

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 25502 of 2014

Jibardhan Bag

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Petitioner

Mr. D.K. Panda, Adv.

Vs.

State of Orissa and others

.....

Opposite Parties

Mr. S. Rath, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

13.07.2022

Order No.

07.

This matter is taken up through hybrid mode.

2. Heard Mr. D.K. Panda, learned Counsel for the Petitioner and Mr. S. Rath, learned Addl. Standing Counsel for the State-Opposite Parties.

3. The Petitioner has filed this Writ Petition seeking to quash the Order dated 08.07.2013 passed in O.A. No. 1282 of 2000, by which the Odisha Administrative Tribunal, Bhubaneswar Bench, Bhubaneswar, has rejected the claim of the Petitioner for regularization of his service on the ground that he does not possess the required qualification for the post of Amin.

4. Mr. D.K. Panda, learned Counsel for the Petitioner contended that admittedly the Petitioner was appointed as NMR Amin under the Minor Irrigation Division, Gaisilat in the district of Bargarh on 01.05.1983, therefore, the qualification prescribed for the post of Amin as on that date, should have been taken into consideration and the Petitioner should have been regularized on the basis of qualification he possessed at the time of his appointment. It is further contended that reliance was placed on the Resolution dated 25.09.1989 of the Finance Department, wherein entry qualification for the post of Amin was prescribed as Matric. But such qualification

having come later on, i.e., after the appointment of the Petitioner, the same would not apply retrospectively so as to deprive the benefit to the petitioner. It is contended that the Petitioner possessed Class-IX qualification and continuing in service w.e.f. 1983. Therefore, in absence of any criteria for qualification for such appointment, he cannot and could not have been denied the benefit of regularization and consequential benefits admissible to him. Thus, he seeks for quashing of the order passed by the tribunal.

5. Mr. S. Rath, learned Addl. Standing Counsel for the State- Opposite Parties contended that as the qualification prescribed for the post of Amin has been effective from 25.09.1989 as per the Finance Department Resolution No.36632 dated 25.09.1989 and the same having been reemphasized in the Finance Department Resolution dated 15.05.1997, the claim of the Petitioner for regularization of service cannot be sustained, as he does not possess minimum qualification. Accordingly, he justifies the order of the tribunal.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that Petitioner was appointed as NMR Amin under the Minor Irrigation Division, Gaisilat in the district of Bargarh on 01.05.1983 and retired from service w.e.f. 2008. He approached the Tribunal claiming regularization of his service and to allow him to avail the pay and allowances equal to his counterparts. It is also admitted fact that the Petitioner is senior to one Tepra Budek (Sl.No.141), Syamsundar Hans (Sl.No.142), Perua Bariha (Sl.No.134) and Resika Biswal (Sl.No.540) of the gradation list. In the Original Application, the Petitioner had claimed regularization of his service on the basis of seniority over Sri Behera, who was working as NMR Amin and inducted in the Work-Charged

Establishment by virtue of the Order dated 09.12.1996 and subsequently brought to regular establishment by virtue of the Order dated 28.08.1997. The Petitioner has studied up to IX standard in Chandrasekhar High School in the district of Sambalpur. Therefore, the Petitioner contended that his service should be regularized, as he was appointed on 01.05.1983 and by that time no qualification was prescribed for the post of Amin to get appointment. Reliance was placed on the Resolution dated 25.09.1989 of the Finance Department, which was subsequently taken into consideration in the Finance Department Resolution dated 15.05.1997, by which qualification has been prescribed as Matric, but the said Resolutions may apply prospectively. As such, by the time the Petitioner was appointed on 01.05.1983, he having possessed Class-IX qualification, he was given appointment as Amin. Therefore, the contention raised, that the Petitioner does not possess requisite qualification, has no force, as the Resolutions referred to above, will apply prospectively. As a consequence thereof, the decision taken by the Tribunal, on the ground that the Petitioner had not possessed requisite qualification at the time of appointment, cannot be sustained in the eye of law.

7. On 27.04.2022, when the matter was listed, learned State Counsel had taken specific plea that the genuineness of the document filed under Annexure-4 dated 22.06.1981 of the Office of the Director, Bureau of Statistic & Economics, Orissa by way of the additional affidavit filed by the Petitioner in compliance of the Order dated 04.04.2022, is doubted. Therefore, this Court called upon the State Counsel to verify the same and apprise the Court by the next date. In compliance of the said Order, Mr. S. Rath, learned Addl. Standing Counsel states that the documents which are relied upon by

the Petitioner are available on record and, as such, there is no iota of doubt that the documents relied upon by the petitioner are genuine.

8. In the above view of the matter, since no qualification was prescribed for the post of Amin by the time the Petitioner was appointed on 01.05.1983 and, as such, the Petitioner possessed Class-IX qualification, issuance of subsequent Resolutions prescribing qualification as Matric, has no application to the present context. As such, the Tribunal has committed gross error in passing the order impugned. Thereby, the Order dated 08.07.2013 passed by the Odisha Administrative Tribunal, Bhubaneswar Bench, Bhubaneswar in O.A. No. 1282 of 2000 cannot be sustained in the eye of law and is liable to be quashed and is hereby quashed. Consequentially, the Opposite Parties are directed to regularize the service of the Petitioner and extend all the consequential benefits, as due and admissible to him, in accordance with law, within a period of four months from the date of production of certified copy of this Order.

9. The Writ Petition is accordingly disposed of.
Issue urgent certified copy as per Rules.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE