

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 1700 of 2012

Ambika Prasad Rath

....

Petitioner

M/s. D. Routray, Advocate & Associates

-versus-

State of Orissa and others

....

Opposite Parties

Mr. P.K. Muduli, AGA

CORAM:

THE CHIEF JUSTICE

JUSTICE R. K. PATTANAİK

ORDER

27.06.2022

Order No.

06.

1. The challenge by the Petitioner in the present writ petition is to an order dated 13th January 2012, passed by the State Administrative Tribunal, Orissa, Bhubaneswar, dismissing the Petitioner's O.A. No.24 of 2010. By the said order, the Petitioner had challenged. An order dated 4th January 2010, passed by the Department of Higher Education, Government of Orissa upholding the cancellation of his appointment as an Auditor under the Rehabilitation Assistance Scheme (RA Scheme). By the order dated 24th July 2003 as being in violation of Rule 6 of the O.C.S. Rehabilitation Assistance (amendment) Rules, 1998.

2. While issuing notice in the present petition on 2nd February 2012, status quo was asked to be maintained.

3. Interestingly, such a status quo order was initially passed by the Tribunal itself in the first round of litigation in O.A. No.1120 of

2003. Therefore, virtually by means of interim orders, the Petitioner has been continuing as such since then.

4. The background facts are that the Petitioner's father Sri Gobinda Chandra Rath was working as an Assistant Teacher in the Government UP School, Unit-1, Bhubaneswar. He retired on ground of invalidation on 31st January, 1995. On 3rd July 1995, the Petitioner applied for appointment under the Rehabilitation Assistance Scheme (Rehabilitation Assistance Rules, 1990).

5. On 27th October 1999, the Government of Orissa decided to establish three composite Regional Directorates to look after the matters concerning Higher Education and School & Mass Education. On 15th November 1999, the name of the Petitioner was recommended by the Director of Higher Education for appointment under the RA Scheme. A communication to this effect was sent on that date to the Regional Director, Bhubaneswar. It is stated that the clarification was sought by the Regional Director and the Higher Education Department on 24th December, 1999 clarified that candidates sponsored by the Higher Education Department could be appointed under the RA Scheme.

6. On 22nd March 2000, the Regional Director of Education wrote to the Joint Secretary, Department of Higher Education pointing out that as far as the Petitioner was concerned, he was not eligible for Rehabilitation Assistance under Rule-3 of the 1990 Rules since stood amended with effect from 7th October, 1998 by virtue of an amendment to the 1990 Rules.

7. At this stage, it must be noted that in terms of the 1998 amendment for appointment to the post of an Auditor, an applicant had to be a graduate. The second stipulation in terms of the amendment in 1998 was that under the RA Scheme, a person could not be appointed to a post which carried a remuneration of more than of Rs.6,000/- a month.

8. In response to the letter dated 22nd March 2000, the Department of Higher Education issued a clarification on 27th May 2000, stating that the Petitioner was still eligible since his case was processed prior to 3rd October, 1998. Consequently, on 21st June 2000, the Petitioner was appointed as an Auditor under the RA Scheme.

9. On 24th July 2003, an order was issued by the Department of Higher Education pointing out that the Petitioner and one other person had been appointed as Auditors in violation of Rule-6 of the OCS (Rehabilitation Assistance) Amendment Rules 1998 and that appointment should be cancelled forthwith.

10. Aggrieved by this order, the Petitioner initially filed O.A. No.1120 of 2003 before the Tribunal and an interim order was passed staying the order of cancellation of his appointment. On 1st December 2005, the Tribunal disposed of O.A. No.1120 of 2003 requiring the Opposite Parties to treat the entire application as a representation and dispose it of by passing a speaking order.

11. Thereafter, on 4th January 2010, the impugned order was passed by the Department of Higher Education reiterating the cancellation of the Petitioner's appointment. It is pointed out that in the present case, in terms of the RA Scheme that existed prior to the

amendment of the 1998 Rules, appointments could be made against the Class-IV and Class-III posts. It is further stipulated that appointment in the rules could be made once against any post either in Group-C or Group-D in a base post and the maximum scale of monthly pay for such post shall not exceed Rs.6,000/- and Rs.3,200/- respectively.

12. In the said order, it was further pointed out that the appointing authority in respect to the Petitioner was the D.I. or C.I. of Schools and the Administrative Department is the School & Mass Education Department and therefore, “it was not a deserving case to be considered for appointment under the Higher Education Department”. The order concluded that “as such, the Government in Higher Education Department has taken an erroneous decision for his appointment as Auditor and subsequent decision to accommodate applicant in the post of Junior Diarist/ Despatcher in the Office of the Regional Directorate of Berhampur, which was deem fit and proper at that time”. Accordingly, the Director of Higher Education was directed to place all the service records of the Petitioner with the Director of Secondary Education for taking appropriate action and “appointment against a suitable vacancy existing under the D.I. or C.I. under the S&ME Department, Bhubaneswar, who was the appointing authority of the deceased employee.”

