

IN THE HIGH COURT OF ORISSA AT CUTTACK

O.J.C. NO.13996 OF 1996

In the matter of an application under Articles 226 & 227 of the Constitution of India

Ganeswar Patra

....

Petitioner

-versus-

***State of Orissa, represented through
the Secretary, Forest & Environment
Department & Ors.***

....

Opposite Parties

.

For Petitioner:

Mr. P.K.Khuntia, Advocate

For Opp.Parties:

Mr.S.K.Pattanaik. Sr.Advocate

J U D G M E N T

PRESENT:

THE HONOURABLE MR.JUSTICE BISWANATH RATH

Date of Hearing: 10.03.2022 Date of Judgment:23 .03.2022

1. Writ petition involves a direction in the nature of writ of mandamus directing opposite parties to regularise the services of the petitioner at least from the dates juniors to him have been regularised, on quashing of Annexures- 7, 9 and 10, declaring the retrenchment illegal and also disbursing equal pay for equal work with release of differential arrear salary within specific time.

2. Background involving the case is petitioner discharged his duties as an agent in different spells from 27.9.1980 to 30.8.1990 under Similipahar Forest Development Corporation on short term basis. It is after merger of S.F.D.C. with O.F.D.C. on 1.10.1990 petitioner was directed to join as an agent on 26.10.1990. Records reveal petitioner being a matriculate was initially engaged on fixed remuneration of Rs.300/- per month vide order dated 27.9. 1980 vide Annexure-1, he joined the post on 3.10.1980 and continued till 31.5.1981. While continuing as such, petitioner applied for leave on 31.05.1981. While availing leave since petitioner remained under treatment till 20.12.1987, on the basis of medical support he joined again on 24.12.1987 and continued till 31.05.1988. Petitioner once again joined as an agent in the month of October 1988 and continued till May 1989. Petitioner served another spell from October 1989 to 30.06.1990. On his own, petitioner claimed to have continued in service from 1980 till 1990 in different spells but with definite breaks. While the matter stood thus the Similipahar Forest Development Corporation Limited got merged with Orissa Forest Development Corporation on 01.10.1990 and employees of S.F.D.C. became employees of O.F.D.C. Limited w.e.f. 1.10.1990. It is claimed that after a gap, again petitioner was engaged as an agent on 26.10.1990 in O.F.D.C. and claimed to be continuing till filing of pre-amended writ petition. Petitioner claimed even though he was selected vide Annexure-1 through a selection process and securing second position in the selection process but he was allthrough kept as a temporary employee and was not regularised. Giving name of several persons junior to

him, petitioner alleged even though numbers of person have been regularised, yet petitioner has not been considered for regularisation. Petitioner also alleged that in spite of his discharging similar duties like his counter parts, he was paid a meagre remuneration. Petitioner claimed that he has been illegally deprived from regular scale along with service benefits such as D.A., A.D.A., house rent, medical leave, pension and gratuity etc. For his continuing for such long period, petitioner claimed though there was requirement of permanent employees, yet the petitioner was not regularised as such claimed the action of opposite parties remains violative under Article 14 and 16 of the Constitution of India. While the matter stood thus, vide Annexure-5 petitioner approached the Divisional Manager (C) O.F.D.C. Ltd. Karnjia ventilating his grievances and praying for his regularisation by submitting a representation on 27.04.1993. Representation of petitioner not being attended for long, on 14.11.1996 petitioner once again ventilated his grievances before Divisional Manager (C) O.F.D.C. Ltd. Vide Annexure-6 requesting for regularisation of his services. While matter stood as such, petitioner was served with a notice to show cause on 06.07.2001 vide Annexure-7 as to why his services shall not be dispensed with. Being aggrieved, petitioner along with 31 similarly situated persons challenged the show cause notice vide O.J.C. No.9455 of 2001. This Court in disposal of the writ petition on 27.07.2001 while observing petitioners will submit their show cause within seven days, directed authorities involved to consider their response and pass reasoned order. Further considering pendency of a writ for regularisation

observed any decision taken there shall remain subject to outcome in the pending writ petition. Petitioner in the process filed response vide Annexure-8 which being considered and rejected vide Annexure-9, in the meantime petitioner was served with an retrenchment order dated 31.07.2001 vide Annexure-10.

