. Proof Readers working in that Section are assisted by Copy Holders. There were six vacant posts of copy Holders in the Government Press as on 16.4.1992. They were to be filled up by direct recruitment in accordance with the Orissa Government Press Industrial Employees Classification, Recruitment, Promotion, Conditions of Service and Appeal Rules, 1978 (hereinafter referred to as the "Rules"). Accordingly, the six vacant posts were notified on 16.4.1992. Out of the large number of applicants 194 candidates were found eligible for the written test. The written test was held on 7.3.1993. Forty candidates were found suitable for the oral test. The names were enlisted in order of marks secured by them and also category wise a four posts were to be filled up by general category candidates, one post was to be filled up by a scheduled castes candidate and one was to be filled up by a candidate belonging to scheduled tribes. Meanwhile on 26.2.1993 the Government imposed a ban effective from 1.1.1993 to the effect that 2/3rd of the vacancies of the base level posts should not be

filled up. Out of the 40 candidates who were found eligible for the oral test 37 appeared for the test and out of them 19 were selected for empanelment. On 13.7.1993 a selection list was prepared category wise. Nine candidates were impanelled in the general category and five each in the categories of scheduled castes and scheduled tribes. Respondent Nos.1 to 3 were placed at serial Nos. 5 to 7 in the list of general category candidates and respondent No.4 was placed at serial No.3 in the list of scheduled castes candidates. On 2.6.1993 the vacant posts had increased to 9 and subsequently to 15 and, therefore, five posts (1/3rd of 15) were filled up according to their roster points. The persons who were appointed were above respondent Nos.1 to 4 in the selection list. It appears that the Director thereafter moved the Government to accord permission through the high power committee to fill up the remaining vacancies. The ban which was imposed by the Government was temporarily lifted on 9.8.1994 and was re-imposed with effect from 1.4.1995. In view of this later development the respondents made representations from time to time to the Government to fill up the vacant posts on the basis of the said selection list. As the Government did not accede to their request they approached the Tribunal for the reliefs mentioned above.

The O.A. was resisted by the Government on the ground that only six posts were notified and, therefore, no more posts could be filled up on the basis of the said selection list. It was also the case of the Government that in view of the ban only five posts could have been filled up even if the subsequent vacancies were taken into account. It was also its case that the panel of selected candidates which was prepared on 13.7.1993 had remained valid only till 12.7.1994 in view of Rule 11(v) of the Rules.

The Tribunal rightly held that the only question which fell for its consideration was whether the selection list was still in force or had expired on 12.7.1994. The Tribunal construed Rules 9, 10 and 11 of the Rules and observed as under:

"Rule 11 is the Chapter-III of the Rules which deals with Classifications, Recruitment, Promotion and Confirmation. Rule 9(A) provides that the Director who is the appointing authority with respect to non-gazetted Industrial posts will make appointment to such posts. He will be aided and guided by a committee of officers as provided therein. Clause (B) provides for functions of the committee. It provided that the committee shall meet occasionally to discuss all matters relating to recruitment, etc. Sub-clause (iii) of the aforesaid clause provides the appointing authority will normally act upon recommendation of the Committee in exigency of public service, the appointing authority may fill up posts in anticipation of the sanction of the appointing authority by recording proper reasons. Rule 10 provides that the committee as well as the appointing authority will be guided by the principles as laid down therein in

matters of recruitment, promotion etc. clause (A) provides for the general principles. Sub-clause (iii) provides that the recruitment shall be made trade wise. Production wing is as branch and proof reading is a section of the said branch. Sub-clause (vii) provides that all posts in the first point of recruitment in all the trades will be filled up by way of direct recruitment and as referred to above the manner of recruitment has been provided in Rule-11. In this context the select list drawn will remain valid for one year. Thus, the list is not complete unless it is approved by the committee as proved in Rule 9(B)(iii) though appointing authority may fill up the posts in anticipation of the approval of the committee by recording proper reasons."

It, therefore, held that a list of selected candidates will become valid only after its approval by the Appointing and Promotion Committee. As there was nothing to show that the Committee had approved the said list an inference could be drawn that the Committee did not approve it. Therefore, 13.7.1993 cannot be treated as the date from which the period of one year is to be counted. The Tribunal also held that under the Rules there is no provision enabling the State Government to control filling up of vacancies and, therefore, period during which the said list remained suspended has to be excluded for the purpose of counting the period of one year. It also held that the provision made in Rule 11(v) that the selection list once drawn will remain valid for one year being a procedural provision is only directory and not mandatory. Taking this view it directed the Government, that for the sake of efficiency of public administration, it should fill up the vacant posts by appointing candidates from the selection list prepared on 13.7.1993. It also directed the Director of the Press to obtain permission of the Government and after getting such permission to treat the appointees as probationers from the date of their appointment.

