

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) No.1818 of 1993

In the matter of an application under Section 19 of the
Administrative Tribunal's Act, 1985.

.....

Achyutananda Bastia

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

For Petitioner : M/s. U.C. Mohanty(Advocate)

For Opp. Parties : Mr. B. Panigrahi
Additional Standing Counsel

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 23.09.2022 and Date of Judgment:18.10.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical)
Mode.

2. Heard Mr. U.C. Mohanty, learned counsel for the Petitioner and Mr. B.
Panigrahi, learned Addl. Standing Counsel appearing for the Opp. Parties.

3. The present writ Petition has been filed with the following prayer:-

“(a) To regularize applicant’s services in the present existing vacancy with all consequential benefits.

(b)The applicant may be allowed to continue in his post till disposal of this case.

(c) Issue any other appropriate relief as the Hon’ble Court deems fit and proper.”

4. Learned counsel for the Petitioner submitted that vide office order issued on 12.03.1992 the Petitioner was appointed as Junior Store Keeper on adhoc basis in the Office of SIPRO, Deogarh.

5. It is submitted that subsequently vide order issued on 19.07.1992 and 03.07.1992 the Petitioner was appointed as such in the same capacity and was allowed to continue on adhoc basis. It is also submitted that in spite of being allowed to continue on adhoc basis when the Petitioner was not absorbed in the regular establishment the present writ Petition was filed with the above said prayer. It is also submitted that learned Tribunal while issuing notice of the matter vide order dtd.13.10.1993 passed an interim order by directing that the Petitioner shall not be terminated without leave of the learned Tribunal.

6. Mr. Mohanty, learned counsel for the Petitioner submitted that in terms of the said order passed on 13.10.1993 the Petitioner was not only allowed to continue on adhoc basis, but also he retired from his service while continuing as such on attaining the age of superannuation on 31.10.2020. It is accordingly submitted that even though the Petitioner continued on adhoc basis w.e.f.12.03.1992 till his superannuation on 31.10.2020, but due to pendency of the matter before this Hon’ble Court the Petitioner retired without being absorbed in the regular establishment and accordingly he was deprived from getting the benefit of pension and other pensionary benefits. It is also submitted that in view of such long continuance on adhoc basis for

more than 28 years, the Petitioner has accrued the right of regularization in his favour.

7. Mr. Panigrahy, learned ASC made his submission basing on the stand in the counter filed by the Opp. Parties. It is submitted that since the post of Junior Store Keeper at Paralakhemundi, where the Petitioner continued is meant to be filled up by Scheduled Caste candidates, the Petitioner was not absorbed as against such a reserved post. It is also submitted that the Petitioner till his retirement on 31.10.2020 was extended with the benefit of regular scale of pay and other benefits.

8. Mr. Mohanty, learned counsel for the Petitioner in support of his claim as made in the writ Petition relied on a decision of the Hon'ble Apex Court reported in the case of **Rudra Kumar Sain Vs. Union of India 2000(8) SCC 25** and another decision of the Hon'ble Apex Court in the case of **Ramesh Kumar Sharma Vs. Rajasthan Civil Services 2001(1) SCC 637**. Hon'ble Apex Court in the aforesaid reported decision in the case of Rudra Kumar Sain in Para 16 to 20 held as follows:-

"16. The three terms "ad hoc", "stopgap" and "fortuitous" are in frequent use in service jurisprudence. In the absence of definition of these terms in the rules in question we have to look to the dictionary meaning of the words and the meaning commonly assigned to them in service matters. The meaning given to the expression "fortuitous" in Stroud's Judicial Dictionary is accident or fortuitous casualty. This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long period. But an appointment made either under Rule 16 or 17 of the Recruitment Rules, after due consultation with the High Court and the appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to fortuitous. In Black's Law Dictionary, the expression "fortuitous" means "occurring by chance", "a fortuitous event may be highly unfortunate". It thus, indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. The expression ad hoc in Black's Law Dictionary, means something which is formed for a particular purpose. The expression "stop-gap" as per

Oxford Dictionary, means a temporary way of dealing with a problem or satisfying a need.

17. In Oxford Dictionary, the word ad hoc means for a particular purpose; specially. In the same Dictionary, the word fortuitous means happening by accident or chance rather than design.

18. In P. Ramanatha Aiyer's Law Lexicon (2nd Edition) the word "ad hoc" is described as "For particular purpose, Made, established, acting or concerned with a particular (sic) and or purpose." The meaning of word fortuitous event is given as "an event which happens by a cause which we cannot resist; one which is unforeseen and caused by superior force, which it is impossible to resist; a term synonymous with Act of God".

19. The meaning to be assigned to these terms while interpreting provisions of a Service Rule will depend on the provisions of that Rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter-se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as ad hoc or "stop-gap". If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as fortuitous in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a stop-gap arrangement and appointment in the post as ad hoc appointment. It is not possible to lay down any straight-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stop-gap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the question of inter se seniority of officers in the cadre.

20. In the Service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be stop-gap or fortuitous or purely ad hoc. In this view of the matter, the reasoning and basis on which, the

appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be fortuitous/ad hoc/stop-gap are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous.”

9. Similarly, in the case of Ramesh Kumar Sharma Hon’ble Apex Court in Para 4 held as follows:-

“(2) The seniority of a surplus employee appointed to a new post in a temporary or ad hoc capacity shall, pending his appointment on a (substantive basis, be determined in the following manners:

(a) In the case of a surplus employee appointed temporarily to a new post his seniority among the temporary employees holding same posts in the service or cadre in which he is absorbed shall be determined by placing him immediately below the temporary employee of the new service or cadre who has rendered a longer period of continuous temporary service compared to the continuous temporary service of the surplus employee on same equivalent or higher post.

(b) In the case of surplus employee appointed on ad hoc basis in a new post his seniority among the ad hoc employee holding same posts in the service or cadre in which he is absorbed shall be determined by placing him immediately below the ad hoc employee of the new service or cadre, who has rendered a longer period of continuous service on an ad hoc basis compared to the continuous ad hoc service of the surplus employee on same, equivalent or higher post:

In Baleshwar Dass v. State of U.P. this Court held that when a person holds a post for an indefinite period especially for long duration in contradistinction to a person who holds it for a definite or temporary period or holds that on probation then it must be held that he held a post in a substantive capacity.”

10. Accordingly, Mr. Mohanty, learned counsel for the Petitioner submitted that in view of the long continuance of the Petitioner on adhoc basis for more than 28 years and the decision governing the field, the Petitioner is eligible to get the benefits as due to a regular employee.

11. Heard learned counsel for the Parties. Perused the materials available on record. This Court after going through the same finds that the Petitioner was appointed on adhoc basis vide order dtd.12.03.1992 under Annexure-1 series and he continued as such till his superannuation on 31.10.2020. Therefore, in

view of such long continuance, the Petitioner as per the considered view of this Court is eligible for his absorption as against the post of Junior Store Keeper.

12. While holding so this Court directs the Opp. Parties to pass necessary order by showing the Petitioner absorbed as against the post of Junior Store Keeper within a period of three (3) months from the date of receipt of this order. This Court further directs that on such absorption of the Petitioner in the regular establishment consequential retiral benefits as due and admissible be also released in his favour within a further period of three (3) months.

13. The writ Petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 18th of October, 2022/Sneha