3. Mr.Khuntia, learned counsel appearing for the petitioner in the above background of the case challenged to the retrenchment order also while continuing with his prayer for regularisation, submitted there is clear victimisation as well as exploitation involving petitioner and for no proper treatment to a mere employee finally even after long period in the first spell of his service, then continuing in service from 26.10.1990 till he was retrenched by order dated 31.07.2001 almost 11 years of service, petitioner is made to street and forced the petitioner to serve his rest of life in pitiable condition. Mr.Khuntia, learned counsel keeping in view the age of the petitioner in filing writ petition in 1996 almost 49 years and already reached at the age of 75 years presently contended that the petitioner is feeling fully helplessness and unsecured. Mr.Khuntia, learned counsel for the petitioner in the above background of matter submitted that in the present scenario even if regularisation direction and or reinstatement is not possible, there should at least be grant of appropriate relief by way of monetary compensation by this Court. Mr.Khuntia again taking this Court to the persons disclosed through paragraph-12 of the brief contended that when person similarly placed got benefit of regularisation there was no impediment and obstruction in the regularisation of the petitioner involved. He however admitted that looking to the present age of

the petitioner, there is no possibility to put back the petitioner into service. Mr. Khuntia, learned counsel for the petitioner also involving the show cause and the retrenchment order submitted that the reason assigned in the retrenchment order did not have any reflection in the notice by way of show cause and claims the retrenchment of the petitioner came by way of surprise and thus prays this court for interfering in the impugned order and granting appropriate relief in the interest of justice.

4. Mr. S.K.Pattnaik, learned senior counsel appearing for contesting opposite party no.5 in his opposition to the claim involved referring to the counter affidavit on behalf of the opposite party no.5 contended that petitioner was merely engaged as an agent on temporary basis under the erstwhile Similipahar Forest Development Corporation. Initial engagement of the petitioner was on short term basis. On completion of his first spell of service, petitioner even did not turn up for further extension. It is claimed that on his own submission in the writ petition, petitioner was on leave for long time on the ground of treatment. It is while the matter stood thus, the Sub-Committee of the S.F.D.C. considered the cases of daily wage workers, who have completed two or more years of service for regularisation following the rules prevailing then. It is at this time finding some vacancy, petitioner made a fresh application and was engaged as a fresh agent on 24.12.1987 by virtue of formal offer of engagement at Annexure-B. In the process, Mr. Pattnaik contended that though a large number of employees have been regularised but petitioner was not available to be regularised at the relevant time. Describing in paragraph-

7, the period of engagement of the petitioner from 3.10.1980, the first spell for 7 months and 28 days. Second spell from 24.12.1987 till 31.5.1988, 5 months and 6 days. Third spell from 6.1.1989 till 31.3.1989 again 2 months and 24 days. In his last spell, he was engaged on 25.10.1989 and continued till 30.6.1990 for about 8 months and 5 days. Thereafter his fresh engagement took place on 26.10.1990. In filing counter affidavit in 1998, opposite party no.5 claimed that petitioner was still continuing in service. It is here opposite party no.5 claimed since the petitioner had not earlier continued for two years, in any of the spell, his case could not be considered for regularisation prior to his engagement till 1990. Filing the scheme of the Corporation vide Annexure-C, an attempt was made by the opposite party no.5 that for the clear provision therein to regularise an employee provided he would have completed two years of service, senior counsel appearing for opposite party no.5 claimed, petitioner for his own creation could not be considered for regularisation with the persons regularised for their qualifying two years of service at a stretch. Mr.Pattanaik, learned senior counsel for opposite party no.5 claimed S.F.D.C. merged with O.F.D.C. on 1.10.1990 and petitioner was subsequently engaged on 26.10.1990 as an agent by order of Divisional Manager, Karanjia Commercial Division, a new Corporation. Keeping in view the restriction in clause-12 in Annexure-C, petitioner since was not regularised in S.F.D.C. had no scope to claim to be regularised in the O.F.D.C. and it is contended that O.F.D.C. did not have any such proposal. Referring to the plea of the opposite party no.5 in paragraph-12,

it is contended that persons selected and appointed on 27.9.1980 along with petitioner, who continued in service after 31.5.1981 and completed two years of service were regularised under the regularisation scheme framed in the year 1982 in S.F.D.C. but against available vacant post. In paragraph-13 it is also admitted by opposite party no.5 that subsequently 58 daily wagers in S.F.D.C. were also regularised as appearing in Annexure-E dated 7.8.1990 and petitioner could not be considered because he had no continuous employment for 2 years.

