

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.245 of 2007

Smt. Sabitri Swain

....

Petitioner

Mr. K. P. Mishra, Advocate

-Versus-

State of Odisha and others

....

Opp. Parties

Mr. P.K. Muduli, AGA

Mr. R.K. Das, Advocate for O.P.Nos.4 & 5

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAİK

ORDER

12.04.2022

Order No.

R.K. Pattanaik, J.

20.

1. Instant writ petition under Articles 226 and 227 of the Constitution of India, 1950 is at the behest of the Petitioner assailing the legality and judicial propriety of the impugned order dated 18th December, 2006 passed in O.A. No.157 of 2002 (Annexure-12) by the Orissa Administrative Tribunal, Bhubaneswar (OAT) on the grounds *inter alia* that it is untenable in law and thus, liable to be quashed with a declaration regarding her inclusion in the cadre of Junior Grade Typist of the Directorate of Economics and Statistics, Orissa, Bhubaneswar (DES) with effect from 22nd March, 1991.

2. The Petitioner was initially appointed as a Junior Grade Typist on 23rd August, 1986 in the DES under a statutory scheme of

rehabilitation but upon its abolition, was retrenched from service on 30th April 1987 and then, was adjusted against a Junior Clerk post in the DSO, Mayurbhanj and then on her representation, she was given appointment against a vacancy post of Junior Typist and joined on 3rd April, 1991 but thereafter, was again adjusted against an ex-cadre post of Junior Clerk-cum-Junior Typist in order to save her retrenchment and she was transferred to the DSO, Khurda in the year 1995. The Petitioner contends that while she was continuing at DSO, Khurda, OP No.2 published a gradation list as on 31st December, 1996, wherein, her name did not find a mention, for which, she represented OP No.1, where after, she was included in the provisional gradation list treating her joining as 3rd April, 1991 which was subsequently revised in 2002 through a corrigendum. Further, according to the Petitioner, on 8th January 2002, she was brought back to the DES from DSO, Khurda and in the meanwhile, OP Nos.3 to 5 joined there in the year 1999 as Junior Typists and they challenged the gradation list published in 2001 and her seniority by approaching the OAT in O.A. No.157 of 2002 which resulted in passing of the impugned order under Annexure-12. As per the Petitioner, OAT did not consider the case properly and disposed of the matter on being influenced by the order in OA No.772 of 1999, which, therefore, suffers from legal infirmity.

3. Heard Mr. K.P. Mishra, learned counsel for the Petitioner, Mr. R.K. Das, learned counsel for OP Nos.4 and 5 and Mr. P.K. Muduli, learned AGA appearing for the State.

4. Precisely stated, the Petitioner joined the DES on 25th August, 1986 under the Rehabilitation Assistance Scheme and when it stood abolished, she being the junior most in the cadre, was retrenched from service on 30th April 1987 and thereafter, was adjusted as Junior Clerk in the DSO, Mayurbhanj on 4th June 1987 and subsequently, joined in the office of the DES on representation and at that time, she was given appointment as Junior Typist with a condition that she would be the junior most among the Junior Typists and accordingly, joined on 3rd April, 1991 and consequent upon abolition of the 'Third Economic Census' scheme on 31st May 1991, she being the junior most in the cadre was allowed to draw her pay against a vacant post of Junior Clerk-cum-Junior Grade Typist (an ex-cadre post) in order to save her from retrenchment. Thereafter, pursuant to the order dated 4th December, 1995 in O.A. No.29 of 1988, since one Smt. Sarojini Panda was required to be reinstated against the post of Junior Clerk-cum-Junior Grade Typist at the DES, the Petitioner had to be disturbed again and was transferred to DSO, Khurda.

5. OP No.2 filed counter affidavit, where after, the Petitioner submitted her reply by a rejoinder which was followed by an additional affidavit dated 23rd April 2007.

6. In fact, OP Nos.3 to 5 assailing the seniority of the Petitioner filed O.A. No.157 of 2002 which was disposed of by the OAT under Annexure-12, wherein, it was held that the Petitioner having been transferred to DSO, Khurda where she continued

from 3rd March 1997 to 8th January 2002 and since returned to the DES in 2002 shall have to be encadred from 9th January 2002 only. In other words, the OAT concluded that after the Petitioner returned to the DES, she was to be treated as a fresh entrant for having lost the link with the cadre not being deputed to another cadre and without any observation in regard to inter se seniority. The aforesaid decision of the OAT under Annexure-12 is currently under challenge by the Petitioner.

