

A THE DIRECTOR OF HORTICULTURE, ODISHA

v.

PRAVAT KUMAR DASH & ORS.

(Civil Appeal Nos. 6227–28 of 2019)

B AUGUST 09, 2019

[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]

- Service Law : Appointment – Post of gardeners – Issuance of Circulars whereby selected applicants to be imparted pre-service gardeners training in departmental farms by Director of Horticulture – Selected applicants underwent training – However, few candidates selected by Director of Horticulture without following the procedure – Appointment of few candidates and later on termination of their services – Subsequently, Government Order that not to fill up the posts of Gardener and to create the equal number of posts of Horticulture Workers – Said order set aside by the tribunal and direction issued to the State to consider the applicants for appointment against the existing vacant posts of Gardener – Writ petition thereagainst, dismissed by the High Court – On appeal, held: Circular contemplates that there is no guarantee of employment after successful completion of training by the trainees – Appointment to the post of Gardener is required to be made in terms of the Recruitment Rules or in terms of the instructions issued – Selection of the candidates for training was not by way of transparent procedure nor there was any commitment to appoint candidates who have completed training as Gardeners – Even if a candidate has completed training, he cannot seek right of employment unless such public posts are advertised and filled up by giving opportunity to all similarly situated candidates – Directions of the tribunal, as upheld by the High Court, wholly unjustified as there cannot be any direction for appointment only for the reason that the candidates have undergone training – Furthermore, no right can be conferred on the persons who were terminated on the basis of equity in favour of the other candidates – Thus, the order passed by the High Court and the tribunal are set aside .*

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Allowing the appeals, the Court

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HELD: 1.1 The respondents were subjected to training in pursuance of circular dated July 4, 1998. The training was proposed in the circular dated April 16, 1998. It clearly contemplates that there is no guarantee in the matter of employment after successful completion of training by the trainees. At that time, training was contemplated only in the School of Horticulture, Khurda during the year 1998–1999. Subsequently, the training was proposed to be held in ten selected departmental farms but there is no assurance in the said communication dated July 4, 1998 that candidates would be appointed. The appointment to the post of Gardener is required to be made in terms of the Recruitment Rules if any, applicable thereto or in terms of instructions issued under executive power of the State but the appointments cannot be made merely for the reason that a candidate has undergone training. Out of 1359 candidates who applied in pursuance of circular dated July 4, 1998, 362 candidates were selected for training but the manner of their selection has not come on record. [Para 17][716-A-C]

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1.2 The selection of the candidates for training was not by way of transparent procedure nor there was any commitment to appoint candidates who have completed training as Gardeners, therefore, even if a candidate has completed training, he cannot seek right of employment unless such posts are advertised and filled up by giving opportunity to all similarly situated candidates. The directions of the Tribunal, as affirmed by the High Court, that the candidates are intended to be employed are wholly unjustified as there cannot be any direction for appointment only for the reason that the candidates have undergone training. It is not necessary for this Court to examine whether the post of Gardener has been upgraded to the post of Horticulture Extension Worker or that it is the same post having a different nomenclature. The fact remains that all public posts are required to be filled up by giving an opportunity to all the candidates to apply and to compete for the post. [Para 18][716-D-F]

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- A 1.3 The services of six persons who were appointed were ordered to be terminated on December 10, 1999 but even if their termination was set aside on April 24, 2001, it would not confer any right on the basis of equity in favour of the other candidates. There cannot be any parity in the illegality. The order of the tribunal, as affirmed by the High Court, directing the State to appoint the applicants as Gardeners is beyond their jurisdiction vested in the High Court as there cannot be any direction for making appointment to the public post in such a manner. The orders passed by the High Court and the tribunal are set aside and the OAs filed by the respondents are dismissed. [Para 19, 20][716-G; 717-A-B]
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Chandigarh Administration & Anr. v. Jagjit Singh & Anr. (1995) 1 SCC 745 : [1995] 1 SCR 126; Kulwinder Pal Singh & Anr. v. State of Punjab & Ors. (2016) 6 SCC 532 : [2016] 4 SCR 439 – referred to.