5. Mr.Pattanaik, learned senior counsel also opposed the claim of the petitioner on the basis that after the formation of O.F.D.C. on merger of S.F.D.C. and O.P.D.C. as Orissa Forest Development Corporation Limited, O.F.D.C. found that there has been excess employment and there was no justification to justify such engagement particularly keeping in view the financial condition of the Corporation at that stage. It is claimed that at this point of time O.F.D.C. consulted with Tata Consultancy Services to assess the workload requirement of the Corporation to be managed with its income also taking up the issue that O.F.D.C. had already entered into loss into crores. It is claimed that Tata Consultancy Services Limited submitted its report in January, 1993 disclosing that there is economic crisis and over engagement of staff and O.F.D.C. had no scope for further regularisation of the services of daily wagers like that of the petitioner. It is further claimed that in fact, Corporation stopped regularising the employees. It is claimed that O.F.D.C. could not actuate regularisation of employees engaged on daily wage basis in 1997 till filing of the counter affidavit but was in

view to take up regularisation issue in the event there is improvement in the financial condition of the corporation. Finding dearth of work, Corporation was not in a position to regularise the petitioner in the pendency of writ petition till petitioner attended age of superannuation even.

6. Mr.Pattanaik, learned senior counsel however at this stage looking to the nature of challenge in the writ petition and his answer to the challenge to order at Annexures-7, 8 and 10, decision for retrenchment of the regular employees was taken while considering the requirement of exact manpower of the Corporation and also keeping in view Tata Consultancy view obtained in the meantime further on the premises that petitioner had already attended the age of retirement in the year 2005 and was paid retrenchment allowance of Rs.14,631 towards compensation and notice pay vide Annexure-10 and further subsequently was paid a sum of Rs.14,190/- by order of the Gratuity Authority towards gratuity on 15.12.2006, Mr.Pattanaik submitted that there is no scope for entertaining the prayer of the petitioner either for regularisation or interfering in the retrenchment order at this stage of the matter. Mr.Pattanaik. learned senior counsel accordingly prayed this Court for dismissal of the writ petition.

7. Reading together with Annexure-1 and Annexure-E both in writ petition and counter respectively, this Court finds , persons vide Annexure-1 at Sl.No.1 dead, at Sl.Nos.3 and 7 while left service, persons at Sl.Nos.4, 5, 6, 8 9 and 10, who were all appointed with petitioner on 27.9.1980 have all been regularised whereas petitioner at Sl.No.2 of Annexure-1 is the

only person not regularised. Similarly, coming to reading Annexure-E, a part of counter of opposite party no.5, an office order dated 7.8.1990 clearly discloses regularisation of persons find place at Sl.No. 1 to 58 except person at Sl.No.22 (joined on 11.2.1980) , Sl.No.40 joined on 6.4.1980, Sl.No.41 joined on 24.4.1980 and persons joined much subsequent to petitioner and have all been regularised on 7.8.1990. This Court here takes note of material fact through counter of opposite party no.5 at internal page-3 of counter and running page 31 of the brief. In the statement, it appears, petitioner undisputedly completed 240 days but had not completed two years of service in one spell. In the next spells since petitioner got appointment on 26.10.1990 and continued till 31.7.2001 till he was retrenched on issuing of Annexure-10 impugned herein. Thus, there is no doubt petitioner could not be regularised for technical reason but however a large number of persons junior to him have been regularised and could not face retrenchment for their regularisation in the meantime.

8. Undisputedly, till his 5th spell of working, petitioner could not be eligible to be considered for regularisation following Clause-F of Annexure-C for consideration of his regularisation. This Court here observes Annexure-C came into existence by way of proceeding of the 12th meeting of the Board of Director of Similipahar Forest Development Corporation Limited held on 16.10.1982 observing the regularisation of employees working on daily wage basis for more than 3 years somewhere it is also indicated for more than 2 years. This Court here observes entire reading of the proceeding it nowhere discloses that regularisation

aspect will be considered as a onetime measure and resolution had no future effect upon introduction of such proceeding, a resolution was passed in the year 1982 Agenda, Item No.12 therein. Regularisation of service of employees working on daily wages basis for more than 3 years, at Clause –f reads as follows:

“Consolidated rated workers’ means a worker engaged in job of permanent or continuous nature either in the field or in the office of any establishment under the Corporation in continuous service for a period of at least two years on consolidated salary drawn monthly, weekly, fortnightly or daily.”

