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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) Nos.9335 and 23062 of 2016

Ramesh Chandra Mohapatra
(In W.P.(C) No.9335 of 2016)

....

Petitioners

Susil Ray
(In W.P.(C) No.23062 of 2016)

-versus-

State of Odisha and others

....

Opposite Parties

Advocates appeared in these cases:

For Petitioner

:

M/s. Manoranjan Mishra,
Advocate and associates

For Opposite Parties

:

Mr. P.K. Muduli,
Additional Government Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE B.P. ROUTRAY

JUDGMENT

05.08.2022

Dr. S. Muralidhar, CJ.

1. The common judgment dated 7th September 2021 passed earlier dismissing these writ petitions has been recalled by a separate common order passed by this Court today in RVWPET Nos.201 and 202 of 2021 and both these writ petitions have been restored to file. They are being disposed of afresh, after hearing counsel for the parties, by this common judgment.

2. The respective Petitioners in both these writ petitions question an order dated 10th September 2015 passed by the Odisha Administrative Tribunal, Cuttack Bench (OAT) in dismissing O.A. Nos.648(C) and 696(c) of 2013 filed by them.

3. The background facts are that the Petitioners were appointed as a Field Man Demonstrator in the Office of the Soil Conservation Officer (SCO), Koraput Division by an order dated 2nd April, 1992. The said order, which was common to the Petitioners and four others, reads as under:

“The following outsiders are appointed as Field Man Demonstrator on ad hoc basis for a period of 89 days (eighty-nine) with effect from the date they report themselves for duties in the respective offices noted against them in the time scale of pay Rs.800-15-1010-EB-20-1150/- P.M. with usual D.A. as admissible under rules. The candidate should join the post within 7 days from the date of issue of this order failing which the appointment will be treated as automatically cancelled.

The appointment is purely temporary and terminable at any time without assigning any reason thereof. This appointment will have no statutory value to claim for regular appointment either in the same post or in any other post in the Department in future.”

4. Subsequently, by an order dated 20th November 1993, Ramesh Chandra Mohapatra was appointed as Junior Soil Conservation Assistant “purely on ad hoc basis for a period of 89 (eighty-nine) days in the scale of pay of Rs.950/- to 1500/- per month and all other allowances as admissible under the Rules from time to time.”

The usual clause that he would not have any legal claim to get a regular job in the Department by virtue of such ad hoc appointment was inserted. He was then deputed to work under the IFAD assisted Orissa Tribal Development Project, Kashipur by an order dated 23rd August 1995 in the newly created post of Junior Soil Conservation Assistant.

5. On 15th September 2000, the Agriculture Department of Government of Odisha issued an order dispensing with the services of the Petitioners and six others due to the shrinkage of funds in various schemes. Consequentially, the Director of Soil Conservation, Orissa issued an order dated 20th September 2000 dispensing with the services of the Petitioners. Aggrieved by the said order of termination, the Petitioners approached the OAT in O.A. Nos.3246(C) and 3123(C) of 2000 respectively which were disposed of on 20th November 2003 with the observation that the principle of “last come first go” had not been followed. A direction was issued to the Opposite Parties to examine and reconsider the issue and take appropriate action.

6. On 5th October 2007, the Director, Soil Conservation, Orissa was directed to accommodate the Petitioners and similarly situated persons and take appropriate action as per the decision dated 15th December 2006 of the Government.

7. Meanwhile, some of the similarly placed persons approached the OAT in different O.As., which were allowed. The orders of the OAT were challenged by the State in this Court in W.P.(C)

No.14678 of 2008 [against Hrudananda Panda] and W.P. (C) 12972 of 2009 [against Narayan Pattanaik] which were dismissed confirming the order of the OAT. SLP (C) [cc Nos.11249 and 11322 of 2011] filed by the State were also dismissed by the Supreme Court on 18th July, 2011.

8. On 28th January 2013, the OAT allowed another O.A. No.918 of 2001 filed by a similarly situated person viz., Manoj Kumar Parida setting aside his termination order and directing his reinstatement on par with Hrudananda Panda. The OAT noted that Hrudananda Panda was admittedly junior to Manoj Kumar Parida. Following the decision of the OAT in O.A. No.439 of 2007 filed by Hrudananda Panda, who had already been reinstated, the OAT allowed the application of Manoj Kumar Parida. In the above orders the OAT followed the decision of the Supreme Court in ***State of Karnataka v. Uma Devi AIR (2006) SC 1806*** and ***State of Karnataka v. M.L. Keshari AIR (2010) SC 1806*** and of this Court in ***Smt. Mira Piri v. State 2007 (II) OLR 533*** on the ground that they were “irregular and not illegal recruits”.