Aggrieved by the said directions and the order passed by the Tribunal the State has approached this Court.

It was contended by the learned counsel for the appellant-State that the Tribunal in giving the aforesaid directions has acted beyond its jurisdiction and that the said directions are illegal inasmuch as they are contrary to Rule 11 of the Rules. In our opinion the contention deserves to be accepted. Merely because there were some vacant posts of Copy Holders and the Director of the Press had recommended to the Government to fill up those posts it was not open to the Tribunal to direct the Government to fill up those posts even though it had good reasons not to do so. It should have been appreciated by the Tribunal that mere empanelment or inclusion of one's name in the selection list does not give him a right to be appointed. So also if the Government decides not to make further appointments for a valid reasons, it cannot be said that it has acted arbitrarily by not appointing those whose names are included in the selection list. Whether to fill up a post or not is a

policy decision and unless it is shown to be arbitrary it is open to the Tribunal to interfere with such decision of the Government and direct it to make further appointments. The Tribunal in directing the Government to make further appointments on the efficiency ground of public administration went beyond its jurisdiction. While giving such a direction what the Tribunal failed to appreciate was that the decision of the Government not to make further appointments was not challenged as arbitrary and it was challenged only on two grounds viz : (1) In between 9.8.1994 and 13.1.1995 there was no ban and, therefore, the Government could have appointed the respondents on the vacant posts and (2) The Government had made appointments in the same Press from out of a panel of Distributors, Binders, Type Suppliers, etc. which was prepared about 7 years back and, therefore, the Government had meted out discriminatory treatment to the respondents. The Tribunal did not find the action of the Government discriminatory possibly because as pointed out by the State in its counter filed before the Tribunal the selection list, prepared for Distributors, Binders, Type Suppliers, was of a different nature and character as it was prepared on the basis of a trade test which was confined to the in-service employees eligible for promotion to those posts under Rule 17 of the Rules. It may be recalled at this stage that the posts of Copy Holders in the Government Press are base level class-III post and are required to be filled up by direct recruitment from open market under Rule 10 and 11 of the Rules.

We also find that the Tribunal has not correctly construed Rules 9, 10 and 11 of the Rules. Rule 9 which refers to the Committee is the Appointment and Promotion Committee which has to deal with promotions and recruitment of only in-service employees. Rule 9 and 10 of the Orissa Government Recruitment Rules, 1978 deal with recruitment of in-service employees and promotion of employees; and, in respect of the recruitment and promotion of such employees the Appointment and Promotion Committee has a role to play but in cases of direct recruitment from the open market the Appointment and Promotion Committee does not come to the picture at all and, therefore, the Tribunal was wrong in holding that the selection list prepared for direct recruitment from open market was required to be approved by the said Committee and it could become a valid selection list only after its approval by the said Committee. The Tribunal also failed to appreciate that if the selection list was not valid since it was not approved by the Committee then it could not have conferred any right in favour of those who were included in the said list and it would not be legal to make appointments of those included in such an invalid list.

Rule 11(V) of the Rules does not speak of any approval by the Appointment and Promotion Committee. Moreover, it does not prove that it will remain valid for one year from the date of approval by such Committee. The language used in the Rule is very clear and admits of no ambiguity. It provides that selection list once drawn will remain valid for one year. What the Tribunal failed to appreciate was that the significance of word "drawn" used in the said Rules. Therefore, according to the Rules the period of one year starts running from the date on which a selection list is drawn. Admittedly, in this case the selection list was drawn up on 13.7.1993 to, therefore, expired on 12.7.1994. The Government, therefore, was justified in not making any further appointment from the said list after 12.7.1994. The Tribunal in directing the Government to make further

appointments from the said dead list has committed an illegality in exercise of its jurisdiction. Even if the said Rule is treated as directory and not mandatory, it was not for the Tribunal to direct the Government to treat it as 'live' and in force and to make further appointments from the list.

As we find that the view taken by the Tribunal is wrong and the directions given by it are not legal the orders passed by it is quashed and set aside. This appeal is allowed accordingly with no order as to costs.

JUDIS