13. It is the above order dated 4th January 2010, which was again challenged by the Petitioner before the Tribunal by filing O.A. No.24 of 2010. In the impugned order, the Tribunal has noted that

at that time he had applied for appointment under the RA Scheme, the Petitioner was a +2 Certificate holder and not a graduate and therefore was not eligible for appointment to the post of Auditor. The Tribunal further observed that although he might have become a graduate by that time his appointment as Auditor in the year 2000, by that time the 1998 amendment was already in force and he could not have been appointed to a post having a maximum pay of more than 6,000/- per month.

14. Learned counsel appearing on behalf of Mr. D. Routray for the Petitioner contented that the Petitioner had been appointed rightly as an Auditor by the order dated 23rd June, 2000 by the Regional Director and his application had been forwarded to the Director, Elementary Education, Orissa which was through the proper channel. The Petitioner was already a graduate by that time and therefore his appointment as an Auditor was not illegal. He further contended that since the application of the Petitioner had been made in 1995 i.e., prior to the coming into force of the 1998 amendment, the ineligibility introduced by the amendment with effect from 3rd October, 1998 would not apply to him and his application be considered in terms of the rules were in existence on the date of the application.

15. Mr. P.K. Muduli, learned Additional Government Advocate, on the other hand, pointed out that in terms of the pre 1998 Rules, the Petitioner had to be a graduate to be appointed as an Auditor whereas he was not at the time of making such application. Even as per the amendment in 1998 he could not have been appointed as an

Auditor since that post fetched a pay of more than of Rs.6,000/- per month.

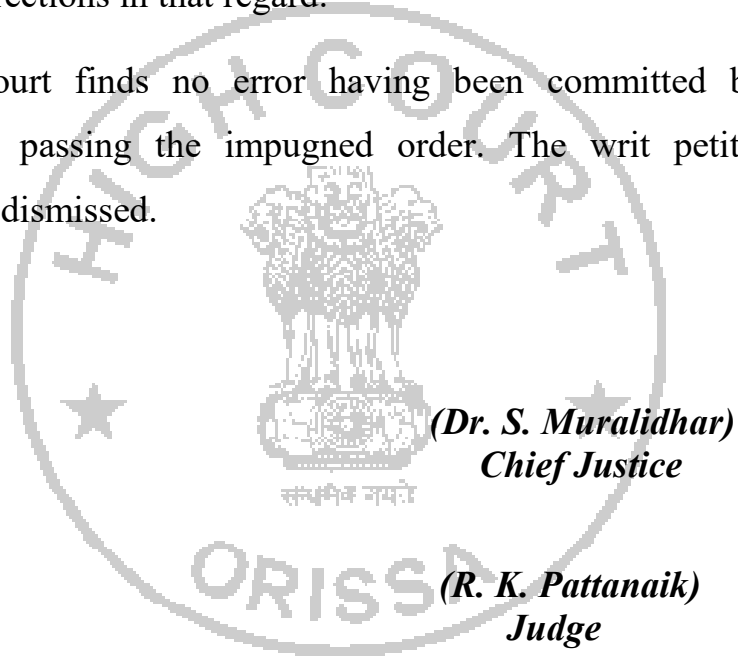
16. The above submissions have been considered. The undisputed fact is that the Petitioner was not a graduate when he made an application on 3rd July, 1995 for appointment by way of Rehabilitation Assistance under the 1990 Rules. The position under the 1990 Rules prior to the amendment in 1998 was absolutely clear that appointments could be made to either a Group-C or Group-D post fetching a pay of not more than Rs.6,000/- & Rs.3,200/- respectively. Therefore, prior to 1998, there could have been no appointment of the Petitioner to the post of an Auditor which is a Group-C post since the minimum qualification for such appointment was that a person should be a graduate, whereas the Petitioner was not. Therefore, even by the pre 1998 position, the Petitioner could not have been appointed as an Auditor.

17. As rightly pointed out by Mr. P.K. Muduli, learned AGA if one word to go by the amendment in 1998, with effect from 3rd October, 1998, then again the appointment could not be made to a post fetching more than Rs.6,000/- per month under the RA Scheme. Therefore, even in the post 1998 amendment situation, the Petitioner was not qualified to continue as an Auditor.

18. Viewed from many angle, therefore, the Court is unable to find any error having been committed by the Opposite Parties in passing the order dated 24th July, 2003 reiterated on 4th January, 2010 cancelling the Petitioner's appointment as Auditor.

19. It must be mentioned here that by an order dated 15th March, 2020 in the present petition, this Court had noted that the Petitioner was seeking time for instructions “with regard to availability of Junior Assistant Post, so that the Petitioner can be adjusted against the said post under the Rehabilitation Assistance Scheme”. Today learned counsel for the Petitioner informs the Court that there is no vacant post of Junior Assistant in the Department of Directorate of Higher Education. Consequently, the Court is not in position to issue any directions in that regard.

20. The Court finds no error having been committed by the Tribunal in passing the impugned order. The writ petition is accordingly dismissed.



S. Behera