9. In the reply filed to O.A. No.648(C) of 2013 filed by the Petitioner-Ramesh Chandra Mohapatra in the OAT seeking similar relief, the stand of the Opposite Parties was that the order of this Court dismissing the State’s W.P.(C) No.14678 of 2008 [against Hrudananda Panda] by this Court and of the Supreme Court in SLP (C) [cc Nos.11249 and 11322 of 2011] “is a specific one and it will not applicable to the cases of all retrenched/terminated employees. If they need for their reinstatement/reappointment they should have

obtain the orders of the Hon'ble Court as done in case of three applicants and State respondents have no scope to interfere against such order.” The Petitioner-Ramesh Chandra Mohapatra filed a rejoinder before the OAT in the said O.A. and claimed the same benefits as was given to Hrudananda Panda, Narayan Pattanaik and Suresh Kumar Sahoo, who are at Sl. Nos.26 to 28 in the gradation list. The Petitioner-Ramesh Chandra Mohapatra was at Sl. No.41.

10. The OAT in the impugned order declined the relief to the present Petitioners on the ground that the aforementioned persons were senior to the Petitioners; further that the Petitioners had not worked for ten years and it had not been shown that their appointments were against any sanctioned posts. Therefore, it was held by the OAT that the Supreme Court's judgment in *State of Karnataka v. Uma Devi* (*supra*) would not apply.

11. Correspondingly in W.P.(C) No.9335 of 2016 filed by Ramesh Chandra Mohapatra, the State has filed a reply taking the same stand viz., that the Petitioner cannot claim parity with the aforementioned employees who had been reinstated pursuant to the orders of the Supreme Court.

12. Importantly, in the rejoinder filed in W.P.(C) No.9335 of 2016, Ramesh Chandra Mohapatra has pointed out that persons junior to him have been reinstated pursuant to the orders of the High Court. The order of the High Court dismissing the State's W.P. (C) 5548 of 2014 against Prahallad Sahoo has in fact been affirmed by the Supreme Court on 12th September, 2018 by the dismissal of the

State's SLP (C) 32178 of 2014. The information set out in a tabular form in the rejoinder reads as under:

Sl No.	Names of similarly situated persons	Date of appointment	Date of High Court's order	Date of the Apex Court's order
01	Prahallad Sahu	13.11.1998	16.04.2014	12.09.2018
02.	Harihar Prusty	26.06.1997	30.01.2018	
03.	Manoj Kumar Parida	12.09.1995	03.12.2019	

13. The orders appointing each of the above persons, the corresponding order of the OAT and that of the High Court and the Supreme Court of India have all been enclosed with the rejoinder affidavit. Specifically, in SLP (C) No.32178 of 2014 (***State of Orissa v. Prahallad Sahoo***), the observation of the Supreme Court in its order dated reads as under:

“XXX

XXX

XXX

Though the appointments of the respondents were irregular as they were not sponsored by the Employment Exchange, we do not intend to interfere with the judgment of the High Court in view of the long period of service rendered by the respondents. The question of law raised in these petitions is left open.

The special leave petitions are dismissed accordingly.”

14. In the case of Harihar Prusty, this Court while dismissing the State's W.P. (C) 9475 of 2016 by the order dated 30th January, 2018 declined to interfere with the order dated 15th September 2015 passed by the OAT in O.A. No.2137(C) of 2001 whereby the OAT

had directed his regularization. Likewise, in the case of Manoj Kumar Parida, the order of the OAT was affirmed by this Court by an order dated 3rd December 2019 in W.P.(C) No.1366 of 2014.

15. This Court has heard the submissions of Mr. Manoranjan Mishra, learned counsel appearing for the Petitioners and Mr. P.K. Muduli, learned Additional Government Advocate for the State in both the matters.

16. Mr. Muduli is unable to dispute the fact that the aforementioned three persons viz., Prahallad Sahoo, Harihar Prusty and Manoj Kumar Parida were juniors to both the Petitioners. However, he seeks to contend that the method of recruitment of the Petitioners was different from the aforementioned three persons. Further, he submits that Prahallad Sahoo and Harihar Prusty were in the “Soil Conservation Technical Cadre” whereas Manoj Kumar Parida belonged to a different Ministerial cadre.

17. The Court has compared the appointment orders issued to Prahallad Sahoo, Harihar Prusty and the present Petitioners and it finds that they are no different. The appointment orders of Prahallad Sahoo and Harihar Prusty also refer to them as ‘outsiders’ and they were appointed as Field Man Demonstrator in a scale of pay. The wording of their appointment letters is no different from that of the present Petitioners. As far as the cadres are concerned, the Petitioners belong to the Soil Conservation Technical Cadre to which Prahallad Sahoo and Harihar Prusty belong. Therefore, there can be no justification for treating the present Petitioners

differently. Meanwhile, as already pointed out even by the Government, another employee Subasish Sarangi who was also earlier Field Man Demonstrator has been reinstated in service pursuant to the order passed by this Court in W.P.(C) No.31174 of 2020.

18. With all these cases being identical and that the aforementioned three persons who have been reinstated being junior to the present Petitioners, there can be no justification for treating the present Petitioners differently.

19. Consequently, both these writ petitions are allowed. The orders dated 20th September, 2000 dispensing with the services of the present two Petitioners are hereby set aside. The impugned order of the OAT is also set aside. The Petitioners are directed to be reinstated in service. Necessary orders be issued by the concerned authorities within a period of eight weeks.

(Dr. S. Muralidhar)
Chief Justice

(B.P. Routray)
Judge

S.K. Guin/PA