

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 17662 of 2013

Bichi Barik

.....

Petitioner

Mr. S.K. Swain, Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. S.N. Nayak, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

13.04.2022

Order No.

15.

This matter is taken up through hybrid mode.

2. Heard Mr. S.K. Swain, learned counsel for the petitioner and Mr. S.N. Nayak, learned Additional Standing Counsel.

3. The petitioner has filed this writ petition assailing the order dated 16.11.2012 passed by the Odisha Administrative Tribunal in O.A. No. 4318 (C) of 2010, wherein the tribunal has rejected the claim of the petitioner for extension of the scale of pay attached to the post of Driver, though he has discharged the duty as Driver as and when required, by the opposite parties.

4. Mr. S.K. Swain, learned counsel for the petitioner contended that the petitioner who was substantively appointed as a Driver, but was allowed to drive medium and light vehicles on the orders of the Director, Animal Husbandry and Veterinary Services without any additional remuneration or claim for regularization of the same. He further contended that in view of the decision of the apex Court in the case of *Selva Raj v. Lt. Governor of Island, Port Blair and others*, AIR 1999 SC 838, the petitioner is entitled to higher scale of pay admissible to the post of driver. He also contended that in view of Rule 96 of the Orissa Service Code, he is entitled to get the additional remuneration since he has discharged the duty of driver.

5. Mr. S.N. Nayak, learned Additional Standing Counsel contended that the petitioner though was appointed in the substantive Class-IV post, but nothing has been placed on record to indicate that by any office order, he has been allowed to work either on temporary basis or on officiating basis to discharge the duty of Driver. So far as the applicability of the case of *Selva Raj* (supra), is concerned, the ratio decided in the said case, cannot be made applicable to the present case.

6. Having heard learned counsel for the parties and after going through the record, it appears that the petitioner was appointed as an attendant and was discharging his duty. For that duty he has been allowed the scale of pay admissible to the said post. But pursuant to the letter dated 01.09.2009 under Annexure-9, he has been allowed to drive Government vehicles as and when necessary subject to the condition that they will not be paid any extra remuneration for the purpose and they will not claim service benefit as driver in future. This order having been challenged by the petitioner before the tribunal. The petitioner pleaded before the tribunal that the petitioner was engaged as a driver from 06.01.2007 to 10.04.2012 and has been disengaged during pendency of the original application, though vacancies of drivers are available and similarly situated persons have been engaged as drivers on regular basis in the meantime. Attention was also drawn to Rule-96 of the Orissa Service Code. As per the said rule the petitioner is not entitled for any additional remuneration since the petitioner was not allowed to discharge the duty of the driver either on temporary basis or on officiating basis. More so, the document, which has been relied upon by the petitioner, i.e. Annexure-9 has also been quashed by the tribunal in view of the fact the same is exploitive and cannot be enforced as a person cannot be forced to do the work of a highly skilled employee while clearly being engaged and paid in the lower post without adequate compensation for such service.

7. Since the order in question, i.e. Annexure-9 having been

quashed by the Tribunal as the petitioner never been appointed or engaged in temporary basis or allowed to discharge the duty on officiate basis, the benefit is not admissible to him. As stated above, the petitioner's claim for additional remuneration in terms of Rule 96 cannot have any justification. The tribunal has however directed the opposite parties to consider the case of the petitioner in the post of driver in case there is any vacancy of driver and other similarly situated persons have been engaged.

8. Reliance has been placed to the case of **Selva Raj** (supra), which is totally distinguishable from the present case. In that case, the petitioner had claimed that he was entitled to the salary for the post of Secretary (Scouts) during the time he had worked pursuant to the order dated 28.01.1992. Since he had discharged the duty of Secretary (Scouts) and the salary of the said post was denied he approached the Central Administrative Tribunal and against the rejection order of the tribunal, he approached the apex Court. The apex court directed for payment to the applicant. The ratio of the said case is not at all applicable to the case of the petitioner and the same is distinguishable.

9. In view of the above, this Court is of the opinion that there is no error apparent on the face of the order of the tribunal warranting interference by this Court. The writ petition merits no consideration and the same stands dismissed.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE