

A

KHETRABASI BISWAL

v.

AJAYA KUMAR BARAL AND ORS.

NOVEMBER 20, 2003

B

[V.N. KHARE, CJ. AND S.B. SINHA, J.]

*Service Law :*

C

*Judiciary—Posts of Temporary Munsif (Emergency Recruitment)—Orissa Public Service Commission sending list of selected candidates to Government—Government preparing another list omitting names of candidates selected by Commission—Writ petition filed before High Court—High Court preparing its own list without issuing notice to affected candidates—Offers of appointment issued by State Government in terms of list prepared by High Court—Held, candidates who suffered prejudice by reason of directions issued by High Court were necessary parties—The procedural as well as the substantive law both mandate that in the absence of a necessary party, the order passed is a nullity and does not have a binding effect—In exercise of jurisdiction under Article 142 and with a view to do complete justice matter remitted to High Court for a fresh decision on merits and after giving opportunity to writ petitioners to implead all the necessary parties—Constitution of India—Article 142.*

E

*Practice and Procedure—Non-impleadment of necessary parties—Effect of.*

F

*Constitution of India, 1952 :*

G

*Article 226—Writ of mandamus—Selection to posts of Temporary Munsifs—Dispute arising out of State Government preparing a different list than that sent to it by Orissa Public Service Commission—Writ petition filed before High Court—High Court preparing its own list and giving directions accordingly—Held, a writ of or in the nature of mandamus could not have been issued directing State Government to appoint the selectees in terms of the select list prepared by High Court—High Court should have, if such a case was made out, relegated the matter to the Commission.*

H

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5984 of A  
1998.

From the Judgment and Order dated 22.8.97 of the Orissa High Court  
in O.J.C. No. 14380 of 1996.

WITH B

C.A. Nos. 5986, 5987 and 5985 of 1998.

Dr. K.S. Chauhan, Chand Kiran and V.K. Burman for the Appellant  
in C.A. No. 5984/98. C

Goodwill Indeevar for the Appellant in C.A. No. 5985/98.

V.A. Mohta, Bharat Sangal, Ms. Sangeeta Panicker and R.R. Kumar  
for the Appellants in C.A. No. 5986-87/98.

Jana Kalayan Das Respondent for State. D

Ms. Kirti Mishra for Orissa Public Service Commission.

The following Order of the Court was delivered :

On 17.6.1996 the Orissa Public Service Commission (for short 'the  
Commission') issued an advertisement No. 5 of 1996-97, inviting application  
in the prescribed form for 25 posts of Temporary Munsif (Emergency  
Recruitment) in Class II of Orissa Judicial Service. E

The appellants herein and the respondents along with the others  
submitted an application before the Commission. F

A written examination was held by the Commission and in terms  
thereof, a list of the successful candidates was prepared. The selectees were  
later on interviewed by the Commission and in the said proceeding a sitting  
Judge of the High Court acted as an expert. Thereafter the select list has  
been prepared on the basis of merit, which contained 39 names. The names  
of the appellants, admittedly, found place therein. The said list was sent  
to the State Government for its approval. The State Government, however,  
on receiving the said list, prepared another list. The name of Khetrabasi H

A Biswal also found place therein. The names of the appellants, namely, Dipali Chand and Govinda Chandra Parida and another were omitted. Several writ applications were filed by Ajaya Kumar Baral, Pradipta Kishore Bhuyan, Krushna Chandra Jena, Bijaya Kumar Patra and Govinda Chandra Parida and Anr. filed petitions bearing O.J.C. Nos: 14,380 of 1996, 5566, 6040, 6041 and 6088 of 1997 respectively. It is also not in dispute that one of the appellants, namely, Dipali Chand in Civil Appeal Nos. 5986 and 5987 of 1998 also filed a Writ Petition No. 13687 of 1997, which is still pending. By reason of the impugned judgment, the High Court purporting to interpret the service rules prepared the list of the candidates, who should have been selected. Pursuant to and in furtherance of the directions issued by the High Court, offers of appointment were issued by the State Government in terms of the list prepared by the High Court. The appellants herein were not party to the writ applications. The High Court, while preparing its own list, did not think it fit to issue notices to other candidates like the appellants herein, who had suffered prejudice by reason of the directions issued by the High Court. The appellants, therefore, were necessary parties.

E The State Government after receiving the list from the Commission, prepared another list out of the list prepared by the Commission. In this list of the State Government, names of certain persons, who were in merit list did not find place. One of such situated person filed a petition under Article 226 of the Constitution of India before the Orissa High Court, challenging the list prepared by the State Government. It is not disputed that the appellants herein were not parties to the writ petition.

F It is against the said judgment of the High Court, the appellants are in appeal before us.

G The procedural law as well as the substantive law both mandates that in the absence of a necessary party, the order passed is a nullity and does not have a binding effect.

H It is true that the successful candidates have not been parties before us, but it appears that the appellants herein proceeded to implead only Ajaya Kumar Baral, who was also a writ petitioner before the High Court. Having regard to the peculiar facts and circumstances of the case, we are of the opinion that in exercise of our jurisdiction under Article 142 of the

Constitution of India and with a view to do complete justice to the parties, the matters may be remitted to the High Court for a fresh decision on merits and after giving opportunity to the writ petitioners to implead all the necessary parties therein. The writ petition filed by Dipali Chand should be heard along with the other writ petitioners. In our opinion a writ of or in the nature of mandamus could not have been issued, directing the State Government to appoint the selectees in terms of the select list prepared by the High Court. The High Court should have, if such a case was made out, relegated the matters to the Commission. The writ petitioners before the High Court and the other persons, who have been appointed pursuant to or in furtherance of the judgment of the High Court, would continue to hold the post till a final decision is rendered in the matters by the High Court.

In that view of the matter, we set aside the order under challenge and remit the matter to the High Court for decision on merits after giving an opportunity to the writ petitioners to implead all the necessary parties in the writ petition.

The appeals are allowed with the aforementioned directions. There shall be no order as to costs.

Let the records be sent forthwith.

Since the matters relate to the vacancies in the year 1996-97, it requires expeditious hearing. The High Court may dispose of the matters as early as possible.

R.P.

Appeals allowed.