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Case Law Reference

[1995] 1 SCR 126	referred to.	Para 19
[2016] 4 SCR 439	referred to.	Para 19

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CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 6227-6228 of 2019

From the final Judgment and Order dated 22.12.2017 of the High Court of Orissa at Cuttack in W.P. (C) No.11307 of 2016 and 19570 of 2015

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Vikas Singh, Sr. Adv., Som Raj Choudhary, Ujjaval Kumar, Mrityunjay Singh, Advs. for the Appellant.

R. Basant, Gurukrishnakumar, Sr. Advs., Ramendra Mohan Patnaik, Arnav Benera, Kedar Nath Tripathy, Advs. for the Respondents.

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The Judgment of the Court was delivered by

HEMANT GUPTA, J. 1. Leave granted.

2. The challenge in the present appeals is to a judgment passed by Orissa High Court on December 22, 2017 maintaining the order dated

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June 27, 2014 passed by Odisha Administrative Tribunal in Original Application (OA) No. 1510 of 2012 and other petitions. The Tribunal decided nine OAs by a common order whereby the orders passed by the Government not to fill up the posts of Gardener and to create the equal number of posts of Horticulture Extension Workers were set aside. The State was directed to consider the applicants for appointment against the existing vacant posts of Gardener. The operative part of the order reads as under:

“17. In view of our analysis in the foregoing paragraphs, the order dated 15.9.2012, 06.10.2012 and 17.11.2012 passed by the Government in their Agriculture Department not to fill up the posts of Gardener and create equal number of posts of Horticulture Extension Workers stand quashed. Respondents are directed to consider the case of the applicants for their appointment against the existing vacant posts of Gardener, as has been done in the case of similarly placed trained candidates pursuant to the order of the Hon’ble High Court, within a period of three months from the date of receipt of copy of this order. Since the applicants have been fighting for their right for the last more than 15 years, respondents are directed to stick to the dead line fixed by this Tribunal.”

3. Aggrieved against the said order, the State and the Director of Horticulture, Odisha filed writ petitions before the High Court. The High Court dismissed the writ petitions holding that the applicants had undergone training after being selected and sponsored by the Government. It is also held that since the posts of Gardener are lying vacant, there is no reason why the State should not consider the applicants against such vacancies.

4. The facts leading to the present appeals are that Agriculture and Cooperation Department of Odisha approved ten months course for pre-service training of Gardeners. The Gardeners were to be recruited through an open advertisement and to undergo ten months training in the School of Horticulture, Odisha. All the candidates who were trained up to the year 1990 were absorbed. It was on April 16, 1998, the Director of Horticulture decided to impart pre-service Gardener’s Training in the 10 Departmental farms during the year 1998-1999. The candidates were

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A to be selected as per the guidelines in terms of the selection procedure circulated. The procedure for selecting candidates in all the 30 districts was to be made by a committee chaired by Deputy Director of Horticulture in each range. One of the conditions in the procedure circulated was as under:

B “VIII. The candidates are required to furnish a bond in the prescribed form to the effect that after successful completion of training they shall serve under the Department for at least 3 years, if required, failing which the stipend paid during the training period shall become refundable. No guarantee can be given in the matter of employment after successful completion of the training by the trainees.”

5. The High Court ordered an inquiry on May 11, 1999 in Miscellaneous Case No. 5135 of 1999 arising out of OJC No. 4665 of 1999, when it was found as under:

D (i) Out of sixty four candidates selected as gardeners trainee, six candidates have been selected by the Director of Horticulture without following proper procedure.

(ii) 356 (Three hundred and fifty six) candidates have been selected as gardeners trainee irregularly and imparted training in some identified farms under Director of Horticulture outside the School of Horticulture at Kurds, meant for such training without approval of Government.

(iii) Besides, 997 (Nine hundred ninety seven) applications received directly for selection as gardeners trainee are also lying pending with the Director of Horticulture Orissa without proper notification.”

6. It was decided to dispense with the services of six persons who have been selected by the Director of Horticulture. The Director of Horticulture was directed not to give any employment or any financial assistance to 356 candidates who have been selected irregularly and imparted training at places other than School of Horticulture, Khurda. Director of Horticulture was also directed not to entertain 997 pending applications for their selection as Gardeners trainee. The said decision became the subject matter of challenge before the Odisha Administrative Tribunal.