7. Mr. Das, learned counsel appearing for OP Nos.4 and 5 contended that the Petitioner was never in the cadre of the DES rather was adjusted against an ex-cadre post and therefore, she could not have been placed above in the gradation list, which was rightly appreciated by the OAT. In reply, Mr. Mishra submitted that the Petitioner joined the DES in 1986 and after being retrenched in 1987 was adjusted against a post of Junior Clerk in DSO, Mayurbhanj with the gap period from 30th March 1987 to 4th June 1987 being condoned and subsequently, was given appointment against a vacant post of Junior Typist in the DES and thereafter, when the scheme was closed, she was temporarily adjusted and then, had to be transferred to DSO, Khurda in 1995 in order to comply the order of the OAT in O.A. No.29 of 1988. It is contended that the Petitioner was admitted in the cadre of the DES with effect from 3rd April, 1991, hence, was placed in the gradation list as on 31st December, 1996 published in the year 2001. In fact, as revealed from the record, the Petitioner represented for having been excluded from the cadre, where

after, a revised gradation list was prepared and duly published on 9th January, 2002. According to the OAT, since the Petitioner left the DES and joined DSO, Khurda in 1995 where she continued till 1997 and having returned to the DES in 2002, it has to be held as a fresh encadrement. Mr. P.K. Muduli, learned AGA apprised the Court that the Petitioner was transferred to DSO, Khurda not on her representation but primarily to accommodate the applicant of O.A. No.29 of 1988.

8. From the reply of OP No.2 before the OAT which has adopted pursuant to this Court's order dated 18th January, 2007, it appears that on the representations filed by the Petitioner to OP No.1, she was placed in the gradation list published in 2001 and finally revised in 2002. In fact, the Petitioner having since joined the DES on 3rd April 1991 was placed in the gradation list which was partially modified by the orders of OP No.1. The Petitioner was appointed initially in the DES and finally, joined the DES vide Annexure-4. There is no dispute that OP Nos.3 to 5 joined the DSE much after the Petitioner, who entered in service in the year 1986. The Petitioner although was brought back to the DES in 1991 but had to be transferred to the DSO, Khurda to carry out the directions of the OAT in O.A. No.29 of 1988. The Petitioner was shifted to the DSO, Khurda not on her request but was on account of an exigency which surfaced after disposal of O.A. No.29 of 1988. Under the above peculiar circumstances, it would not be just and fair to hold that the Petitioner lost her cadre in the DES after being transferred to DSO, Khurda in the year 1995. It

is also made to reveal from the stand of OP No.2 before the OAT that the Petitioner was cadred in the DES and it is not required to sanction any post for the purpose of encadring an employee in the establishment. It had also been apprised by OP No.2 to the OAT that the Petitioner was not appointed against any ex-cadre post but was only allowed to receive salary against such post. Nevertheless, the Petitioner had been in the cadre of DES though initially under a scheme but thereafter, substantively with effect from 1991 much before the appointment of OP Nos.3 to 5. The conclusion of the OAT that the Petitioner lost the link with the cadre in 1997 after having joined the DSO, Khurda and returned to the DES in 2002 and therefore, she would have to be in the gradation list below OP Nos.3 to 5 cannot be sustained in view of the fact that she had been in the cadre of DES from 1991 and onwards but was shifted to the DSO, Khurda not her own accord but to accommodate one Smt. Sarojini Panda in compliance of the OAT's direction in O.A. No.29 of 1988. For the aforesaid reasons, the Court is of the considered view that the decision of the OAT to the effect that the Petitioner shall have to be treated as a fresh entrant with effect from 9th January 2002 cannot be upheld and therefore, the impugned order under Annexure-12 deserves to be interfered with.

9. Accordingly, it is ordered.

10. In the result, the writ petition stands allowed. Consequently, the impugned order dated 18th December, 2006 passed in O.A.

No.157 of 2002 under Annexure-12 is hereby quashed. As a necessary corollary, the Petitioner is treated to be in the cadre of the DES with effect from 3rd April, 1991 and correspondingly to carry her seniority in the gradation list.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice



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