Reading of Clause-f of the resolution makes it clear that continuous service shall have the same meaning as under Section 25(8) of Industrial Disputes Act, 1947. For the opinion of this Court, the proceeding dated 16.10.1982 is an established procedure of the authority. Looking to the petitioner’s 5th spell of his service joined on 26.10.1990 and was retrenched by virtue of the order dated 31.7.2001 vide Annexure-10, the petitioner had already rendered almost 11 years of continuous service. Unfortunately, there is no decision of the opposite party no.5 for regularisation of the service of the petitioner even though he had already spent almost 11 years of service and a decision being taken following the proceeding under Annexure-B, petitioner could have been found to be a regular employee and consequence of retrenchment of a regular employee would have been definitely and completely different. It might have so happened in the event petitioner would have been regularised, there might not been any requirement of considering the retrenchment of the petitioner. This Court here of course observes Annexure-B was an outcome of a proceeding of Similipahar Forest Development Corporation and in the event of

petitioner's service was allowed to be continuing under O.F.D.C., he could not have been put to lesser advantage of retrenchment when he had the advantage of regularisation following the resolution under Annexure-B. The management failed to appreciate this aspect of the matter while taking the decision for retrenchment of the petitioner.

8. Considering the rival contentions of the parties, this Court finds undisputedly till 5th spell of joining of the petitioner on 26.10.1990, petitioner in his earlier spells of working undisputedly did not cover 2 years continuously in any of the spells. In the circumstance, this Court looking to the purport behind the proceeding of the 12th Meeting of Board of Directors, Similipahar Forest Development Corporation held on 16.10.1982 and since the petitioner's 5th spell of engagement was in a new Corporation, there was no possibility of regularisation for the proceeding of S.F.D.C. vide Annexure-6. However, it is taking into consideration the plea of the petitioner and the counter averments, this Court finds petitioner after joining the new establishment on 26.10.1990 finally relieved from service by way of retrenchment with effect from 31.7.2001 and there is also no dispute that petitioner has received a sum of Rs.13,631/- by way of retrenchment allowance and Rs.14,187 by way of gratuity. This Court finds initial engagement of the petitioner was on 3.10.1980. Looking to the age of disengagement by way of retrenchment of the petitioner, this Court finds petitioner had already crossed 20 years from the date of initial joining. In the meantime, it appears petitioner attended his age of superannuation also in the year, 2005. Accordingly, there is no

possibility of bringing back the petitioner to service any further. However, taking queue from the counter plea of opposite party no.5, through paragraph-13 this Court finds there has been regularisation of number of persons and even in paragraph-15 it appears, the Corporation was in consideration of regularisation of employees of daily wage basis in 1989. Had a decision been taken for regularisation of such employee before receiving of opinion of Tata Consultancy, position of the petitioner would have been otherwise and there might not have been a situation in taking out the service of the petitioner as he would not have been available in the pocket of casual or temporary employee. Petitioner however suffers on account of Corporation getting into actual manpower decision undertaking a process sometimes in the year 2001. In the entire reading of show cause served on petitioner vide Annexure-7 and the decision for retrenchment of petitioner, this Court nowhere finds there is any reference to Tata Consultancy Service opinion and such a plea for the corporation comes through the counter of O.F.D.C. Looking to the service rendered by the petitioner starting from 1980 and ending in 2001 and that he has already attended the age of superannuation in the year 2005 with meagre amount of Rs.13,631/- towards gratuity and a sum of Rs.14,198/- towards retrenchment allowance, now the petitioner already reached at the age of 75, the condition of petitioner can very well be visualised. This Court here observes in the event the Corporation had taken any decision for retrenchment of such employees in the event there arose a situation to take out employment of casual employees for their having no security in the service career and

by way of retrenchment and considering that even had no scope for further engagement, coming to age of 45 years by the time of retrenchment, the Corporation should have at least considered for providing reasonable financial assistance to the persons so retrenched at least to have a security in their rest part of life. Life of a person losing his job at the age of 45 years can very well be visualised. This Court here finds the Public Authority did not behave like a model employer rather adopted the practice of use and throw.

9. Keeping the above in view, this Court though finds no scope for directing regularisation of service of the petitioner at this stage and no scope for interfering in the retrenchment order for the petitioner not undertaking an exercise under the provision of Industrial Dispute Act to set aside it, following due process of law, finding the future of a man retrenched at the age of 45 years having reached at 75 years of age, in the interest of justice, to meet his day-to-day requirement at least till last part of his life and considering petitioner in the last spell of service continued for 11 years, he be paid at the minimum a sum of Rs.75,000/- (Rupees seventy five thousand), which amount shall be released in favour of the petitioner within a period of fifteen days from the date of receipt of certified copy of this judgment.

10. In the result, the writ petition succeeds in part. No cost.

(Biswanath Rath)
Judge