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7. On April 24, 2001, services of six persons as mentioned in the letter of Director of Horticulture were terminated. Such order of termination was challenged before the Odisha Administrative Tribunal in OA Nos. 1144 of 2001, 1181 of 2001, 1374 of 2001 and 1435 of 2001. These applications were allowed on September 13, 2006 whereby the appellant was directed to reinstate the services of the applicants along with payment of consequential benefits including 50% of their salary and allowances.

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8. The writ petitions filed by the State against order dated September 13, 2006 were dismissed by the High Court on December 5, 2009. It was held that all trainees who have taken training outside the School of Horticulture, Khurda stand on the same footing and a pick and choose method could not have been adopted by the Department for the purpose of compliance of the order of the Court passed in OJC No. 4665 of 1999 (PIL). The High Court held that all such trainees were appointed against the substantive vacancies and continued for almost two years, therefore, they are protected under Article 311 of the Constitution of India and their services could not be terminated without any notice. The relevant extract from the order reads as under:

“7. ...As it appears, all the candidates selected, for such training had been trained in different farms instead of School of Horticulture at Khurda meant for such training without approval of the Government. Therefore, all such trainees, who had taken training outside the School stand on the same footing and a pick and choose method could not have been adopted by the Department for the purpose of compliance of the order of this Court passed, in the aforesaid Public Interest Litigation. We are, therefore, of the view that there was no illegality in the recommendation of the Director selecting these four opposite parties for the purpose of training, he being the higher authority than the authority competent to do so.

8. Apart from the above, as rightly observed by the Tribunal that all these opposite parties were regularly appointed by order dated 30th June, 1999 against the substantive vacancies and continued as such almost for two years. Therefore, they are protected under Article 311(2) of the Constitution of India as well as Rule 15 of

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- A the O.C.S. (C.C.A) Rules, 1962 and their services could not have been terminated without a notice to show cause. The Tribunal, while holding such, also relied upon a decision of the Hon'ble Supreme Court as well as a decision of this Court.”
9. Nine OAs were filed by 81 applicants before the Odisha Administrative Tribunal including OA Nos. 337 of 2001 and 529 of 2001. Another OA No. 1534 of 2006 was also filed seeking appointment as Gardener in terms of order dated September 13, 2006. Such applications were allowed by the Tribunal on May 11, 2011.
10. It may be noticed that certain OAs filed by Subhash Chandra Jena, Ajay Kumar Das and Ranjit Sahoo were dismissed by the Tribunal on December 21, 2009 but such order was set aside by the High Court on December 14, 2011 holding that the applicants were on the same footing as parties in previous applications which were decided on May 11, 2011.
- D 11. On March 7, 2012, the State decided to abolish the post of Gardener. On May 9, 2012, it was decided that no further recruitment will be made in the cadre of Gardener and the post would stand abolished when the incumbent retires or gets promoted. There were certain directions to the State Government to consider the appointments in other Original Applications. The claim of the applicants for appointment as Gardener was rejected on various dates. Such termination orders were challenged in nine separate applications before the Odisha Administrative Tribunal including OA No. 1510 of 2012 which was allowed on June 27, 2014 and the writ petitions filed by the State stand dismissed vide order dated December 22, 2017. This order is impugned in the present appeal.
- F 12. In this factual background and the number of orders passed by Odisha Administrative Tribunal, the argument of Mr. Vikas Singh, learned senior counsel for the appellant is that 362 persons were selected in wholly irregular manner to undergo training in Departmental farms other than training by the Director of Horticulture. Out of 1359 applications, 362 were selected without any criteria. The circular of the State Government was categorically to the effect that undergoing training will not ensure an appointment. The training of Gardener was only an eligibility qualification and not a guarantee for the appointment. It is, thus, argued that training was not as per the decision of Director of
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Horticulture communicated on April 16, 1998 but in the departmental farms without a transparent selection process, 362 candidates out of 1359 candidates were selected to undergo training. Still, further, six candidates were appointed surreptitiously, therefore, it was decided to terminate their services. The appointment was *dehors* any selection procedure known for making employment against the public post, therefore, such appointments cannot be said to be protected by Article 311 or by the Orissa Civil Services Rules.

