

IN THE HIGH COURT OF ORISSA AT CUTTACK

OJC No. 6613 of 2000

State of Orissa & Ors.

.....

Petitioner
Mr. S. Rath, ASC

Vs.

Birendra Kumar Dwibedi

.....

Opposite Party
None

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE B.P. SATAPATHY

ORDER

16.12.2022

Order No.
08.

This matter is taken up through hybrid mode.

2. Heard Mr. S. Nayak, learned Addl. Standing Counsel appearing for the State-Petitioners.
3. None appears for the opposite party at the time of call.
4. The State and its functionaries have filed this writ petition assailing the order dated 25.08.1999 passed in O.A. No. 1315 of 1997 under Annexure-1, by which the Orissa Administrative Tribunal, Bhubaneswar has directed to consider the case of the opposite party for regularization and that to pay the minimum scale of pay prescribed for regular employee of his category, within a period of three months.
5. Mr. S. Nayak, learned Addl. Standing Counsel appearing for the State-Petitioners contended that the State-authorities have not challenged the direction given by the tribunal in paragraph-8 of the judgment. But, so far as the observation made by the tribunal in paragraph-10 of the order with regard to payment of minimum scale of pay admissible to the regular employee of his category, the State is aggrieved by the same. It is contended that since the service of the opposite party is not regularized, he is not entitled to minimum scale of pay prescribed for regular employee.
6. Pursuant to notice issued, though opposite party has already entered appearance through his counsel, but none is not present at the

time of call. Since the matter is of the year 2000, this Court is not inclined to grant any further adjournment.

7. Perused the records. As it appears, the opposite party was initially engaged as NMR Tracer on 01.11.1987 under the Chief Engineer, Subarnarekha Irrigation Project, Baripada and worked as a High Skilled Draughtsman, in which he continued on NMR basis without any break in service in the same establishment. The sole grievance of the opposite party before the tribunal was that even though he was performing his duties against regular post of Draughtsman for ten years on being engaged as NMR worker on daily wage basis, his service was not regularized nor was he paid the salary as per regular scales of pay prescribed for such posts, as revised from time to time. Thereby, he claimed for regularization of service and to fix his pay at the minimum stage of scale of pay prescribed for the post from his initial appointment. The tribunal, after due adjudication, in paragraph-8 directed as follows:-

“8. State Government in the Finance Department issued the resolution No.22764/F dated 15.5.97 laying down certain guidelines for absorption of these categories of employees in regular Government service. In view of the aforesaid resolution respondent-4 (Chief Engineer, Subarnarekha Irrigation Project) is directed to consider their cases in terms of the aforesaid Resolution, if they are not disengaged in the meantime and are not found otherwise ineligible.”

8. So far as the scale of pay is concerned, in paragraph-10 of the judgment, the tribunal directed as follows:-

“10. I find that the aforesaid dictum of the Supreme Court is fully applicable to these cases of applicants. Respondent-4 is, therefore , directed to pay the applicants the minimum of the scale of pay prescribed for regular employees of these categories within three months from the date of receipt of a copy of this order with effect from 1.4.1999 until their service are regularized, as stated above.”

9. Mr. S. Nayak, learned Addl. Standing Counsel appearing for

the State-Petitioners contended that, so far as the direction given in paragraph-8 of the order of the tribunal is concerned, the State has no grievance. But so far as the direction given in paragraph-10 of the order with regard to payment of minimum scale of pay prescribed for regular employee is concerned, it is contended that the opposite party is not entitled to the same. But fact remains, if the opposite party was discharging the duty for a quite long period in the same post and such benefit has been extended by the Government to the similarly situated persons, in that case, denial of such benefit to the opposite party will amount to arbitrary and unreasonable exercise of power by the authority concerned. Thereby, this Court does not find any error apparent on the face of order passed by the tribunal by giving direction in paragraphs-8 and 10 of the order, so as to cause interference by this Court.

10. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

(B.P. SATAPATHY)
JUDGE

Ashok