13. It is alternatively contended that even if six candidates have been appointed illegally, such illegality cannot be claimed to be perpetuated by the other candidates by seeking parity with six illegally appointed candidates. It is pointed out that the posts of Gardener were never advertised even when six candidates were appointed, therefore, the direction of the Tribunal as maintained by the High Court to make appointments is contrary to the statutory rules and the procedure for appointment against the public post, therefore, such directions cannot be sustained in law.

14. It is also argued that the findings recorded by the Tribunal, as affirmed by the High Court, that similarly situated Gardeners have been appointed are factually incorrect as some vacancies in the cadre of Gardener were filled in the rehabilitation scheme from amongst the attendants who have completed six years' service for promotion to the post or rank of Gardener on the basis of seniority-cum-merit.

15. On the other hand, the argument of Mr. Guru Krishnakumar as well as Mr. R. Basant, learned senior counsels appearing on behalf of some of the respondents, is that the action of the State is wholly arbitrary as similarly situated candidates have been appointed. It is further argued that the stand that post of Gardener stands abolished and the post of Horticulture Extension Worker has been created is only a ruse as it is nomenclature of the same post. The stand of the State that Horticulture Extension Worker is a promotion post from the post of Gardener is not correct.

16. We have heard learned counsel for the parties and find that the orders passed by the Tribunal, as affirmed by the High Court, are not justified in law.

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- A 17. The respondents were subjected to training in pursuance of circular dated July 4, 1998. The training was proposed in the circular dated April 16, 1998. It clearly contemplates that there is no guarantee in the matter of employment after successful completion of training by the trainees. At that time, training was contemplated only in the School of Horticulture, Khurda during the year 1998-1999. Subsequently, the
- B training was proposed to be held in ten selected departmental farms but there is no assurance in the said communication dated July 4, 1998 that candidates would be appointed. The appointment to the post of Gardener is required to be made in terms of the Recruitment Rules if any, applicable thereto or in terms of instructions issued under executive power of the
- C State but the appointments cannot be made merely for the reason that a candidate has undergone training. Out of 1359 candidates who applied in pursuance of circular dated July 4, 1998, 362 candidates were selected for training but the manner of their selection has not come on record.

- D 18. We find the selection of the candidates for training was not by way of transparent procedure nor there was any commitment to appoint candidates who have completed training as Gardeners, therefore, even if a candidate has completed training, he cannot seek right of employment unless such posts are advertised and filled up by giving opportunity to all similarly situated candidates. The directions of the Tribunal, as affirmed by the High Court, that the candidates are intended to be employed are
- E wholly unjustified as there cannot be any direction for appointment only for the reason that the candidates have undergone training. It is not necessary for this Court to examine whether the post of Gardener has been upgraded to the post of Horticulture Extension Worker or that it is the same post having a different nomenclature. The fact remains that all public posts are required to be filled up by giving an opportunity to all the candidates to apply and to compete for the post.

- G 19. The services of six persons who were appointed were ordered to be terminated on December 10, 1999 but even if their termination was set aside on April 24, 2001, it will not confer any right on the basis of equity in favour of the other candidates. There cannot be any parity in the illegality. Reference will be made to *Chandigarh Administration & Anr. v. Jagjit Singh & Anr.*¹ and *Kulwinder Pal Singh & Anr. v. State of Punjab & Ors.*²

¹ (1995) 1 SCC 745

² (2016) 6 SCC 532

20. In view of the above, we find that the order of the Odisha Administrative Tribunal, as affirmed by the High Court, directing the State to appoint the applicants as Gardeners is beyond their jurisdiction vested in the High Court as there cannot be any direction for making appointment to the public post in such a manner. Consequently, the appeals are allowed. The orders passed by the High Court and the Tribunal are set aside and the OAs filed by the respondents are dismissed.

Nidhi Jain

Appeals allowed.